

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.10.2017

PRONOUNCED ON :10.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.295 of 2001

Sheela Kirupai

...

Appellant

Vs.

1. Saraswathi Ammal

2. The Branch Manager,
State Bank of India,
Chengam.

3. The Director,
Public Health and Preventive
Medicine,
Public Health Department,
DMC, Madras – 6.

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.08.2000 passed in A.S.No.30 of 1998 on the file of the Additional Sub Judge, Tiruvannamalai, confirming the judgment and decree dated 27.11.1997 passed in O.S.No.185 of 1996 on the file of the Principal District Munsif, Tiruvannamalai.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.Dinesh Kumar

No.1 M/s.Sarvabhauman Associates

For Respondents

Nos.2 & 3 : No appearance

JUDGMENT

The judgment and decree dated 28.08.2000 passed in A.S.No.30 of 1998 on the file of the Additional Sub Court, Thiruvannamalai, confirming the judgment and decree dated 27.11.1997 passed in O.S.No.185 of 1996 on the file of the Principal District Munsif, Thiruvannamalai, are under challenge in this second appeal by the plaintiff.

2. The parties are referred to as per the ranking in the trial Court.

3. The suit has been laid by the plaintiff for declaration and permanent injunction.

4. The case of the plaintiff in brief is that she is the legally wedded wife of one S.Krishnan and their marriage had taken place about 42 years ago viz., in the year 1949 according to Hindu rites and customs at Bajanaikoil Thandarampattu, Chengam Taluk and further, according to the plaintiff, while the plaintiff and the above said Krishnan were working in the Health Department, the plaintiff developed love towards Krishnan and accordingly, they had married at Thandarampattu as aforesaid and after the marriage, both have

been living as husband and wife and as such, treated as husband and wife in the society and out of the wedlock above mentioned, according to the plaintiff, two children were born viz., Santhakumari and Jayakumar, who are aged 41 years and 28 years respectively and the plaintiff and Krishnan had been living at Thandarampattu till 1965 and thereafter, the plaintiff had been transferred to Kalpattu and various other places and lastly, retired in the year 1987 at Potharai.

5. It is further stated by the plaintiff that Krishnan had been working at several places and lastly retired at Madras at the office of the third defendant and after his retirement, Krishnan settled at Chengam in his house along with the plaintiff and her husband had made arrangements for the marriage of their children above stated. It is further stated that Krishnan died on 26.11.1989 at Chengam and his death obsequies were performed by the plaintiff and hence, according to the plaintiff, the amount, due to the deceased Krishnan from the defendants 2 & 3, should be paid only to the plaintiff as she is the legal heir of the deceased Krishnan and accordingly, when the plaintiff had applied for legal heir certificate from the Tasildhar concerned, she had been directed to approach the Civil Court for necessary relief and it is the further case of the plaintiff that while Krishnan worked at various places, he had developed intimacy with the first defendant. However,

no legal marriage took place between Krishnan and the first defendant. Further, according to the plaintiff, she had issued a registered notice setting forth the above facts to the defendants 1 & 2 on 11.12.1989 and to the said notice, the first defendant has sent a reply on 08.01.1990 containing false and untenable allegations and it is false to state that a valid marriage took place between the deceased Krishnan and the first defendant and the first defendant is not the legal heir of the deceased Krishnan and hence, the suit for declaration and permanent injunction.

