



OSA No. 78 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25-06-2026

Pronounced on : 28.07.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA Nos. 78 and 80 of 2019

and

CMP NO. 7430 Of 2019

O.S.A. No.78 of 2019

Shanmugavelli
W/o. A. Ashokan,
No.6 Parthasarathy Street,
Saligramam, Chennai 600 093

..Appellant

Vs

1.R. Panchavarnam
W/o. Late A. Raja,
No.62/13, Vijayaraghavapuram 3rd Street,
Saligramam, Chennai.
2.Minor R. Priyadharshini
D/o. Late A. Raja,
Minor Rep By Mother And Natural Guardian
R. Panchavarnam,

..Respondents

OSA No. 80 of 2019

1.R.Shanmugavalli
No.6 Parthasarathy Street, Saligramam, Chennai.
2.Minor R.Sabarish
3.Minor R.Harish
Minor 2 And 3 Rep By their Mother And Natural
Guardian R.Shanmugavalli,

..Appellants

Vs



OSA No. 78 of 2019



Minor R.Priyadharshini
Rep By Mother Natural Guardian,
Smt R.Panchavarnam
No.62/13, Vijayaraghavapuram 3rd Street,
Saligramam, Chennai 600 093

..Respondent

Common Prayer: Original Side Appeals are filed under Order XXXVI of Rule 1 of Original Side Rules Read with Clause 15 of the Letters Patent praying to set aside the order dated 11-08-2017 passed in OP Nos.637 of 2008 and 432 of 2009 on the file of this Court.

For Appellant(s): Mr. S.C. Sezhiyan
for Mr. K. Subash in both appeals

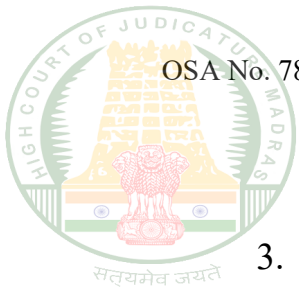
For Respondent(s): Ms. M.Meenatchi For R1 and R2 in OSA
No.78/2019 and
for Sole Respondent in OSA No. 80/2019

Common Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

A common judgment of this Court, disposing of two petitions is in challenge before us.

2. The petition in O.P. No.637/2008 was filed under Section 372 and 276 of the Indian Succession Act and Order XXV Rule 6 of the Original Side Rules, by one Panjavarnam and Minor Priyadarshini, claiming themselves to be the widow and the daughter of Late Raja. The said Raja died on 04.02.2007 while in service at Government Royapettah Hospital, Chennai.



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3. The petition in O.P. No.432/2009 was filed by one Shanmugavalli along with minor Sons, namely, Sabarish and Harish, claiming themselves to be the widow and children of late Raja. These two petitions came to be filed for obtaining Succession Certificate with respect to the claim for the death benefits and pensionary benefits of deceased Raja.

4. Therefore, both Panchavarnam and Shanmugavalli are claiming to be the legally wedded wife of Raja. As stated above, both the succession cases came to be consolidated and tried together. Both oral and documentary evidence was led by both the parties. The petitioner in O.P. No.637/2008 namely Panchavarnam has stated that, she had married Raja as per the Hindu Religious Rights and Customs on 28.08.1998 and the 2nd petitioner was born to them. Their marriage Invitation is marked as Ex.P1. She had further stated that Shanmugavalli had made rival claim for the death benefits of deceased Raja, who is actually the wife of Ashokan, brother of deceased Raja. She had also produced Ex.P4 dated 11.11.1984, the marriage receipt issued by Meenakshi Sundareswarar temple, reflecting the marriage between Ashokan and Shanmugavalli, petitioner in O.P. No.432/2009, claiming that she is the wife of Ashokan, and the minor petitioners 2 and 3 in O.P. No.432 of 2009 are the children born to the said Ashokan and Shanmugavalli and they are not the children born to Late. Raja and Shanmugavalli.



