

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.03.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.No.1847 of 2000

V.Balu

.. Appellant

vs.

The Managing Director
Tamil Nadu State Transport Corporation
Villupuram.

... Respondent

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 03.08.2000 made in A.S.No.16/1998 on the file of the Sub Court, Chidambaram confirming the judgment and decree dated 27.11.1998 made in O.S.No.196/1998 on the file of the District Munsif Court, Chidambaram.

For Appellant : Mr.Srinath Sridevan
For Respondent : Mr.T.Arulraj

JUDGMENT

The unsuccessful plaintiff before the courts below is the appellant herein. The suit was originally filed by the plaintiff for declaring that his date of birth is 7.3.1945 and he cannot be superannuated by the defendant before the completion of 58 years from 7.3.1945 and for permanent injunction restraining the defendant Management from superannuating the plaintiff from his service before 7.3.2000 and for mandatory injunction directing the defendant to correct the date of birth of the plaintiff as 7.3.1945 instead of 14.12.1940. The Suit relief was subsequently by order of the High Court dated 12.6.2000 amended by including the relief of mandatory injunction directing the defendant to reinstate the plaintiff in service with all continued benefits from 31.12.1998 till the date of retirement in March 2003 and also for directing the defendant to pay backwages from 1.1.1999.

2.The plaintiff originally joined Military service in 1963 and after leaving from the same, he joined the respondent Transport Corporation during 1977 and at the time of joining the service, his date of birth was given as 14.12.1940 and he was on the basis of the same, issued Ex.A8 retirement notice dated 13.06.1998. The plaintiff after receiving Ex.A8 notice on the basis of Exs.A1 to A6 birth certificates purported to be relating to his elder brothers and sisters, filed O.S.203/97 which was subsequently transferred to District Munsif Court, Chidambaram and renumbered as O.S.196/98 for the reliefs as stated supra.

3.The suit was resisted by the respondent Transport Corporation not only by denying the date of birth of the plaintiff as 7.3.1945, but also by questioning the maintainability of the civil suit on the ground of limitation.

4.The parties, in support of their respective contentions, examined the plaintiff and his witnesses and the Senior Superintendent of the respondent Corporation as PW1 to PW3 and DW1 and produced Exs.A1 to A11 and Exs.B1 to B3 documents during trial. The trial court on the basis of the oral and documentary evidence adduced before the same, arrived at a conclusion that the suit was barred by limitation and the suit claim was under the relevant provisions of the Standing Orders of the respondent Transport Corporation, not maintainable and the plaintiff failed to prove his actual date of birth as 7.3.1945 and accordingly dismissed the suit. Aggrieved against the same, the plaintiff preferred an appeal in AS.16/1998. The lower appellate court after due appreciation of the facts and circumstances of the case and the entire evidence, confirmed the findings of the trial court and dismissed the appeal. Hence, this second appeal by the plaintiff before this court.

5.The second appeal is admitted on the following substantial questions of law:

(i)Whether Civil Court has not got jurisdiction to grant declaratory decree regarding date of birth?

(ii)Whether the limitation for computation of date of birth provided in the Standing Orders will prevail over the Limitation Act?

(iii)Whether the courts below are justified in refusing consequential mandatory relief?

6.Heard the rival submissions made on both sides and perused the records.

7.As already stated, the plaintiff who joined Military in Artillery Depot Regiment on 14.12.1963 and discharged from the same on 24.1.1974 and joined the respondent Corporation on 19.2.1977, come forward with the suit in 1997 for altering his date of birth as 7.3.1945 instead of 14.12.1940 and for consequential service and monetary benefits. The plaintiff in his suit filed in 1997 contended that he comes to know about his actual date of birth as 7.3.1945, through his elder sister after issuance of Ex.A8 retirement notice dated 13.6.1997 and thereafter, he made enquiry and applied for birth extracts of his elder brothers, sisters and himself and come to know about his real date of birth and approached the civil court for the relief as stated supra and the civil suit filed from the date of his knowledge is thus well within the time.

8.Whereas, both the courts below have by relying on the correction made in Ex.B3 service register of the plaintiff, rejected the contention so raised by the plaintiff. The reading of Ex.B3 service register reveals that the date of birth of the plaintiff at last page of the service register was originally entered as 7.3.1945 and the same was struck off and re-entered as 14.12.1940. The official who entered the particulars of the plaintiff in Ex.B3

service register, examined as DW1, in the witness box explained that the same was entered at the instance of the plaintiff and the same was struck off for want of any proof and the date of birth was thereafter re-entered as 14.12.1940 on the basis of the relevant entry in Ex.A10 Certificate of Service issued by the Captain, for Office Commanding Artillery Depot Regiment to the plaintiff.