6. The case of the first defendant in brief is that it is false to state that the plaintiff is the legal heir of S.Krishnan and that their marriage took place in the year 1949 according to Hindu rites and customs at Bajanai Koil Thandarampattu, Chengam Taluk. The plaintiff is a Christian and Krishnan was a Hindu and there is no possibility of their marriage being solemnized according to Hindu rites and customs. The plaintiff never became a converted Hindu and she has all along been a Christian. It is false to state that the plaintiff developed love towards Krishnan and subsequently, married him at Thandarampattu. It is false to state that Krishnan and Plaintiff were living as husband and wife and treated as husband and wife by the society. It is false to state that out of aforesaid wedlock, two children born to them as

narrated in the plaint. It is stated by the first defendant that Krishnan was studying in the school in 1949 and the plaintiff was very much elder in an age to Krishnan and as such, there could not have been a valid marriage between them in 1949 as claimed by the plaintiff. The plaintiff is not the legally wedded wife of Krishnan and the children detailed in the plaint were not born to Krishnan. It is false to state that after retirement, Krishnan had been living with the plaintiff at Chengam and making arrangements for celebrating the children marriage as claimed in the plaint. In fact, Krishnan married the first defendant on 14.09.1969 at Arulmigu Arunachaleshwarar Temple, Tiruvannamalai, as per Hindu rites and customs in the presence of the elders and relatives and the first defendant had been living with Krishnan at all the places, where, he had been transferred and out of the above said wedlock, the first defendant got four sons and one daughter and accordingly, the first defendant has been declared as the legally wedded wife by Krishnan in the official records and the first defendant has various records with reference to the same and Krishnan had been living only with the first defendant at Chengam till his death i.e on 26.11.1989 and it is only the first defendant, who had performed the death obsequies of Krishnan and the plaintiff is not the legal heir of the deceased Krishnan and hence, the plaintiff is not entitled to claim the death benefits whatsoever as the legal

representative of the deceased Krishnan and to the notice sent by the plaintiff, suitable reply has been sent containing true facts and hence, the suit laid by the plaintiff for declaration that she is the legally wedded wife of the deceased Krishnan and that she is the legal representative of the deceased Krishnan, is not maintainable without any cause of action and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case, PWs1 to 3 were examined and Exs.A1 to 4 were marked. On the side of the first defendant, DW1 has been examined and Exs.B1 to B15 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit. Aggrieved over the same, it is found that the plaintiff has preferred the first appeal. It is found that during the course of the first appeal, the plaintiff had filed four additional documents and the First Appellate Court, on a consideration of the materials placed, both oral and documentary, did not find any acceptance with the plaintiff's case and accordingly, confirming the judgment and decree of the trial court, dismissed the first appeal preferred by the plaintiff. Challenging the same, the second appeal has been preferred by the plaintiff.

9. The second appeal has been admitted and the following substantial questions of law were formulated for consideration in the second appeal;

i) Whether the Courts below are right in ignoring Ex.A4 which establishes the relationship between the appellant and Krishnan?

ii) Whether the Courts below are right in rejecting the oral testimony of P.W.2 and P.W.3, who are witnesses to the marriage between Krishnan and the appellant?

iii) Whether the lower appellate court is right in not even considering the additional evidence adduced before it and whether its order is not contrary to the provisions of Order 41 Rule 27 Civil Procedure Code?

10. The plaintiff has laid the suit seeking for declaration that she is the legally wedded wife of the deceased Krishnan and that, she is the legal heir of the deceased Krishnan and for permanent injunction restraining the respondents 2 to 3 to disburse the amount due to Krishnan to the first defendant.

11. Now, according to the plaintiff, she is the legally wedded wife of the deceased Krishnan and that, their marriage took place about 42 years ago i.e. in the year 1949 according to Hindu rites and customs at Bajanaï Koil Thandampattu, Chengam Taluk and as such, they had been living as husband and wife and also treated as husband and wife by the society and further, according to the plaintiff, out of the above said wedlock, two children were born to them and the deceased Krishnan, after his retirement, had been settled at Chengam along with the plaintiff and made arrangements for celebrating the marriage of the children and it is only the plaintiff, who had performed the funeral obsequies of the deceased Krishnan on his death on 26.11.1989 and according to the plaintiff, she is only the legally wedded wife of the deceased Krishnan and hence, entitled to the benefits on his death as his legal heir.