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5. On the side of Shanmugavalli, copies of family Ration Card, Voter ID card were marked as Ex.R2 and R3 to establish the fact that the said Raja was living along with Shanmugavalli at No.6, Parthasarathy Street, Saligramam, Chennai 93. Shanmugavalli deposed that her marriage with Ashokan was dissolved as per customary practice in the presence of village elders under Ex.R4 and duly signed by her and Ashokan. Further She had examined R.W.2 and R.W.3 respectively. R.W.2 Krishnan claimed to be the president of Alagarsampuram, Arunthadiyar, Hindu, Sakliyar, Uravinmurai Munnetra Sangam. Through him Ex.R21 was marked, which is a letter by Kathiriyammal dated 01.02.1995, seeking to settle the difference of opinion between her daughter Shanmugavalli and son-in-law Ashokan. R.W.2 deposed that the marriage between Shanmugavalli and Ashokan was dissolved by them vide Ex.R4 Divorce deed. Further, for the said reason, one Perumal was also examined as R.W.3 on the side of Shanmugavalli, claiming to be Head of the Village Committee. Further, the marriage agreement entered into between Shanmugavalli and Late Raja is marked as Ex.R5 and the Birth certificates and school certificates of Harish and Sabarish, the 2nd and 3rd petitioners in O.P. No.432/2009, are marked as Ex.R7 to Ex.R10. Ex.R13 is the burial ground report of death and Ex.R14 is the death certificate of Raja. Ex.R21 is the letter from Kathiriyammal, mother of Shanmugavalli. Ex.R22 is the letter of Mariyappan and Ex. R23 is the document relating to divorce. Shanmugavalli

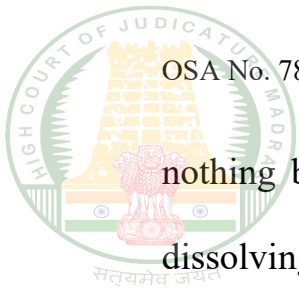


marked the above documents to establish that she is the wife of Late Raja and petitioners 2 and 3 are born to them.

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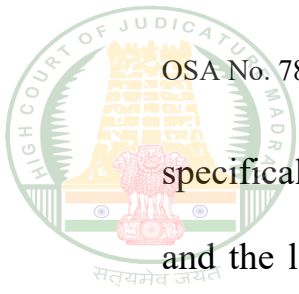
6. However, the learned Single Judge disbelieved the above documents marked on the side of Shanmugavalli and allowed the petition filed by Panchavarnam in O.P. No.637 of 2008 and consequently dismissed the petition filed by Shanmugavalli in O.P. No.432 of 2009 against which, the said Shanmugavalli has preferred the present appeals.

7. Mr. S.C. Sezhiyan, The learned counsel appearing for the appellant Shanmugavalli strenuously argued that the learned Single Judge could not have granted the claim of Panchavarnam. He pointed out that, in grant of certificate in favour of Panchavarnam, the claim of Shanmugavalli and her two sons was altogether ignored, despite the fact that the name of Panchavarnam and her daughter was not reflected in the Service Register of Raja who died on 04.02.2007 and the said Raja had only nominated Shanmugavalli to receive the retirement benefits. He would further submit that, even children born through second marriage are entitled for the estate of the deceased, which is a settled law. His further contention is that, Exs. R1 to R21 would clearly establish that deceased Raja was living only with Shanmugavalli till his death. However, the learned Single Judge failed to appreciate the above documents in a proper perspective manner. Further, the ex-husband Ashokan authored Ex.R4 which is



nothing but an agreement entered into between Ashokan and Shanmugavalli, dissolving their marriage. Hence, he would submit that the relationship between Shanmugavalli and Ashokan came to an end through E.R4 as per their customary practice and Ex.R5 is the marriage agreement entered into between Shanmugavalli and Raja. Further, Ex.R8 to R10 are Government Records in which the deceased Raja had signed as the father of the minor children. Hence he would submit that the learned Single Judge, without appreciating the above documents, dismissed the petition filed by Shanmugavalli, warrants interference by this Court.

