

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2017

PRONOUNCED ON : 28.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.44 & 49 of 2001

1. Mangammal
2. Swaminathan
3. Saraswathi
4. Sabitha ... Appellants in both second appeals.

(Appellants 2 to 4 declared as major and their mother Mangammal discharged from the guardianship vide order of Court dated 14.11.2017 made in C.M.P.Nos.18621 and 18622 of 2017 in SA.No. 44 of 2001 and C.M.P.Nos.18623 & 18624 of 2017 in SA.No.49 of 2001)

Vs.

1. Sagunthala ... R1 in SA.No. 44/2001 and R2 in SA.No.49/2001
2. The Deputy Director of Health Service and District Health Officer, Krishnagiri. ... R2 in SA.No. 44/2001 and R1 in SA.No.49/2001

Common Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Principal District Judge of Dharmapuri at Krishnagiri dated 13.12.1999 in A.S.Nos.82 & 70 of 1999 setting aside the judgment and decree of the District Munsif of Krishnagiri dated 09.06.1999 in O.S.No.433 of 1994.

In both Second appeals

For Appellants : Mr. J.Hariharan for
M/s. V.Nicholas

For Respondents : Mr.V.Raghavachari
for R2 in SA.No.49/2001 &
for R1 in SA. No.44/2001

Mr.T.Jayaramaraj,
Government Advocate (Civil side)
for R1 in SA No. 49/2001 &
for R2 in SA No.44/2001

COMMON JUDGMENT

Second appeal No.44 of 2001

Challenge in this second appeal is made to the judgment and decree dated 13.12.1999 passed in A.S.No.82 of 1999 on the file of the Principal District Court Dharmapuri at Krishnagiri reversing judgment and decree dated 09.06.1999 passed in in O.S.No.433 of 1994 on the file of the District Munsif Court, Krishnagiri.

Second appeal No.49 of 2001

Challenge in this second appeal is made to the judgment and decree dated 13.12.1999 passed in A.S.No.70 of 1999 on the file of the Principal District Court Dharmapuri at Krishnagiri reversing judgment and decree dated 09.06.1999 passed in in O.S.No.433 of 1994 on the file of the District Munsif Court, Krishnagiri.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration, permanent injunction and mandatory injunction.

4. The case of the plaintiffs, in brief, is that the first plaintiff and P.Kannan got married as per Caste custom and Hindu law at Kattinayanapalli Village, Subramania Swamy Temple on 27.06.1979, in the presence of caste men and their marriage was registered under the Tamil Nadu Hindu Marriage Registration Rules, 1967, and after the marriage, the plaintiff and P.Kannan lived as husband and wife and the plaintiffs 2 to 4 were born to them and the marriage had not been dissolved by any decree of the Court or otherwise. P.Kannan worked as Plaugue Mazdoor under the first defendant and he developed illicit intimacy with the second defendant and one Chinnammal and thereby,

started ill treating the first defendant and also failed to provide maintenance to the plaintiffs and finally drove them out of the home. On account of failure of the panchayats conducted, hence, the plaintiffs instituted proceedings against P.Kannan in M.C.No.3 of 1993 for maintenance, on the file of the Judicial Magistrate Court, Tiruppathur, and P.Kannan filed a counter claiming to have married the second defendant Sakunthala and his marriage with the first plaintiff is therefore bigamous. Before the M.C.No.3 of 1993 proceedings could be disposed of, P.Kannan, died on 26.08.1994 and it is seen that he had nominated the second defendant as his nominee in the Service Register. On the other hand, P.Kannan did not contract any marriage with the second defendant and the plaintiffs are the legal heirs of the deceased P.Kannan and they alone are entitled to the pension benefits and other benefits of the deceased P.Kannan from the first defendant and the second defendant is not entitled to claim any benefits and on the other hand as the second defendant is attempting to claim the benefits from the first defendant, the plaintiffs issued a legal notice to the defendants not to disburse the benefits and accordingly, the plaintiffs are necessitated to lay the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that it is true that the deceased P.Kannan was working as Plaugue Mazdoor under the

first defendant and the person who has been nominated in the Service Register is entitled to receive the retirement benefits as per the Government Rules and the first defendant is not aware as to whether P.Kannan has married for the second time and the first defendant is willing to pay the amount as directed by Court and accordingly, prayed to dispose of the suit.