12. Further, according to the plaintiff, the first defendant is not the legally wedded wife of the deceased Krishnan and the deceased Krishnan had only developed intimacy with the first defendant and no valid marriage took place between them and hence, according to the plaintiff, the first defendant cannot claim any entitlement to receive the death benefits of the deceased Krishnan and inasmuch as she had

made attempt to receive the benefits on the death of the deceased Krishnan, hence according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

13. According to the first defendant, the plaintiff is not the legally wedded wife of the deceased Krishnan and that, no valid marriage took place between the deceased Krishnan and the plaintiff as claimed in the plaint in the year 1949 at Bajanai Koil, Thandarampattu, Chengam Taluk as per Hindu rites and customs and therefore, according to the first defendant, the deceased Krishnan and the plaintiff had never lived as husband and wife as claimed in the plaint and never been treated as husband and wife by the society as stated in the plaint and it is the further case of the first defendant that the children described in the plaint were never born to the deceased Krishnan and the plaintiff and it is only the first defendant, who is the legally wedded wife of the deceased Krishnan and according to her, the deceased Krishnan and the first defendant got married on 14.09.1969 at Arulmigu Arunachaleshwarar Temple, Tiruvannamalai, as per Hindu rites and customs and had been living as husband and wife and out of the said wedlock, five children were born and accordingly, Krishnan had declared only the first defendant as his nominee in the official records, where he had served and it is only the first defendant, who had

performed the funeral obsequies of the deceased Krishnan on his death and hence, it is only the first defendant, who is the legal heir of the deceased Krishnan and the plaintiff cannot claim to be the legal heir of the deceased Krishnan and hence, the suit is liable to be dismissed.

14. In the light of the aforestated defence set out by the first defendant, it is found that as rightly contended by the first defendant's counsel, the onus is heavy upon the plaintiff to establish that she and the deceased Krishnan had got married in the year 1949 as per Hindu rites and customs at Bajanai Koil Thandarampattu, Chengam Taluk. It is found that the plaintiff has not whispered in the plaint as to the date and month of the marriage. She has very vaguely stated that their marriage took place in the year 1949 as per Hindu rites and customs. The plaintiff examined as PW1 has admitted that she is a Christian by birth. It is also admitted that the deceased Krishnan was a Hindu. It is also not in dispute that the deceased Krishnan had died on 26.11.1989 and his death certificate has been marked as Ex.B13. Now, the plaintiff examined as PW1 during the course of cross examination has admitted that she was elder to the deceased Krishnan by two years and according to her, their marriage took place in the year 1949 according to the Hindu rites and customs and that, their marriage was celebrated

in the presence of Pattabi Reddiar, Jaganatha Reddiar and in the presence of more than 100 persons. Further, according to the plaintiff, the Thali was handed over by Seetha Reddiar and the deceased Krishnan tied Thali on her neck. However, it is seen that the plaintiff has not whispered in the plaint as to the presence of the above said persons at the time of alleged marriage between the plaintiff and the deceased Krishnan in the year 1949 and very vaguely it has been alleged in the plaint, that their marriage took place in the year 1949. Further, it has been stated by the plaintiff that no invitation card has been printed for the marriage. The above said persons, who are stated to be present at the time of alleged marriage between the plaintiff and the deceased Krishnan, were not examined by the plaintiff. It is not stated that the above said persons are not available for adducing the evidence as such. It is further seen from the admission of the plaintiff examined as PW1 for establishing that they were living as husband and wife, after the marriage, the plaintiff is in the custody of ration card and voters list and they are available at her residence. However, it is stated by the plaintiff that she has not produced the said documents. When according to the plaintiff, she is in the custody of the best evidence to establish the factum of the deceased Krishnan and her living as husband and wife, it is strange to see that such records are not forthcoming on the part of the plaintiff. This itself raises a strong

