



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

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CORAM:

THE HONOURABLE Ms.JUSTICE **R.MALA**

**Second Appeal (MD) No.199 of 2016
and
C.M.P. (MD) No.3033 of 2016**

1.R.Lathiba @ Deepa
2.R.Manikandan
3.Minor.Jothi Lakshmi
4.Minor.Karthika
(Appellants 3 and 4 are represented
by the 1st appellant, mother and
next friend) ... Appellants

versus

1.R.Amutha
2.Minor.Pa di Muthumani
3.Minor.R.Balachandran
4.Muthu Lakshmi
5.The Superintendent of Police,
Sivagangai Collectorate Compound,
Sivagangai.
(Respondents 2 and 3 are represented by
the 1st respondent, mother and next
friend) ... Respondents

Prayer: Second Appeal is filed under Section 100 of CPC., to set aside the judgment and decree dated 05.10.2012 made in A.S.No.93 of 2011 on the file of the Sub Court, Devakottai confirming the judgment and decree dated 23.06.2011 made in O.S.No.69 of 2010 on the file of the Additional District Munsif Court, Karaikudi and allow the above second appeal.

For Appellants : Mr.D.Sadiq Raja
For Respondents : Mr.R.Sundar Srinivasan

JUDGMENT

The plaintiffs/appellants, who lost the legal battle in both the Courts below, have come forward with this second appeal stating that the first plaintiff/first appellant is the legally wedded wife of Mr.Ramachandran, who died on 12.02.2000 in road



accident. The first respondent has claimed that she is the legally wedded wife of Ramachandran and she filed O.S.No.41 of 2006 to declare that she is the legally wedded wife of deceased Ramachandran and to direct the 5th respondent to disburse all the terminal benefits arising out of the demise of deceased Ramachandran. The said suit was decreed. Even though, the first plaintiff/first appellant filed an application in I.A.No.22 of 2007 to implead herself as a party to the proceedings, the same was dismissed and hence, she filed the suit in O.S.No.69 of 2010, to declare that the judgment and decree dated 10.08.2009 made in O.S.No.41 of 2006 on the file of the Additional District Munsif Court, Karaikudi, is null and void and not binding the plaintiff and also, to direct the fifth respondent to disburse the retiral benefits to the plaintiffs, the appellants herein.

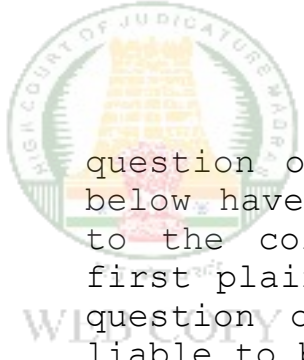
2.The respondents herein have raised the defence stating that the first respondent is the legally wedded wife and the first appellant is a muslim and there is no marriage between the first plaintiff and Ramachandran and to avoid unnecessary dragging on the proceedings, she has ended in compromise in M.C.O.P.No.177 of 2000. However, there is no document to show that the first plaintiff and her children are the legal representatives and their names have been nominated in the official records. Only the first respondent and her children have been nominated. Hence she prayed for dismissal of the suit.

3.The fifth respondent has also filed a detailed written statement stating that the deceased Ramachandran died on 12.02.2000 and in all the official records, he nominated her wife Amutha and her children viz., R1 to R4 as legal representatives.

4.The trial Court, after considering the pleadings, viz., plaint, written statement, framed necessary issues and considering the oral and documentary evidence, dismissed the suit, stating that the marriage has not been proved. Against, which, the plaintiffs have preferred an appeal and the same was also dismissed by the first appellate Court, stating that the first plaintiff, having knowledge about the filing of the suit in O.S.No.41 of 2006, filed an application to implead herself as a party to the proceedings and even though, it was dismissed, she has not challenged that order. Hence, she has filed the present second appeal.

5.Heard the learned counsel for the appellants and perused the materials available on record.

<https://hcservices.courts.gov.in/hcservices/> the arguments and also perusal of the typed set of papers, this Court finds that the question as to whether the first appellant is the wife of deceased Ramachandran is not a



question of law and it is a question of fact. Both the Courts below have considered the oral and documentary evidence and come to the correct conclusion and dismissed the suit filed by the first plaintiff. Therefore, I am of the view that no substantial question of law arises in this second appeal and the same is liable to be dismissed at the admission stage itself.

7. Accordingly, this second appeal is dismissed at the stage of admission. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Karikudi
2. The Additional District Munsif, Karaikudi.

+1cc to Mr.D.Sadiq Raja, Advocate Sr.No. 30220
+1cc to Mr.K.Sundar Srinivasan, Advocate Sr.No.30257
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AA/SKS-RR/14.07.2016/3p-5c

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