

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.75/2017 & CMP.No.1440/2017

- 1 Ponnammal
- 2 Ezhilarasi
- 3 Manickavalli
- 4 Tindralkumaran
- 5 Marudhachalamurthy

... Appellants / Defendants 1 to 5

Versus

- 1 Padmavathi
- 2 Thamilarasi
- 3 S.Senthilkumaran
- 4.S.Saravanan
- 5 Karthikeyan
- 6 The Manager

Life Insurance Corporation of India,
Anna Salai, Thriuvannamalai Branch

... Respondents /Plaintiffs
1 to 5 & 6th Defendant

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 30.01.2012 made in A.S.No.15 of 2011 on the file of the District Judge, Thriuvannamalai in confirming the Judgment and Decree dated 22.02.2011 made in O.S.No.49 of 2009 on the file of the Principal Sub-Court, Thiruvannamalai.

For Appellants : Mr.R.Sivaraman for
Mr.N.Damodharan
For RR 1 to 5 : Mr.V.Haribabu for
Mr.P.Munusamy

JUDGMENT

By consent, the second appeal is taken up for final disposal.

2 The defendants 1 to 5 who had lost partly before the Courts below, are the appellants herein.

3 The suit in O.S.No.49 of 2009 filed by the respondents/plaintiffs on the file of the Principal Subordinate Judge, Thiruvannamalai, for partition of the amounts due and payable under the Insurance Policies with the Life Insurance Corporation of India - 6th defendant and for prohibitory injunction against the said respondents, not to disburse the amounts to appellants/ defendants 1 to 5, came to be decreed partly vide Judgment and decree dated 22.02.2011. The Plaintiffs, in respect of the disallowed claim, did not file any appeal and whereas, the defendants 1 to 5 filed an appeal in AS No.15 of 2011 on the file of the District Judge, Thiruvannamalai. The Lower Appellate Court, vide impugned judgment and decree dated 30.01.2012, has dismissed the appeal, thereby confirming the judgment and decree passed by the Trial Court and challenging the legality of the same, the present Second appeal is filed.

4 The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] For the sake of convenience, the array of parties / nomenclature adopted by the Trial Court, is adopted in this second appeal also.

[b] The plaintiffs would aver among other things, the 1st Plaintiff is the legitimate wife of late P.M.Shanmugam, retired Teacher and plaintiffs 2 to 5 are the sons and daughters of late P.M.Shanmugam and the 1st plaintiff. The 1st defendant is the second wife of late P.M.Shanmugam and the marriage between them was held during the subsistence of the first marriage with the 1st plaintiff by late P.M.Shanmugam and therefore, the plaintiffs took a stand that the second marriage of P.M.Shanmugam with the 1st defendant is ab initio void and she is not entitled to claim any share in his properties or assets. Since the marriage of P.M.Shanmugam with the 1st defendant is ab initio void, the children born to them, viz., the defendants 2 to 5 are treated only as illegitimate children born to them and however, in view of the relevant statutory provisions, the defendants 2 to 5 are deemed to be the legitimate children for the purpose of claiming a share in the assets of their deceased father.

[c] The plaintiffs would further aver that late P.M.Shanmugam had obtained five Insurance Policies aggregating to a sum of Rs.5 lakhs, with the maturity value of Rs.4,19,939.30p. and out of five policies, two policies were taken in the name of the 1st defendant and the rest of the

policies were taken in his name and the premium amounts in respect of the five policies have been paid by P.M.Shanmugam only. It is further stated by the plaintiffs that P.M.Shanmugam had appointed the 5th defendant as nominee in respect of a policy and in respect of two other policies, had nominated the 4th defendant as nominees and in respect of the rest of two policies, had nominated the 1st defendant. The plaintiffs also took a legal plea that in the light of the settled position of law, that nominee is only an agency created by the maker to act as the collecting agent, the defendants cannot claim any amount due and payable under the policies, in which they have been shown as nominees and despite the demand made to give a share in the amounts due and payable under the three Insurance Policies taken in the name of P.M.Shanmugam and in respect of two other Policies taken in the name of the 1st defendant, the premiums were paid by P.M.Shanmugam and the defendants did not come forward to accede to their request/demands and therefore, filed the suit.