suspicion in the case of the plaintiff as determined by the Courts below. It is further stated by the plaintiff that out of the wedlock, two children were born to them and their birth certificates had been registered. However, the birth certificates of the two children born out of the above said wedlock had not been filed and exhibited in the case and no reason has been adduced for the same. It is not the case of the plaintiff that the said records are not available at the time of adducing evidence. The plaintiff has claimed in the plaint that after the marriage, the deceased Krishnan and she had been living together as husband and wife and as such, they were treated as husband and wife by the society. However, it has been admitted by the plaintiff subsequently that there is no record available to show that the deceased Krishnan and she had been living at various places as husband and wife. It is thus found that there is no record at all to establish prima facie that the deceased Krishnan and the plaintiff had been living at various places as husband and wife as claimed by the plaintiff. It is further found that the plaintiff has admitted out of the said wedlock two children were born viz., Santhakumari and Jayakumar. However, though the plaintiff claims that their marriage had been celebrated, in the proceedings before the trial Court, neither the marriage certificate nor other relevant documents have been produced with reference to the factum of marriage and the birth of the

said children by or through the deceased Krishnan. It is further found that only one document has been pressed into service at the time of the trial of the case before the Munsif Court, Thiruvannamalai and the same has been marked as Ex.A4. Ex.A4 is said to be admission card of the children born to the deceased Krishnan and the plaintiff. Now, according to the plaintiff, she, after the marriage, had become converted into Hindu in the year 1950. Now, as regards Ex.A4, it is found that the said document has been marked stating to be the copies of admission card of Santhakumari and Jayakumar. In the said documents, in the column, name of the parent, it has been mentioned as S.Krishnan and in the covering letter sent by the Head Master, Government Higher Secondary School, Vanapuram, it is mentioned that the entries reflected in the admission card have been recorded as stated by the plaintiff. It is found that the plaintiff has been described as Guardian. Therefore, according to Ex.A4, it is not clear whether at the time of admission of Santhakumari and Jayaumar whether the particulars as regards the parentage of the above said persons had been furnished by Krishnan and in the covering letter, as above stated, indicate that the above said particulars had been furnished only by the plaintiff as the guardian of the concerned persons. In such view of the matter, it is found that when the first defendant is challenging the truth and validity of the document marked as Ex.A4 and when it is

found that particulars reflected therein had been furnished only by the plaintiff as such and when it is not established that the particulars reflected therein had been furnished by the deceased Krishnan and when the particulars reflected in Ex.A4 are not shown to be given by the deceased Krishnan by examining the concerned school authority, it is seen that as rightly determined by the Courts below, no safe credence could be attached to Ex.A4 to hold that a valid marriage had taken place between the deceased Krishnan and the plaintiff in the year 1949 as claimed in the plaint and out of the said wedlock, Santhakumari and Jayakumar were born to them. In such view of the matter, it is found that the Courts below had for valid and acceptable reasons referred to place reliance upon Ex.A4 and barring Ex.A4, it is found that no other valid document has been placed by the plaintiff to establish the factum of marriage between the deceased Krishnan and herself. As seen above, though the plaintiff has claimed to be in the possession of various records to establish the fact that the deceased Krishnan and she had been living as husband and wife, the said records had not been filed. Subsequently, knowing the true position, the plaintiff has also admitted that there is no record available to establish that the deceased Krishnan and she had been living as husband and wife at various places.

15. That apart, it is found from Ex.B15, the transfer certificate of

the deceased Krishnan, that he was born on 01.07.1931 and that, he had actually left the school only on 14.03.1950. Ex.B15 has not been challenged by the plaintiff as such. It is thus found from Ex.B15 that in the year 1949, the deceased Krishnan was only a school going student. In such view of matter, to claim that the deceased Krishnan, at that point of time, had married the plaintiff in the year 1949, who is admittedly elder to him cannot be accepted as such without any acceptable and reliable proof. As seen above, even according to the plaintiff, no marriage invitation card has been printed for their marriage. Further, as pointed out above, the persons, who are stated to be present at the time of marriage and who are stated to have performed their marriage were not examined by the plaintiff. In such view of the matter, it is found that the plaintiff, as such, has not adduced any acceptable and reliable evidence before the trial Court to hold that there has been a valid marriage between deceased Krishnan and her as claimed by her.

