

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07 - 07 - 2015

Coram

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 382 of 2015

and

M.P. No. 1 of 2015

C. Rajammal

.. Appellant/Plaintiff

vs.

1. V. Leela

2. The commissioner of Police
Coimbatore

.. Respondents/Defendants

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 22.10.2013 in A.S. No. 118 of 2011 on the file of the Court of I Additional Subordinate Judge, Salem, reversing the judgment and decree dated 04.01.2011 made in O.S. No. 1190 of 2006 on the file of the I Additional District Munsif, Salem.

For Appellant : Mr. R. Selvakumar

For Respondent 1 : Mr. G. Arulmurugan

JUDGMENT

Whether the plaintiff Rajammal is the legally wedded wife of the deceased-Chockalingam is the main issue to be decided and whether she is entitled to receive the pensionary benefits of the deceased Chockalingam is the hot issue being tried from 2006.

2. This second appeal is filed by the plaintiff against the judgement and decree dated 22.10.2013 passed by the I Additional Subordinate Judge, Salem, in A.S. No. 118 of 2011 wherein and by which the judgment and decree dated 04.01.2011 recorded in O.S. No. 1190 of 2006 passed by the learned I Additional District Munsif, Salem, were reversed allowing the First Appeal at the instance of the first defendant.

3. The plaintiff has filed the suit for declaration that she is the legally wedded wife of the deceased Chockalingam and entitled to receive family emoluments, death benefits and pension from the second defendant and for permanent injunction restraining the defendants

from disbursing the entire amount of family emoluments, death benefits to the first defendant and also for costs.

4. According to the plaintiff, who claims to be the legally wedded wife of one V. Chockalingam, who served as a Police Constable at Coimbatore, her marriage took place on 15.5.1988 and was registered. But they had no issues. It is alleged by the plaintiff that inspite of her husband keeping concubines and the ill-treatment meted out to her by him and his parents, she managed to live with him. It is stated that at one point of time, she lodged a complaint to the higher authorities as a result of which he was suspended from service for a short period and due to his ill-health, he died on 05.7.2006. Hence, she has filed the suit for declaration that she is the legally wedded wife of late Chockalingam and she is entitled to receive the family emoluments, death benefits and pension. She also sought for permanent injunction restraining the second defendant from disbursing the entire amount of death benefits and emoluments to the first defendant.

5. Resisting the suit, the first defendant, mother of the deceased Chockalingam, filed written statement denying all the averments made in the plaint. According to her, on 15.5.1988, the date on which the alleged marriage took place as averred by the plaintiff, her son Chockalingam was a minor. She also denied the alleged marriage and the suspension of his service on the basis of the complaint. It is the further case of the first defendant that her son Chockalingam died only as a bachelor and hence, she alone is the legal heir of the deceased entitled to his death benefits. On these grounds, she sought for dismissal of the suit.

6. The second defendant Commissioner of Police, Coimbatore City, filed written statement stating that the deceased, who was working as Head Constable, died on 05.7.2006 while he was on Medical Leave. It is stated that though the plaintiff has given a petition requesting to give all benefits like pension and compassionate appointment, the enquiry revealed that she had lived with four other persons and she had illicit intimacy with the deceased. It is further stated that the deceased filed nomination form nominating his mother first defendant to receive the benefits and as such, the first defendant alone is entitled to receive all the death benefits and family emoluments of the deceased and sought for dismissal of the suit.

7. Before the trial Court, the plaintiff examined herself as P.W.1 and marked as many as thirteen documents, viz., Exs. A.1 to A.10. To nullify the case of the plaintiff, the first defendant examined herself as D.W.1 besides examining five more persons as D.W.2 to D.W.6 and marked Exs. B.1 to B.9.

8. The trial Court / learned I Additional District Munsif, Salem, Chennai, after analysing the oral and documentary evidence available on record, by judgment dated 04.01.2011, has come to a resultant conclusion that the plaintiff is the legally wedded wife of the deceased Chockalingam and accordingly, decreed the suit holding that both the plaintiff and the first defendant, who is the mother of the deceased, are entitled to the death benefits of the deceased in equal share. On appeal by the first defendant / mother of the deceased, the Lower Appellate Court / learned I Additional Subordinate Judge, Salem, on appreciation of the facts and the materials available thereon, finding that the marriage between the plaintiff and the deceased has not been proved, reversed the finding of the trial Court and allowed A.S. No. 118 of 2011 by judgment dated 22.10.2013 . Feeling aggrieved by the same, the plaintiff is before this Court with this Second Appeal.

9. Heard Mr. R. Selvakumar, learned counsel appearing for the appellant / plaintiff and Mr. G. Arulmurugan, learned counsel appearing for the first respondent and perused the records.

10. The fact remains that Chockalingam, appointed as Grade II Police Constable on 25.5.1988 and promoted as Grade I Constable and thereafter, as Head Constable on 28.10.2004, served with the Tamil Nadu Police Department died on 05.7.2006 while he was on Medical Leave. It is also not in dispute that the first defendant Leela is the mother of the deceased.

