

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

S.A.No.4 of 2015

and M.P.No.1 of 2015

1.Pottiammal (deceased)

2. Amsa .. Appellant/
Appellant/1st Defendant
(2nd appellant brought on record as L.R. of
the deceased sole appellant, vide order dated
09.06.2015 made in M.P.No.2 of 2015
in SA 4 of 2015))

vs.

1.Eswari

2.Soundararajan

3.Jalendran ... Respondents 1 to 3/ Plaintiffs

4.The General Manager,
Southern Railways,
Having Office at Chennai Central,
Chennai.

5.The Personnel Officer,
Southern Railways,
Chennai.

... Respondents 4 & 5/Defendants 2 and 3

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 16.07.2014 made in A.S.No.54 of 2012 on the file of the Sub-Judge at Ponneri, Thiruvallur District, by dismissing the appeal and confirmed the decree and judgment passed in O.S.No.308 of 2005 dated 22.12.2008 on the file of the District Munsif Court at Ponneri.

For Appellant : Mr.T.P.Sekar

For Respondents : Mrs.V.Bhavani Subbarayan
4&5 for R4 and R5
:R1-R3 -No Appearance

J U D G M E N T

The first defendant in O.S.No.308 of 2005 on the file of the District Munsif Court, Ponneri, who lost before the Courts below, came forward to file this Second Appeal.

2. Facts necessary for the disposal of this Second Appeal are as follows:

2.1. The plaintiffs/respondents 1 to 3 had filed the above said Suit to declare that the first plaintiff is the legally wedded wife of deceased Munusamy and the plaintiffs 2 and 3 were born out of the wedlock between the first plaintiff and the deceased Munusamy and for a mandatory injunction directing the defendants 2 and 3, their men, agents, servants and subordinates to stop the pension already granted in favour of the first defendant and for costs of the suit.

2.2. It is the case of the plaintiffs that the deceased Munusamy, Son of Thulukanam was an employee in the Mechanical Department, Carriage Works, Perambur, Southern Railways under Token No.WR 1699 as R/Plater II and he retired from service and was in receipt of pension and prior to his marriage with the first plaintiff, he was in illegal contact with the first defendant herein and thereafter, she got separated. The plaintiffs would further aver that the first defendant had also admitted about the marital relationship between her husband Munusamy and the first plaintiff and also executed a Letter of Administration as to the relationship on 09.03.1996 and also gave an affidavit of undertaking as to the payment of some portion of retiral benefits. The plaintiffs would further state that Munusamy died on 10.01.2005 and they came to know that the first defendant has been nominated and therefore, the defendants 2 and 3/respondents 2 and 3 were started paying family pension and therefore, came forward to file the Suit.

2.3. Though the first defendant was served with summons, she did not enter appearance and the defendants 2 and 3 had filed a common written statement denying among other things that the appellant/first defendant had filed an application dated 04.12.2005 along with the Death Certificate of Munusamy to the Branch Manager, Indian Bank, Gummudipoondi, claiming family pension and it was sanctioned through Pension Payment Order - P.P.O.No.0614214602. It is the stand of the defendants 2 and 3 that family pension payable to the appellant/first defendant is in order and as per the records, the first plaintiff is not the wife of Late Munusamy and however, the plaintiffs 2 and 3 were shown as dependants and further that the first plaintiff also did not make any claim immediately after the demise of Munusamy and therefore, prays for dismissal of the Suit.

2.4. The Trial Court, on consideration of the pleadings, framed the following points for consideration:

1. Whether the plaintiffs are entitled for declaratory relief?
2. Whether the plaintiff is entitled to get mandatory injunction as against the 2nd and 3rd defendant?
3. To what other relief the plaintiff is entitled to?

During the course of trial, the first plaintiff examined herself as PW1 and also examined one Kasi as PW2 and marked Exs.A1 to A12. On behalf of the defendants, one Narayanan, the official working in Perambur Wagon Works was examined as DW1 and Exs.B1 and B2 were marked. The Trial Court, on consideration of pleadings, oral and documentary evidence, has decreed the Suit as prayed for, vide judgment and decree dated 22.12.2008.

2.5. Aggrieved by the same, the first defendant filed an appeal in A.S.No.54 of 2012 on the file of the Court of Subordinate Judge, Ponneri. The Lower Appellate Court, on perusal of the grounds of appeal and other materials, framed the following point for consideration:

Whether the appellant is entitled for the relief as prayed for in the appeal?

