

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM

THE HONOURABLE MS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.721 of 2017 and
C.M.P.No.18267 of 2017

Kantha @ Kanthammal ... Appellant (Plaintiff)

..vs..

1. Muniammal
2. The Assistant Record Officer
for O.I.C. Records, Madras
Regiment
Abhikh Karyalaya, Post Box No.1
Wellington (Nilgiris) 643 231 ... Respondents (Defendants)

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree of the learned Principal Subordinate Judge, Krishnagiri dated 27.11.2007 in A.S.No.61 of 2007 confirming the Judgment and Decree of the learned District Munsif of Krishnagiri, dated 27.07.2006 in O.S.No.35 of 2004.

For Appellant : Mr.C.N.J.Hariharan
for Mr.V.Nicholas

For Respondents : Mr. M.V.Krishnan

J U D G M E N T
सत्यमेव जयते

The Plaintiff aggrieved by the Judgment and Decree of the Lower Appellate Court dated 27.11.2007 has preferred this Second Appeal.

2. The case of the Plaintiff is that her husband, C.K.Munusamy was a Havildhar in Army and he had married a first defendant as his first wife. As the misunderstanding arose between them, he divorced the first wife/first defendant according to their custom on 27.02.1962. After that the first defendant is alleged to have married one Kannugan and lived with him. It is further stated that on 07.02.1968, the above said Munusamy married the plaintiff for the second time and got four

children out of the said marriage. The said Munusamy retired from service on 31.01.1979 and was receiving the pension till his death i.e. on 17.07.2002. It is further stated that the Plaintiff who is the legally wedded wife and their children are lawfully entitled to get family pension after the death of said Munusamy. On 09.07.2003, when the Plaintiff applied for family pension, the second defendant had directed her to produce the copy of the divorce order. However, as claimed by the Plaintiff, it was only a customary divorce. Hence, the decree could not be produced, in the absence of judicial order of divorce. The Plaintiff has now filed the suit for declaration to declare herself as legally wedded wife of late Munusamy and entitled to get the family pension from the second defendant.

3. The first defendant who is the first wife contested the suit contending that there was no divorce as per the caste customs. It was stated further that the Plaintiff was not at all the wife of late C.M.K.Munusamy and she and her children are not entitled to any family pension. Only the name of the first defendant is entered into the service records of late C.M.K. Munusamy and therefore she prayed for dismissal of the suit.

4. On the above facts, the trial Court had found that both the widows are entitled for 1/2 share each. However, the Lower Appellate Court set aside the said finding and held that the conclusion of the trial Court was wrong and that when the first marriage was subsisting, there cannot be a second marriage.

5. The learned counsel for the appellant contended that P.W.3 who is a person belonging to the village where the deceased was living has stated that the deceased had married the first defendant and divorced her as per customs. Thereafter, the Plaintiff had married to the said C.M.K.Munusamy. Excepting the interested testimony of P.W.3, there is no proof for such customary divorce prevailing in the community of the deceased C.M.K.Munusamy. Infact, the marriage between the plaintiff/appellant and late C.M.K.Munusamy was also found to be not proved. The trial Court infact had found that both the widows are entitled for 1/2 share each. However, the Lower Appellate Court set aside the said finding and held that the conclusion of the trial Court was wrong and that when the first marriage was subsisting, there cannot be a second marriage. Even if there was a marriage, the same is not valid as the same was during the subsistence of the first marriage. Accordingly, the claim of the Plaintiff is negatived by the Lower Appellate Court and decreed that the first defendant is legally wedded wife, who is entitled to receive the pensionary benefits of deceased Munusamy. The said finding is correct and the same is confirmed and the second appeal is dismissed and the first defendant is declared as the legally wedded wife of the deceased

and that she is entitled to receive the pensionary benefits of the deceased C.M.K.Munusamy.

7. In the result, this Second Appeal is dismissed, confirming the Judgment and decree of the Lower Appellate Court. The first defendant/first respondent is declared as a legally wedded wife and she is entitled to receive the pensionary benefits of the deceased C.M.K.Munusamy. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-ix)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif of Krishnagiri
2. The Principal Subordinate Judge, Krishnagiri

copy to.

The Section Officer,
V.R. Section, High Court, Madras. (2 Copies)

+1cc to Mr.V.NICHOLAS Advocate, S.R.No.87360
+1cc to Mr.M.V.KRISHNAN Advocate, S.R.No.86789

S.A.No.721 of 2017

SU(CO)
TR(04/01/2018)

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