[d] The 5th defendant had filed a written statement which was adopted by the defendants 1 to 4 and apart from refuting the averments made in the plaint, they would contend that late P.M.Shanmugam lived with the 1st defendant after he got married to her during the year 1971 and out of the lawful wedlock, defendants 2 to 5 were born and therefore, they are the legitimate sons and daughter of P.M.Shanmugam and the 1st defendant. It is further averred by the 5th defendant that late P.M.Shanmugam has also executed a Registered Will dated 03.04.2007 in favour of defendants 1 and 4 and also nominated the 1st defendant as the beneficiary to be eligible to get the family pension in the Service Record and those documents also evidence the fact that the 1st defendant is the legally wedded wife of late P.M.Shanmugam. Insofar as the claim made by the plaintiffs for getting the matured amount of the policies are concerned, the 5th defendant took a stand that two policies stand in the name of the 1st defendant and insofar as the rest of the policies are concerned, premiums were paid out of the income generated through one of the sons as well as by the 1st defendant and as such, in respect of three policies, plaintiffs are not entitled to claim any share. The 5th defendant also took a stand that the 1st plaintiff is the illegitimate wife of late P.M.Shanmugam and as a consequence, the rest of the plaintiffs have to be treated only as illegitimate children and therefore, prayed for dismissal of the suit.

[e] The 6th defendant has filed a written statement, contending among other things, that two policies stand in the name of the 1st defendant and the rest of the policies stand in the name of P.M.Shanmugam and the policy amounts were said to be contributed by him and as per section 39 of the Insurance

Act, nominees appointed under the policy are entitled to get the relief and since the 1st defendant, in whose name, two policies have been taken, is still alive, the question of payment of the matured amount does not arise at all and in respect of the remaining three policies, they will abide by the judgment passed by this Court.

[f] The Trial Court, on a consideration of the pleadings, had framed the following issues:-

- Whether it is true that the policy holder namely Ponnammal [D1] whose life has been assured under the two LIC policies No.734106855 and 734106858 is alive and the claim remains immatured, no settlement or division could be possible at this pre-matured stage?
- Whether it is true that in respect of three LIC Policies No.734106860, 734106854, 734106862 after the demise of policy holder namely P.M.Shanmugam, D1 and D4 alone are entitled to share the assured amounts? If so, whether the plaintiffs 2 to 5 being the illegitimate children of P.M.Shanmugam are also entitled to get equal shares in the above said three policies?
- Whether the plaintiff is entitled to get a decree for division of the suit LIC policy assured amounts into two equal shares and one such share to them jointly as prayed for?
- Whether the plaintiffs are entitled to get a decree for prohibitory injunction as prayed for?
- To what other relief?

[g] During the course of trial, the plaintiff examined herself as P.W.1 and examined three other witnesses as P.Ws.2 to 4 and Exs.A1 to A14 were marked and on behalf of the defendants, the 5th defendant was examined as DW1 and the 1st defendant was examined as DW2 and Exs.B1 to B32 were marked.

[h] The Trial Court, on a consideration of pleadings and on appreciation of oral and documentary evidences, has recorded a finding that the Policies 1 and 2 stand in the name of the 1st defendant and it is yet to get matured and as such, the claim made by the plaintiffs to get the matured value of those policies, is unsustainable and insofar as the rest of the policies are concerned, the Trial Court held that the 1st plaintiff is the legally wedded wife of late P.M.Shanmugam and plaintiffs 2 to 5 were born to them and the 1st defendant is not the legally wedded wife and though the defendants 2 to 5 are illegitimate children of P.M.Shanmugam, they are entitled to get the benefit of the share in the property left behind their father and therefore, partly decreed the suit, allotting 1/9th

share in Item Nos.3 to 5 [3 policies]. The defendants, aggrieved by the said judgment and decree passed by the Trial Court, filed an appeal in AS.NO.15/2011.

[i] The Lower Appellate Court, on a consideration of the Memorandum of Grounds and materials placed before it, had formulated the following points for determination:-

- Whether the 1st plaintiff is the Christian and she is a legally wedded wife of P.M.Shanmugam? Or the first defendant Ponnammal is the legally wedded wife of the said P.M.Shanmugam?
- Whether the plaintiffs 2 to 5 are the illegitimate children of the said P.M.Shanmugam? Or the defendants 2 to 5 are the illegitimate children of the said P.M.Shanmugam?
- Whether the defendants 1 and 4 who are the nominees for the policies Item No.3,5 and 4 respectively are entitled to the entire amount assured in the policies?
- Whether the judgment of the Trial Court is sustainable in law?
- To what other relief?