16. It is found that during the course of the first appeal, the plaintiff has marked four documents and those documents were also held by the First Appellate Court to be not supporting the case of the plaintiff. In this connection, it is seen that the first document pressed into service by the plaintiff at the time of first appeal is stated to be

the marriage invitation card of Santhakumari, the daughter alleged to be born out of the wedlock between the deceased Krishnan and the plaintiff. No doubt, in the said document, Santhakumari has been described as the daughter of S.Krishnan Naidu. However, as rightly held by the First Appellate Court, merely on the above said solitary document, when it has not been established that the contents therein had been printed at the instance of the deceased Krishnan, it is seen that no safe reliance could be attached for holding that a valid marriage had taken place between the deceased Krishnan and the plaintiff in the year 1949 as claimed in the plaint. Therefore, it is found that the First Appellate Court has rightly discountenanced the above said document for accepting the plaintiff's case.

17. The second document is the voters list of the year 1979 of Polur constituency. In the said voters list, as rightly determined by the First Appellate Court, in serial No.441, the plaintiff's name has been printed and thereafter, within brackets, the name Krishnan has also been printed. As rightly found by the First Appellate Court, merely from the above said entries in isolation it cannot be said that the said Krishnan had illegally married the plaintiff in the year 1949 as claimed by the plaintiff. If according to the plaintiff, Krishnan and the plaintiff had been living together as husband and wife, then naturally the name

of Krishnan would also be printed in the voters list above mentioned. However, it is found that only the name of the plaintiff has been printed showing the name of Krishnan within brackets and there is no mention of the name of Krishnan in the above said voters list. Moreover, it is also found that the name of the children born to them out of the alleged wedlock had also not been reflected in the above voters list. Therefore, it is found that the First Appellate Court had rightly discarded the above voters list pressed into service for establishing the plaintiff's case.

18. The third document is also the voters list of Sorpanandhal Village, wherein, in Serial No.133, there is reference of one Kumar and the name of Krishnan is in bracket. From the above said entry, the plaintiff wants the Court to hold that Kumar referred to in the above said document is the son born to the deceased Krishnan and the plaintiff as claimed in the plaint. However, even according to the plaintiff, the son born to them out of the alleged wedlock is named as Jayakumar but in the entry found in the above said document, only the name Kumar has been mentioned with the name of Krishnan in the bracket. If the above said entry is true and reflects the correct position, as rightly argued, if the entry in serial No.133 pertains to Jayakumar S/o Krishnan, the name of Jayakumar would have been reflected in the same. However, only the name of Kumar is found and

in such view of the matter, it is found that on the basis of the above said entry, it cannot be presumed or held that a valid marriage had taken between the plaintiff and the deceased Krishnan in the year 1949 as claimed in the plaint.

19. The last document projected in the first appeal is the ration card, wherein, only the name of the plaintiff has been shown as the head of the family and there is no reference about Krishnan in the said document. Further, in the column "son", the name Kumar alone is found and the name of Kumar is found to be partially erased suppressing his full name and with reference to the same, no plausible explanation has been offered by the plaintiff and it has also raised serious doubts about genuineness of the document and accordingly, was rightly not accepted by the First Appellate Court. It is thus found that the additional documents projected by the plaintiff during the course of first appeal have been, for valid and sound reasons, rejected by the First Appellate Court and as determined by the First Appellate Court, it is found that the above said documents cannot be safely relied upon to hold that a valid marriage had taken place between the deceased Krishnan and the plaintiff as claimed in the plaint and that, out of the said wedlock, two children were born to them as stated in the plaint.