9.It is common knowledge that the particulars in the service register will normally enter in the presence of the individual concerned as per the particulars given by him, as such, there is absolutely no reason to disbelieve the explanation offered by DW1. Further, it could be only on the basis of the particulars furnished by the plaintiff as the department could not have been expected to know the date of birth of the plaintiff at that point of time. That means, the plaintiff is quite well aware that his date of birth was not mentioned as 7.3.1945, but mentioned as 14.12.1940 in the service register as early as in 1977. If that is so, the plaintiff ought to have taken appropriate steps to correct the wrong entry within the time specified in the Limitation Act or the Standing Orders of the respondent Corporation. While the Limitation Act provides for three years time for approaching the civil forum, the Standing Order provides for one year for approaching the department concerned for correcting the date of birth. The plaintiff has admittedly in the present case, failed to take appropriate steps within the time prescribed either under the Limitation Act or under the Standing Orders and the claim made in 1997 is hence barred by limitation both under Limitation Act and under the Standing Orders of the respondent corporation.

10.Even otherwise, the plaintiff in support of his claim regarding his actual date of birth, relied on Exs.A1 to A6 birth extracts which are according to him, relating to his elder brothers and sisters and himself born to their parents Veeran and Manickam. Though Exs.A1 to A6 are produced through PW1 in the witness box, the plaintiff in the cross examination denied any knowledge about the date of birth of his brothers and sisters and that of himself. The plaintiff has also gone to the extent of denying number of children born to their parents. Though 3 out of 6 children are alive, none of them was brought into the witness box to speak about their date of birth and the date of birth of the plaintiff, who is according to him, the youngest and last one in his family. Further, the cursory glance at Exs.A1 to A6 birth extracts would reveal that they do not contain the name of the children born. More over, while Exs.A1 to A5 birth certificates do mention the name of the father/mother at column 7 as Veeran/Manickam, in Column 7 of Ex.A6, the name of the father/mother was mentioned as Veeran Ponnann Magan Manickam. The plaintiff is unable to explain this inconsistency regarding the name of the parents entered in Exs.A1 to A5 on one hand and A6 on other hand. In short, the plaintiff has not adduced sufficient evidence to prove that Exs.A1 to A6 certificates relating to his brothers and sisters and in the absence of one such evidence, the claim of the plaintiff is thus rightly rejected by the courts below. The courts below have also rightly rejected the plaintiff's claim as hit by the relevant provisions of the Limitation Act as well as the Standing orders and the substantial questions of law are accordingly answered against the plaintiff.

11.In the result, the second appeal is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

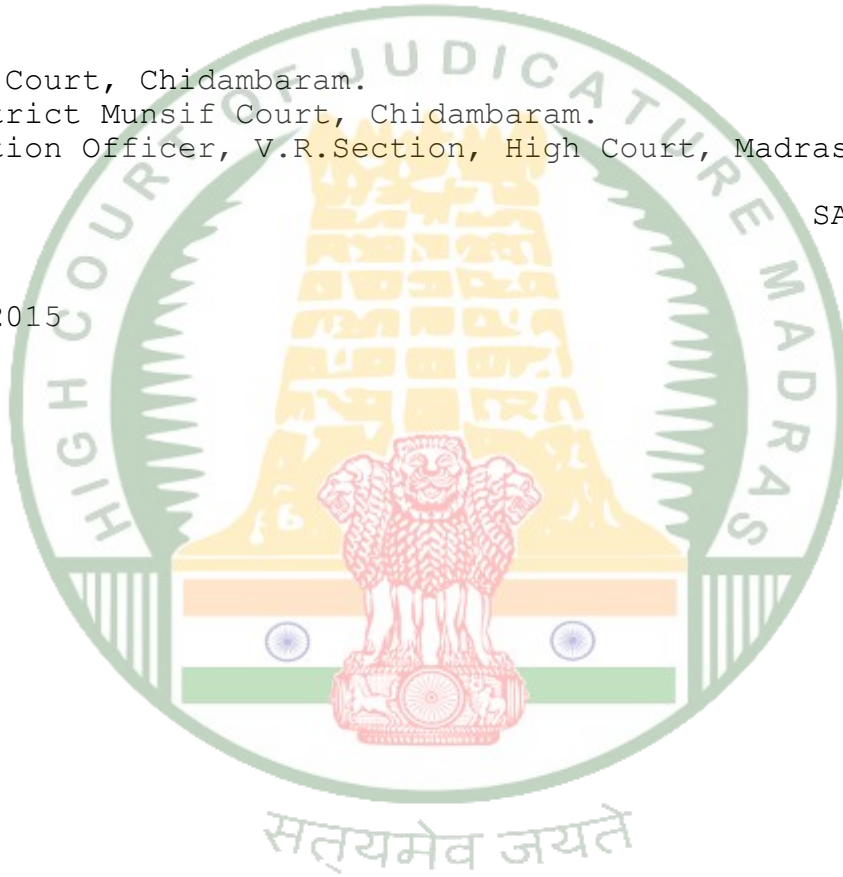
rk

To

- 1.The Sub Court, Chidambaram.
- 2.The District Munsif Court, Chidambaram.
- 3.The Section Officer, V.R.Section, High Court, Madras.

SA.No.1847 of 2000

vsn (co)
pmk.12.8.2015



WEB COPY