

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.546 of 2015

1. Minor Ponthamizh
2. Minor Nishanthini
(Minor appellants 1 and 2 represented
by their next guardian, friend and
mother Amudha 3rd appellant)
3. Amudha
... Appellants
(Defendants 5 to 7)

Vs.

1. Jayamani
2. Government of Tamilnadu,
Rep by The District Collector
District Collector Campus,
Ayyampalayam Post,
Namakkal Taluk, Namakkal District
3. The Revenue Divisional Officer,
Namakkal
4. The Tahsildar,
Namakkal
5. Jayanthi
... Respondents
(Plaintiff & Defendants 1 to 4)

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 12.11.2014 made in A.S.No.86 of 2012 on the file of the Sub Court, Namakkal, confirming the judgment and decree dated 27.07.2012 made in O.S.No.718 of 2008 on the file of the I Additional District Munsif, Namakkal.

For Appellants : Mr.T.Dhanyakumar

J U D G M E N T

The defendants 5, 6 and 7 are the appellants herein. The suit has been filed by the plaintiff for including her name as the legal heir of one deceased Periyasamy and for declaration that the legal heirship certificate issued by the third defendant on 19.12.2008 in Ni.Mu.21374-2008 (A9) is null and void.

2. The case of the plaintiff is that one Periyasamy married Jeyakodi and begot two male children. Both the children died as bachelors. The said Jeyakodi also died in the year 1982. The said Periyasamy was a Junior Engineer in Tamil Nadu Electricity Board and retired on 30.04.2006. After the death of his first wife-Jeyakodi, the said Periyasamy married one Jeyamani i.e. the Plaintiff on 03.03.1983. The fourth defendant is the daughter born to Periyasamy and Jayamani. The said Periyasamy was having illegal relationship with one Amudha, who is the 7th defendant and through her, fifth and sixth defendants were born. After the death of Periyasamy, the plaintiff and defendants 4 to 6 applied for legal heirship certificate to the third defendant. But the defendants 1 to 3, without including the name of the plaintiff had issued legal heirship certificate on 19.12.2008, stating that the defendants 4 to 6 are the only legal heirs. As the plaintiff is the heir of the deceased Periyasamy, the suit is filed for setting aside the legal heirship certificate dated 19.12.2008 issued by the third defendant and including the name of the plaintiff also as the heir of the deceased Periyasamy.

3. The suit was resisted by the appellants/defendants 5 to 7 contending that after the death of the first wife Jeyakodi, the said Periyasamy married the 7th defendant, namely, Amudha and begot defendants 5 and 6. The appellants also denied the marriage of Jeyamani with Periyasamy.

4. Before the trial Court, the plaintiff examined herself as PW-1 and two more witnesses as PWs.2 and 3 and marked Exhibits A1 to A4. On the side of the defendants, no witness was examined and Exhibits B1 to B6 were marked.

5. On the above facts, the question that arises for consideration is as to whether the plaintiff is also the legal heir of the deceased Periyasamy. The deceased Periyasamy was a Junior Engineer in Tamil Nadu Electricity Board and retired on 30.04.2006. He married one Jeyakodi as his first wife, who died on 16.12.1982. These are all admitted facts.

6. The plaintiff Jayamani contended that she was married to Periyasamy on 03.03.1983 after the death of the first wife and, therefore, she is his legal heir. The name of the plaintiff was omitted to be added in the Certificate at the time of enquiry by the third defendant, though she requested the authority for inclusion of her name. Admittedly, nobody was examined on the side of the defendants and there is no reason adduced for not examining anyone on their side. The plaintiff however had been examined as P.W.1 and two other witnesses were also examined. P.W.1 and P.W.2 have categorically stated that Jeyamani was married to the deceased Periyasamy on 03.03.1983. P.W.3 also admitted in his evidence that

Periyasamy retired on 30.04.2006 and in his Service Register, Jeyamani, i.e, the plaintiff, was registered as a nominee. It is also mentioned that Jeyamani is his second wife. Though, neither the plaintiff nor the seventh defendant had proved the factum of their marriages with the deceased Periyasamy, in the nomination filed by the deceased in the Service Register, the plaintiff has been referred to as his wife and it is also stated that the first wife was dead. Even in the Pension Register, the said deceased had mentioned the plaintiff's name as wife and the 4th defendant as daughter through her and fifth and sixth defendants were shown as other heirs. In Exhibit B-6 letter sent by the seventh defendant to the Chief Internal Audit Officer of TNEB, she had admitted that Jeymani, the plaintiff was married to Periyasami as second wife.

7. The lower Appellate Court has also categorically found that the first wife died in the year 1982 and the plaintiff was married in the year 1983 and the fourth defendant was born in the year 1984, which would lead to strong presumption that the marriage of the plaintiff with the said Periyasamy is proved. Accordingly, the Courts below decreed the suit to include the name of the plaintiff as the legal heir of the deceased Periyasamy, along with the defendants 5 and 6, though they are born out of the illegal relationship with the seventh defendant and Periyasamy.

8. In such circumstances, I am not inclined to interfere with the findings of the Courts below, which concurrently decreed the suit. No question of law arises for consideration in the Second Appeal. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1.The Subordinate Judge, Namakkal
- 2.The Additional District Munsif, Namakkal

S.A.No.546 of 2015

aa21/08/2015