20. The plaintiff, in support of her case, has examined PWs2 & 3. Even as per the plaint averments, the plaintiff has not stated that PWs2 and 3 were present at the time of her marriage with the deceased Krishnan in the year 1949. PW2 Arunachalam has only stated that the marriage between the deceased Krishnan and the plaintiff took place in the year 1949 at Bajanai Koil Thandampattu, Chengam Taluk and out of the said marriage, two children were born to them. During the course of cross examination, he has admitted that he does not know the parents of the plaintiff and does not know the name of the father of the deceased Krishnan and according to him, at the time of alleged marriage, the plaintiff would have been aged 20 years and at the time of marriage, only about 20 to 30 persons were present and he does not know what was avocation of the deceased Krishnan at the time of marriage. Therefore, it is found that when PW2 is not aware of the identity of the deceased Krishnan, his claim that he had witnessed the alleged marriage between the deceased Krishnan and the plaintiff in the year 1949, as such, cannot be accepted in any manner.

21. According to the plaintiff, at the time of marriage, more than 100 persons were present. However, according to PW2 only 20 to 30 persons were present. Further, PW2 has not stated about the modalies

of the marriage which had taken place between the deceased Krishnan and the plaintiff, and he has very vaguely stated that their marriage had taken place in the year 1949 at Bajanai Koil Thandampattu, Chengam Taluk. That apart, he has not stated about the details of the marriage and he has also not stated that after the marriage, the deceased Krishnan and the plaintiff had been living together as husband and wife. Further, he has also admitted that he does not know the children born to them and he had not seen the children born to them and therefore, it is found that PW2 is not aware as to whether at all the deceased Krishnan and plaintiff had been living as Husband and wife, after the alleged marriage. In such view of the matter, it is found that the Courts below have rightly not placed reliance on the evidence of PW2 to uphold the plaintiff's case and no infirmity could be attributed to the same as contended by the plaintiff's counsel. As regards the evidence of PW3 Manickam is concerned, it is found that he has not deposed as having witnessed the marriage between the deceased Krishnan and the plaintiff. He would only state that the plaintiff had been residing in his house from 1957 to 66 and he knew the plaintiff's husband Krishnan and that two children were born to them. During the course of cross examination, he has admitted that there is no material to hold that the plaintiff was residing in his house from 1957 to 1966 and further, admitted that at that point of time, the

children were not born to the plaintiff and therefore, it is found that when PW3 has not witnessed the alleged marriage between the deceased Krishnan and the plaintiff and when there is no material to hold that the plaintiff had been residing in his residence with the deceased Krishnan and when even according to PW3, the children were not born to the plaintiff. At that point of time, it is found that on the basis of the above said evidence of PW3, we cannot safely hold that the deceased Krishnan and the plaintiff were living together as husband and wife. It is thus found that the Courts below have rightly not placed reliance upon the evidence of PW3 for accepting the plaintiff's case.

22. In the light of the above discussions, it is found that there is absolutely, no material whatsoever to hold that a valid marriage had taken place between the deceased Krishnan and the plaintiff as claimed by the plaintiff and in such view of the matter, it is found that the Courts below had rightly rejected the plaintiff's case.

23. Per contra, it is found that as rightly determined by the Courts below, the deceased Krishnan had married only the first defendant at Arulmigu Arunachaleshwarar Temple, Tiruvannamalai, on 14.09.1969 and accordingly, the marriage certificate issued by the