8. On the other hand, Ms.M.Meenatchi, the learned counsel for the respondents would submit that the marriage between Panchavarnam and Raja is established through Ex.P1 marriage invitation and that the marriage between them was arranged by elders solemnised at Sarveswarar Temple. Her further contention is that the evidence of Ashokan, who was examined as P.W.2, would clearly establish that he is the husband of Shanmugavalli and the marriage between them was never dissolved and that the petitioners Sabarish and Harish were only born to him through his wife Shanmugavalli. She further submitted that the evidences of P.W.3 and P.W.4, who are the sisters of deceased Raja would clearly establish that the said Panchvarnam alone is the wife of deceased Raja and the said Shanmugavalli never married Raja at any point of time. The learned counsel would further contend that a customary divorce must be

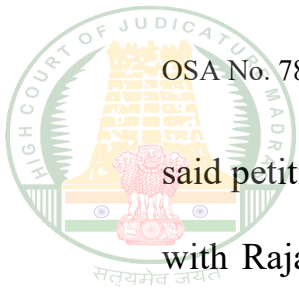


specifically pleaded and established by the person propounding such custom and the law of land is that the marriage has to be solemnised and it has to be dissolved only by a court of law and that in the present case the marriage between Ashokan and Shanmugavalli admittedly was not dissolved by any court of law. She would further contend that customary divorce should not be taken as one of the grounds to grant divorce and the party pleading the form of customary divorce should raise this issue before the competent court to prove the source. The learned counsel supported the judgment of the Single Judge and contented that Panchavarnam and her daughter Priyadarshini being the legal heirs of deceased Raja are alone entitled for the grant of succession certificate as ordered by the learned Single Judge. Consequently, the contention of Shanmugavalli was rightly rejected by the learned Single Judge, warrants any interference.

9. Heard on both sides. Records perused.

10. The petitions in O.P. Nos. 637/2008 and 432/2009 concerns the grant of succession certificate in respect of death benefits and pensionary benefits of deceased Raja.

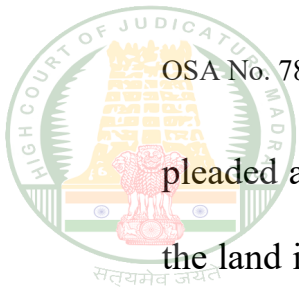
10.1. The 1st petitioner in O.P. No.637/2008 namely Panchavarnam is the legally wedded wife of deceased Raja and the 2nd petitioner Priyadarshini in the



said petition is the daughter of deceased Raja and Panchavarnam. Her marriage with Raja is admitted and has not been shown to have been dissolved by any decree of a competent Court. She claims the succession certificate on that basis.

10.2. The 1st petitioner in O.P. No.432/2009, namely Shanmugavalli asserts that she lived with Raja as his wife for several years and petitioners 2 and 3 are the children born to them. To establish her status, she has produced a document described as a customary divorce deed executed between herself and her erstwhile husband before panchayatdars. There can be no dispute that the said Shanmugavalli had never pleaded divorce through a competent court much less a customary divorce, and the existence of any custom recognizing dissolution of marriage by such a panchayat divorce. She relies on documentary evidences to show that her first marriage was dissolved and that she married the deceased Raja and had long cohabitation with him and the birth certificates and school records relating to the two children for establishing that they were born to deceased Raja.

10.3. Now the question arises whether Shanmugavalli has established that her earlier marriage stood validly dissolved under law. Though she has relied upon Ex.R4 divorce deed duly signed by herself and Ashokan and Ex.R5 photocopy of the marriage registration deed dated 27.08.1998 between her and deceased Raja, it is well settled that a customary divorce must be specifically



pleaded and established by the person propounding such custom and the law of the land is that marriage has to be solemnised and it has to be dissolved only by a Court of law. Admittedly, the marriage between Ashokan and Shanmugavalli was not dissolved by any Court of law. The party pleading the form of customary divorce should raise this issue before the competent court to prove the source. Under the Hindu Marriage Act, the Hindu marriage can be dissolved only by a decree of divorce passed by a competent Court, unless a valid custom having the force of law permitting customary divorce is specifically pleaded and strictly proved.