11. The claim of the appellant that she married Chockalingam on 15.5.1988 at Arulmighu Sughavaneshwarar Thirukoil, Salem, is denied by both the first respondent / mother of the deceased as well as the second respondent Department. In support of such denial, the defendants have produced Ex. B.7 letter dated 03.7.2010 by the Assistant Commissioner / Executive Officer of the said Temple, who has stated that no such marriage had taken place on the said date in their temple. Though the learned counsel for the appellant argued on the presumption of marriage based on the long cohabitation between the appellant and the deceased, the factum of marriage is not proved by any acceptable evidence before the Lower Appellate Court or even before this Court.

12. From a perusal of the records, it is seen that the report Ex. B.1 which was marked through D.W.2 Balu, an official witness working as an Office Assistant in the City Commissioner Office, Coimbatore, speaks volumes of the immoral character of the appellant. One Anbalagan, a resident of the street where the appellant lived earlier, who was examined as D.W.3 has deposed to the effect that the appellant had earlier married her uncle's son Rathinam and after

that, she married one Jayagodi. It is also seen that thereafter, she embraced Christianity and married one Raman alias James and this is proved by the deposition of one Lawrence, a pastor, who was examined as D.W.4 through whom Ex. B.4 and B.5 were marked. Therefore, it is clear that the appellant is not the legally wedded wife of the deceased Chockalingam and as rightly pointed out by the Lower Appellate Court, the trial Court has failed to note Exs. B.4 and B.5, proof of the marriage prior to the alleged marriage and Ex. B.7, letter sent by the Executive Officer of Arulmighu Sughavaneshwarar Temple, which are to the effect that no such marriage as alleged by the appellant took place on 15.5.1988.

13. Regarding the disbursement of death benefits, the rules only provide for nomination and payment of the amount due under the rules to the nominee, in order that the Government may not be put to the trouble of searching for the proper person who will be entitled to receive the amount on the death of a Government Servant. The nomination is filed only to facilitate the Government to make payment to a particular person named by the deceased Government servant so that the Government would be in a position to discharge its liability.

14. In the instant case, it is not in dispute that as per the available records, the deceased Chockalingam has filed nomination form nominating his mother the first respondent herein. It is also pertinent to note that the appellant has also not produced legal heirship certificate. As such, the first respondent alone is entitled to receive all the death benefits and family emoluments of the deceased. The point is answered accordingly. The Lower Appellate Court has rightly dismissed the suit and this court finds no reason to interfere with the same.

In the result, the Second Appeal fails and the same is dismissed confirming the judgment and decree dated 22.10.2013 passed in A.S. No. 118 of 2011 on the file of the learned I Additional Subordinate Judge, Salem. In view of the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

gri

s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. I Additional Subordinate Judge
Salem

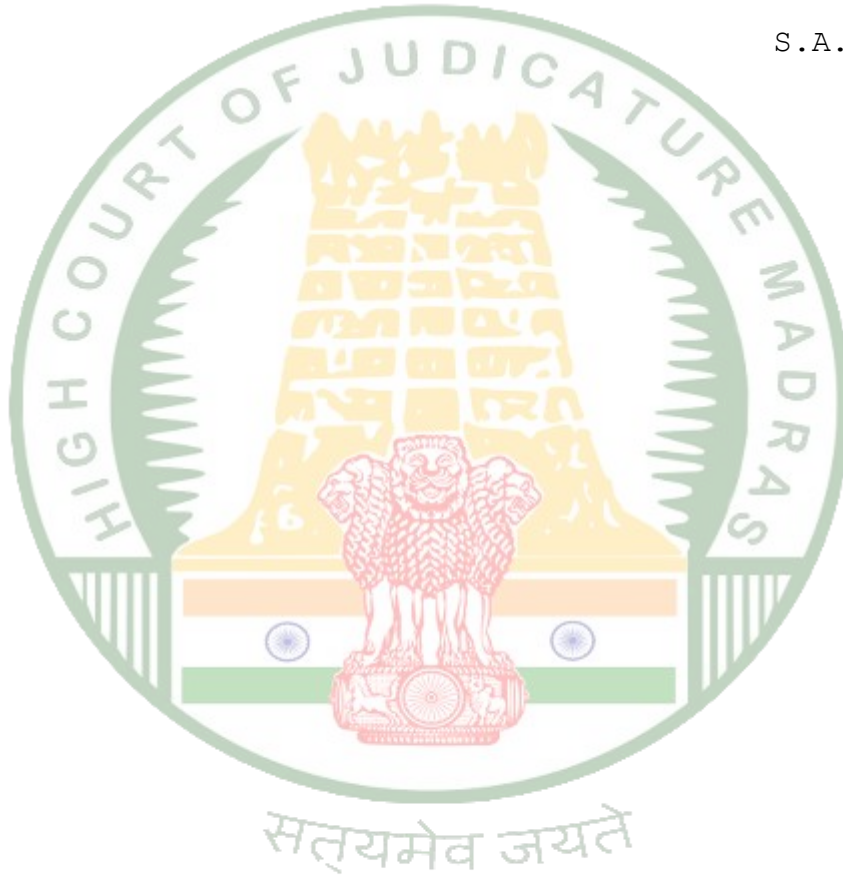
2. I Additional District Munsif
Salem

+ 1 cc to Mr.G.Arul Murugan, Advocate SR 33789

+ 1 cc to Mr.R.Selvakumar, Advocate SR 33862

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