

ITEM NO.32

COURT NO.11

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).636/2009

(From the judgement and order dated 04/04/2008 in
of The HIGH COURT OF MADRAS)

SA No. 737/1996

GOPLIAPPA(D) TR.LR.

Petitioner(s)

VERSUS

MADANAGIRIAPPA & ORS.

Respondent(s)

(With office report)

Date: 03/12/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. V. Prabhkar, Adv.

For Respondent(s) Mr. K.K. Mani, Adv.
 Mr. Abhishek Krishna, Adv.
 Mr. Mayur R.Shah, Adv.

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against judgment dated 04.04.2008 of the learned Single Judge of the Madras High Court whereby he dismissed the second appeal preferred by Gopaliappa (the predecessor of the petitioners) in a suit for declaration of title.

In the reply affidavit filed by respondent Nos.1 to 3, an objection has been raised to the maintainability of the special leave petition on the ground that the petitioners have not approached the Court with clean hands. In paragraph 3 of the reply affidavit filed by respondent No.1, Madanagiriappa, the following

2

averments have been made:

"The Special Leave Petition of the petitioner is not maintainable for the reasons they have not come to this Court with clean hands. The petitioners knew of the pendency of the second appeal before the High Court and their father died on 25.6.2000 neither the petitioner nor their counsel informed the High Court that sole appellant had died and prosecuted the Second Appeal on behalf of dead person. After the dismissal of the second appeal in the High Court now taking this false plea as if they were not aware of the litigation. Similarly even before this Hon'ble Supreme Court they are once again prosecuting the Special Leave Petition

on behalf of dead person namely, Venkataswamy. The said Venkataswamy i.e. petitioner No.2 had died on 8.3.2001 and even this fact was also suppressed by the petitioner and some body had forged the signature of the said dead person in the vakalat and affidavit filed along with the Special Leave Petition. The death certificate of the Venkataswamy is enclosed and marked as Annexure - R1. This respondent submits that the Special Leave Petition of the petitioner should be dismissed with costs.

In order to explain as to how the vakalatnama filed in support of the special leave petition is shown to have been signed by Venkatasamy who had died on 8.3.2001, Nagarajan, son of late Shri Gopaliappa has filed affidavit dated 15.7.2010. In para 4 and 5 of his affidavit, Shri Nagarajan has made the following statements:

"4. I state that we came to know of the litigation in July, 2008 when respondents 1 to 3 disturbed our possession on the ground that they had succeeded before the Hon'ble High Court. It was thereupon that I rushed to Chennai to gather the details of the litigation. After much enquiry, both as to the Counsel engaged by my father and the litigation, I could get the name of the Counsel engaged. I came over to Chennai on 10.08.2008 and met the Counsel engaged by my father. The Counsel opined that the matter be taken to this Hon'ble Court. While handing over all the papers pertaining to the case to me, the Counsel also gave a High Court Vakalathnama as I had informed him that my father had died as early as on 24.06.2000. After I returned to my native and after we had decided to

3

approach this Hon'ble Court, I returned to Chennai on 26.08.2008 and requested the Counsel at Chennai to arrange for filing the matter before this Hon'ble Court. At that stage, the Counsel wanted to know the names, age and address of the legal representatives of my father and accordingly I furnished the details sought for, which included my brother, Venkataswamy. The Counsel thereafter had sent the papers to Delhi along with the details of the legal representatives on 28.08.2008. On the basis of the details of the legal representatives, the Counsel at Delhi prepared the Special Leave Petition on 01.10.2008.

5. Inasmuch as the names of all my brothers including that of Venkatasamy had been mentioned in the Special Leave Petition, the Vakalathnama was signed by me and my brothers, namely Petitioners 1 and 3, affixed their left hand thumb impression and the name of Venkatasamy was written in the Vakalathnama in view of the above. The said name was written by none other than the elder son of Venkatasamy, namely, Narayanswamy. It was under the aforesaid circumstances that the name of Venkatasamy found a place in the Vakalathnama. The aforesaid are found in the High Court Vakalathnama, which had been filed into this Hon'ble Court along with the memo of appearance of the Counsel on Record.

We have heard Mr. V. Prabhakar, learned counsel appearing for the petitioner, who is now represented by his legal representatives and Mr. K.K. Mani, learned counsel appearing for the respondents and perused the record.

In our opinion, the explanation given by the petitioners for filing the special leave petition in the name of Venkataswamy, who had died on 8.3.2001, as one of the legal representatives of late Gopaliappa is wholly unacceptable. The joint affidavit filed in the names of Muniraju, Venkatasamy, Venkatramppa and Nagarajan is liable to be rejected because it is impossible to believe that a dead person had travelled with other legal representatives of Gopaliappa to Chennai and Delhi for the purpose of filing the affidavit.

We are further of the view that the impugned judgment does not suffer from any legal infirmity warranting interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master