[j] The Lower Appellate Court, on appreciation of the oral and documentary evidences, found that the dispute pertains to Policies No.3, 4 and 5 and though a stand was taken that the 1st plaintiff is not a Hindu, the Lower Appellate Court found that she is a Hindu and professing Hindu faith only. Insofar the legitimacy of marriage of the 1st plaintiff with late P.M.Shanmugam, the Lower Appellate Court found that Exs.A2 and A3 dated 12.05.2006-Pension Passbook and Photograph would disclose that the 1st plaintiff is shown as his wife and a joint family photo of P.M.Shanmugam along with her was duly affixed. The Lower Appellate Court further found that the Tahsildar, Chengam, after conducting enquiry, also issued Ex.A13 stating that the 1st defendant is the second wife of late P.M.Shanmugam and therefore, advised both parties to approach the Civil Court and further found that as per Exs.A5 and A8 issued by the competent Tahsildar, coupled with the joint family photo, recorded the finding that the 1st plaintiff is the legally wedded wife of P.M.Shanmugam and the marriage between them took place on 22.11.1970 and the said fact was also amply corroborated to the oral testimonies of P.Ws.2 and 3 coupled with the documentary evidence marked as Exs.A2, A3, A5 and A8.

[k] Insofar as the claim made by the 1st defendant as to the married status and the legitimacy of the children born, the Lower Appellate Court found that the 1st defendant had filed OS.No.345/2009 on the file of the Court of the Principal

District Munsif, Tiruvannamalai, against the 1st plaintiff as well as against the District Elementary Officer, Tiruvannamalai and the Additional Elementary Officer, Tiruvannamalai, praying for declaration that she is alone is the legally wedded wife of the deceased P.M.Shanmugam and for permanent injunction restraining the defendants 2 and 3 from disbursing the death benefits and pensionary benefits to the 1st defendant and for cost and the Trial Court has reached the conclusion that there is inconsistency in the plaint averments with regard to the place of marriage and therefore, dismissed the suit.

[1] The Lower Appellate Court further found that though the defendants had marked Exs.B26, B28, B29 and B30, it is only an evidence of the fact with regard to the paternity of the defendants 2 to 5 and no other evidence has been let in to substantiate the fact that the 1st defendant is the legally wedded wife of late P.M.Shanmugam . The Lower Appellate Court has also taken into consideration the judgment rendered by the Hon'ble Supreme Court of India reported in AIR 84 SC 346 [Sarwati Devi and another Vs. Usha Devi] and found that the defendants 1 and 4 though have been shown as nominees in respect of the suit policies 3 to 5, they are not entitled for the entire amounts due and payable to them in the light of the ratio laid down in the above cited decision. Therefore, held that the plaintiffs 1 to 5 and the defendants 2 to 5 are entitled to 1/9th share and in respect of the policies 1 and 2, since they stand in the name of the 1st defendant, she being alive, the plaintiffs are not entitled to get the matured value of the said amounts and therefore, dismissed the appeal vide impugned judgment and decree dated 30.01.2012 and aggrieved by the same, the present Second Appeal is preferred by the defendants.

3 In the Memorandum of Grounds in the Second Appeal, the following Substantial Questions of law arise for consideration:-

- Whether the Courts below erred in law and misdirected themselves in holding that the first respondent herein is the legally wedded wife of the deceased P.M.Shanmugam and the first appellant herein is his second wife, on mere presumptions and assumptions in the absence of any issues being framed and in the absence of any documentary evidence let in therein except the self-interest evidence of P.W.1?
- Whether the Courts below erred in law and misdirected themselves in granting a decree for 5/9th share in favour of the plaintiffs/respondents 1 to 5 in the suit items 3 to 5 when admittedly the first respondent has failed to prove that she is the first wife of late P.M.Shanmugam, in a manner known to law without properly advertng to and considering the evidences both oral as well as documentary as adduced by the appellants herein?

- Is not the preponderance of the probabilities of the case proves that the first appellant herein is the legally wedded first wife of late P.M.Shanmugam especially Exs.B1 to B24, including the registered Will Ex.B24 adduced by the appellants herein besides the evidence of DW1 and DW2?
- Whether the Courts below erred in law and misdirected themselves in granting a decree for injunction as against the sixth respondent herein restraining the Corporation from disbursing the 5/9th share to the appellants in the suit items 3 to 5 when admittedly the respondents 1 to 5 are entitled to only 4/9th share in the suit policies 3 to 5?