temple authority has been marked as Ex.B1 and further, from Exs.B2 to 4, it is found that only the first defendant has been declared as the legal representative of the deceased Krishnan for receiving the family pension, gratuity and Provident Fund benefits and the above said documents also would go to show that inasmuch as the deceased Krishnan had legally married the first defendant, he had himself declared the first defendant as his legally wedded wife in the official records. Further, from Exs.B5 to 7 viz., the voter's slip, it is only the first defendant, who has been stated as wife of the deceased Krishnan and accordingly, the above said documents also only substantiate the case of the first defendant that she is the legally wedded wife of the deceased Krishnan. Further, the first defendant has also marked the ration card as Ex.B9 to hold that she had married the deceased Krishnan and living with him together and accordingly, they were treated as husband and wife and the necessary documents like ration card etc., have been issued to them and it is found that it is only the deceased Krishnan and the first defendant, who had been treated as husband and wife by the society at large. Further, the birth certificate and transfer certificate of the children born to the deceased Krishnan and the first defendant marked as Exs.B10 to 12 also go in aid of the first defendant's case to hold that she is the legally wedded wife of the deceased Krishnan and it is found that the first defendant has also

marked the legal heir certificate viz. Ex.B14 to hold that she is the legally wedded wife of the deceased Krishnan and out of the said wedlock, five children had born to them. It is thus found that voluminous documents have been pressed into the service by the first defendant to hold that a valid marriage had taken place only between the first defendant and the deceased Krishnan as claimed by her and accordingly, out of the said wedlock, five children were born to them and they had been living together as husband and wife and treated as husband and wife by the Society and accordingly, it is also found that the deceased Krishnan had recorded the name of the first defendant as his only legally wedded wife in the official records and in such view of the matter, the claim of the plaintiff that she is the legally wedded wife of the deceased sans any acceptable and reliable material cannot be countenanced in any manner.

24. In the light of the above discussions, it is found that the Courts below have, giving acceptable and convincing reasons, correctly rejected and ignored Ex.A4, for the reasons aforesated, for not accepting the plaintiff's case and no exception could be taken to the same. It is further found that the Courts below did not rightly place reliance upon the testimony of PWs2 and 3 for upholding the plaintiff's case. No exception could be taken to the same in any manner. It is

further found that the First Appellate Court, for valid and convincing reasons, did not find acceptance with the additional evidence projected by the plaintiff during the course of the first appeal and accordingly, rejected the same and in such view of the matter, the contention of the plaintiff's counsel that the First Appellate Court had not considered the additional evidence projected by the plaintiff during the course of appeal in the right perspective cannot be countenanced in any manner. Therefore, the contention that the First Appellate Court has not acted in accordance with law as per Order 41 Rule 27 of the Civil Procedure Code as such cannot be accepted.

25. In view of the above reasons, the substantial questions of law formulated in this second appeal are answered against the plaintiff and in favour of the first defendant.

26. Inasmuch as the plaintiff has failed to establish that there has been a valid marriage between the deceased Krishnan and herself and that thereafter, they had been living as husband and wife and treated as husband and wife by the society on account of the long cohabitation, it is found that the authorities relied upon by the plaintiff's counsel reported in ***Badri Prasad Vs. Dy. Director of Consolidation and ors, Chanmuniya Vs. Chanmuniya Virendra***

Kumar Singh Kushwaha and Anr and (2011) 12 Supreme Court Cases 220 (Rangammal Vs. Kuppuswami and Another), as rightly argued by the first defendant's counsel, they are found to be not applicable to the facts and circumstances of the present case. Similarly, the authorities relied upon by the plaintiff's counsel reported in **(2009) 10 Supreme Court Cases 680 (Shipra Sengupta Vs. Mridul Sengupta and others) and AIR 2001 SC 3601 (Leela Soni and ors Vs. Rajesh Goyal and ors)** are also found to be not helpful to the plaintiff's case.

27. In the light of the above discussions, the second appeal fails and the same is dismissed accordingly with costs.

Index : Yes/No

10.10.2017

Internet : Yes/No

sms

To

1. The Additional Sub Judge,
Tiruvannamalai.
2. The Principal District Munsif,
Tiruvannamalai.

T.RAVINDRAN,J.

sms



Pre-delivery judgment made in
S. A.No.295 of 2001

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10.10.2017