10.4. In the present case, the said Shanmugavalli has neither pleaded the existence of such a custom nor led evidence establishing that the community to which she belongs recognises dissolution of marriage through panchayat. Mere production of a divorce deed signed before panchayatdars is insufficient to establish a valid dissolution of marriage. In the absence of pleading and proof of custom, such a document has no legal sanctity. In such circumstances, her earlier marriage cannot be held to have been validly dissolved. Further, it should not be understood by the above discussion that we made, in any way, deciding the status of Shanmugavalli finally. She may still prosecute her own remedies for establishing her own status independently of these proceedings.



10.5. However, the evidence establishes that she cohabitated with Raja for a considerable period until his death and that two children, namely Harish and Sabarish were born during such cohabitation. The documents produced regarding the children have not been effectively rebutted. The paternity of the children stands satisfactorily established.

10.6. The law distinguishes the status of the woman from the status of children. Even where the marriage is void, children born from such relationship are entitled to the protection available under Section 16 of the Hindu Marriage Act, and cannot be treated as illegitimate merely because the marriage of their parents is void. They are entitled to succeed to the property of there parents in accordance with law.

10.7. The proceedings for grant of succession certificate under the Indian Succession Act, are summary in nature. The Court is only required to ascertain whether the persons are having the *prima facie* best entitlements to collect the debts and securities of the deceased. Though the law is clear that a nominee can claim the death benefits arising out of the employment can always file an application under Section 372 of the Indian Succession Act, as there is nothing in that Section to prevent such a nominee from claiming the certificate on the basis of nomination. Though Shanmugavalli would claim that she had been nominated in the Service Register of deceased Raja, there is nothing on record



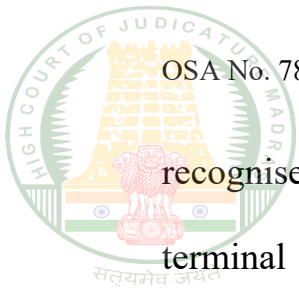
to show that she was nominated by late Raja.

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10.8. However, Shanmugavalli not only claimed herself a nominee but also mother of two children of late Raja who are also the legal heirs of late Raja. Accordingly, while Shanmugavalli cannot be granted a succession certificate in her personal capacity as widow of the deceased, the two children, being the children of Raja, are entitled for succession certificate. The Hon'ble Supreme Court in a reported decision in *Rameswari Devi vs. State of Bihar (2000) 2 SCC 431* has held that even if a Government Servant has contracted a second marriage during the subsistence of the first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Apex Court, therefore, went on to hold that such children would be entitled to pension but not the second wife.

10.9. Therefore, in our opinion, the learned Single judge was not justified in granting the claim of Panchavarnam to the exclusion of deceased Raja's legitimate legal heirs.

10.10. Therefore, even if Panchavarnam is declared the legally wedded wife and is granted the succession certificate, the rights of children who establish that they are the biological children of Raja cannot be extinguished by such proceedings. While family pension is generally payable only to the legally



recognised spouse and eligible dependants under the applicable service rules, terminal benefits forming part of the deceased's estate may be distributable among all legal heirs including children who are entitled to inherit under law.

10.11. Hence, we are inclined to pass the following orders:

The succession certificate shall be issued jointly :

(a) To the petitioners in O.P. No. 637 of 2008 , namely Panchavarnam and Priyadarshini (since attained majority) and

(b) to the petitioners 2 and 3 (since attained majority) in O.P.No.432/2009.

10.12. It is made clear that this judgment is confined to the grant of succession certificate and shall not prejudice or extinguish any independent right that may accrue to the said children in accordance with law. This approach is consistent with the settled principle that a succession certificate does not adjudicate questions of heirship conclusively and does not bar subsequent civil proceedings regarding entitlement to the estate. The amounts shall be distributed in accordance with the personal law governing succession.



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11. In the result, both the Original Side Appeals are allowed. No costs.

Consequently connected miscellaneous petition is closed.

(P.V.,J.) (K.G.T.,J.)

28-07-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

The Sub Assistant Registrar

Original Side, High Court, Madras



OSA No. 78 of 2019



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.**

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**Pre delivery Common Judgment in
OSA Nos. 78 and 80 of 2019
and
CMP No. 7430 of 2019**

28-07-2026