4 Mr.R.Sivaraman, learned counsel appearing for the appellants / defendants would contend that in the suit in OS.No.345/2009 filed by the first appellant against the 1st respondent, relying upon the judgment rendered by the Trial Court in OS.No.49/2009, the Trial Court has reached the finding to the effect that the 1st appellant is not the legally wedded wife and an appeal was filed in AS.NO.45/2013 on the file of the Court of the Principal Subordinate Judge, Tiruvannamalai and it was dismissed for default on 04.09.2014 and a miscellaneous petition has been filed to restore the appeal and in the event of the appeal being restored, the findings rendered by the Trial Court in the Judgment dated 22.02.2011 in OS.No.49/2009, will be relied upon and therefore, would submit that the findings rendered by the Courts below with regard to the status of the 1st appellant herein, can be eschewed so as to enable the first appellant to work out her remedy in AS.No.45/2013 on the file of the Court of the Principal Subordinate Judge, Tiruvannamalai, in the event of the petition for restoration of the said appeal is being ordered.

5 Per contra, the learned counsel for the respondents / plaintiffs would contend that the Courts below, on thorough appreciation of the oral and documentary evidences and in proper perspective, had rightly reached the conclusion to negative the claim of the defendants and since the findings are concurrent in nature, this Court, in exercise of its jurisdiction under section 100 of the Code of Civil Procedure, may not interfere with the same and prays for dismissal of the Second Appeal.

6 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

7 The Courts below have come to the conclusion that as per Exs.A2 and A3 - Pension Passbook and Photograph affixed in the pension passbook, it has been substantiated that the first plaintiff has married late P.M.Shanmugam and the said

documents have been corroborated through the oral testimonies of P.Ws.1 and 3 coupled with the documentary evidence marked as Exs.A2, A3, A5 and A8.

8 Insofar as the claim made by the first appellant/first defendant is concerned, the Trial Court, after perusing Ex.A14-Certified copy of the plaint in OS.No.345/2009 filed by the 1st appellant herein against 1st respondent herein on the file of the District Munsif Court, Chengam, has found that the said suit was also dismissed. Insofar as the reliance placed by the appellants on Exs.B26 to B30 are concerned, the said documents, at best, can be referable to their paternity and the same will not confer any marital status upon the 1st defendant as the legally wedded wife of late P.M.Shanmugam.

9 In the considered opinion of the Court, the said findings rendered by the Courts below cannot said to be perverse or as a result of non-appreciation of the oral and documentary evidences.

10 Insofar as the suit Policies 3 to 5 are concerned, the Courts below had recorded a finding that though those policies stand in the name of some of the defendants, in the light of the stand taken by the 6th defendant / 6th respondent, viz., the Life Insurance Corporation, as to the payment of the premiums and the fact of nomination u/s.39 of the Insurance Act, had rightly reached conclusion that the plaintiffs 1 to 5 / respondents 1 to 5 herein and the appellants 2 to 5 / defendants 2 to 5 are entitled to 1/9th share.

11 This Court, on an independent application of mind to the entire materials placed before it, is of the considered view that the Second Appeal is liable to be dismissed.

12 The learned counsel for the appellants / defendants made a plea that the findings rendered by the Courts below with regard to the status of the 1st defendant / 1st appellant as the wife of late P.M.Shanmugam, have to be eschewed so as to enable the 1st appellant to work out her remedy in AS.No.45/2013 on the file of the Court of the Principal Subordinate Judge, Tiruvannamalai, in the event of the said appeal being restored.

13 Per contra, the learned counsel for the respondents / plaintiffs would contend that since the findings came to be recorded based on the oral and documentary evidences, those findings cannot be eschewed and would further add that the share due and payable to the appellants 2 to 5, is having connection or proximity with the finding as to the status of the wife of the 1st appellant / 1st defendant.

14 This Court, after considering the rival submissions is of the view that it is always open to the 1st appellant / 1st defendant to sustain her claim in the said appeal, in the event of the said appeal being restored by adducing tenable materials or produce additional evidence by filing a petition invoking Order 41 Rule 27 of the Code of Civil Procedure.

15 The learned counsel for the respondents/plaintiffs also made a plea that since the findings of the Courts below are in their favour, the 6th defendant / Insurance Company may be directed to settle the claim with interest.

16 The 6th defendant / 6th respondent is yet to be issued with notice and in the light of the plea made by the learned counsel for the respondents 1 to 5, it is always open to them to work out the said remedy in accordance with law before the 6th respondent in the form of representations.

17 In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the learned District Judge, Tiruvannamalai, in AS.No.15/2011 dated 30.01.2012. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The District Judge, Tiruvannamalai.

2.The Principal Sub Jude, Tiruvannamalai.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

+3cc to Mr.P.Munusami, Advocate Sr.20794
+1cc to Mr.N.Damodaran, Advocate Sr.20897

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