The Lower Appellate Court, on consideration of oral and documentary evidence, found that though the first defendant claims to be the legally wedded wife of the deceased Munusamy, no piece of evidence has been produced to substantiate the same and the appellant did not file any documents in that regard and citing the said reasons, dismissed the appeal suit, vide impugned judgment and decree dated 16.07.2014. Challenging the legality of the same, the first defendant came forward to file this Second Appeal.

3. In the Memorandum of Grounds of Appeal, the following Substantial Questions of Law are raised:

- a) Whether the trial Court passed the decree on merit when the 1st defendant who is aggrieved person not let her evidence and not filed written statement?
- b) Whether both First Appellate Court and Trial Court having jurisdiction to determine the issue of succession of deceased person in suit?

c) Whether both Trial Court and Appellate Court can conclude against the 1st defendant on the basis of Exhibit P1 & P2, so called her consent letters, without examination of 1st defendant?

d) Whether the right of succession is transferable?

e) Is not the appellate court wrong in confirming the decree of suit which passed on merit without hearing and examination of 1st defendant?

f) Whether the First Appellate Court should have remanded the suit for trial after due opportunity given to 1st defendant or not?

g) Whether the marital status of legally wedded wife can be decided by so called consent letters of 1st wife/1st defendant in favour of another woman/1st plaintiff?

4. Mr.T.P.Sekar, learned counsel appearing for the appellant/first defendant would contend that the documents filed on behalf of the plaintiffs would disclose that the first defendant is the legally wedded wife of late Munusamy and the written statement of the defendants 2 and 3 coupled with the evidence of DW1 would also substantiate the said fact and due to reasons beyond control, the first defendant, though receipt of summons, was not able to contest the suit and prays for remand to substantiate her case.

5. Heard the submissions of Mr.V.Bhavani Subbarayan, learned counsel appearing for the respondents 4 and 5 also.

6. This Court has considered the submission made by the learned counsel appearing for the appellant and also perused the materials placed before it.

7. This Court, vide order dated 16.01.2017, has ordered notice to the respondents and though Mr.P.Amarnath, learned counsel entered appearance on behalf of the respondents 1 to 3,

he did not appear despite the matter has been adjourned many times.

8. A perusal and consideration of the written statement filed by the defendants 2 and 3 would disclose that they took a stand that as per the records, the appellant/first defendant has been nominated and she has also been sanctioned family pension as per Pension Payment Order - P.P.O.No.0614214602 and also took a stand that as per their records, the first plaintiff is not the wife of Late Munusamy and however, the plaintiffs 2 and 3 were shown as her sons and as such, she is not entitled for family pension and further the first plaintiff did not make such claim immediately and only after the demise of Munusamy, he made such claim during October 2005 by filing the present Suit.

9. This Court has also gone through the records and found that as per Exs.A1 and A2- consent letters, the first defendant has indicated that she is the first wife of late Munusamy and she given her consent for giving 2/3rd share in pension in favour of the first plaintiff. It is also the case of the plaintiffs themselves that the first defendant has admitted the marital relationship with the deceased Munusamy and also spoken about the above cited consent letters and the Courts below had mainly proceeded on the footing that despite service of summons, the first defendant did not enter appearance and controverted the facts pleaded by the plaintiffs. This Court, in the light of the stand taken by the defendants 2 and 3 coupled with the admitted documents under Exs.A1 and A2 on the side of the plaintiffs themselves, is of the considered view that an opportunity is to be afforded to the first defendant to contest the suit on merits and it would also meet the ends of justice.

10. It is brought to the knowledge of this Court that the appellant/first defendant is no more and her daughter was brought on record. Though the appellant/first defendant has raised very many substantial questions of law, this Court is of the considered view that substantial questions of law (f) and (g) alone arises for consideration and are answered in favour of the appellant.

11. In the light of the reasons assigned above, the order of remand to the Trial Court for retrial is a just and proper order which would also meet the ends of justice.

12. In the result, this Second Appeal is partly allowed and the impugned judgment and decree passed by the learned Subordinate Judge, Ponneri dated 16.07.2014 made in A.S.No.54 of 2012, confirming the judgment and judgment and decree passed by the learned District Munsif, Ponneri dated 22.12.2008 made in O.S.No.308 of 2005 is set aside and the matter is remanded to the Trial Court, namely District Munsif Court, Ponneri, who, on receipt of the records, shall issue summons to the plaintiffs as well as the legal representative of the first defendant and the defendants 2 and 3 and on their appearance, shall afford an opportunity to the appellant/first defendant to file a written statement and thereafter proceed further and to give a disposal in accordance with law as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Subordinate Judge, Ponneri.
2. The District Munsif, Ponneri.

+1cc to Mr.Sekar, Advocate, S.R.No.20892

S.A.No.4 of 2015

TM(CO)
RS(24/04/2017)

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