6. The case of the second defendant, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the plaintiff and P.Kannan got married on 27.06.1979, as alleged in the plaint. There cannot be any valid marriage between them and it is false to state that their marriage got registered and it is false to state that they lived together as husband and wife. It is incorrect to state that the deceased P.Kannan developed illicit intimacy with the second defendant and one Chinnammal and thereby ill treated the first plaintiff, including the other plaintiffs and on account of the same, the plaintiff instituted proceedings in M.C.No.3 of 1993, on the file of the Judicial Magistrate Court, Tirupathur. The above said M.C. Proceedings was contested by P.Kannan and the same became infructuous, on account of the death of P.Kannan. It is true that P.Kannan filed his counter in the M.C proceedings, stating only the second defendant is his legally wedded wife and nominated her as nominee in the Service Register. The second defendant is the legally wedded wife of P.Kannan

and their marriage was solemnized at Subramania Swamy temple in 1966 and they lived together as husband and wife and out of the said marriage they got a female child on 03.04.1968 named as Selvi and the daughter has also got married and the marriage between P.Kannan and the second defendant has not been dissolved and they lived as husband and wife till his death and on the death of P.Kannan, it is only the second defendant who is entitled to the terminal benefits from the first defendant and the plaintiffs cannot claim any right over the same and hence, the plaintiffs' suit is liable to be dismissed.

7. In support of the plaintiffs' case PW1 has been examined and Exs.A1 to A4 were marked and on the side of the defendants, DWs1 to 6 were examined and Exs.B1 to B9 were marked.

8. On a consideration of the oral and documentary evidence and the submissions made, the trial Court was pleased to negative the relief of declaration sought for by the plaintiffs and determined that the plaintiffs 2 to 4 are entitled to 1/3 share of the employment prospects and terminal benefits of the deceased Kannan and accordingly, granted appropriate reliefs in favour of the plaintiffs. Aggrieved over the same, the plaintiffs as well as the second defendant preferred separate first appeals and the first appellate Court on an appreciation of the materials placed, was pleased to dismiss the appeal preferred by the

plaintiffs and allowed the appeal preferred by the second defendant and resultantly, dismissed the suit laid by the plaintiffs in its entirety. Challenging the same, the present second appeals have been preferred by the plaintiffs.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1) When it is found that the first plaintiff and the second defendant are the wife of deceased Kannan and even assuming that the second defendant was first married to deceased Kannan and as such the plaintiffs 2 to 4 could be considered as the illegitimate children of Kannan through the 1st plaintiff, whether the Lower appellate Court is correct in dismissing the suit in toto without considering Sec.16 of Hindu Marriage Act.

2) Even assuming that second defendant has proved her marriage with deceased Kannan, whether the Courts below are correct in holding that the 2nd defendant is the first wife when the 2nd defendant has not established the validity of the marriage between her and deceased Kannan.

10. Claiming that the first plaintiff is the legally wedded wife of the deceased Kannan and that the plaintiffs 2 to 4 were born to them out of the said lawful wedlock, the plaintiffs have laid the suit, seeking the terminal benefits of the deceased Kannan from the first defendant and as according to the plaintiff, the second defendant is not the legally wedded wife of the deceased Kannan and hence, not being entitled to receive the terminal benefits, the plaintiffs have laid the suit against the defendants for appropriate reliefs.

11. The second defendant mainly contested the suit urging that the first plaintiff is not the legally wedded wife of Kannan and on the other hand, the second defendant alone is the legally wedded wife of Kannan and according to the second defendant, Kannan and the second defendant had married as per the Hindu customs and rights in the year 1966 and lived as husband and wife and out of the lawful wedlock, they had got a female child named as Selvi and the said daughter has also got married and it is stated that therefore, the first plaintiff cannot claim to have validly and legally married the deceased Kannan, during the subsistence of the marriage between the second defendant and Kannan and hence, according to the second defendant, the plaintiffs are as such are not entitled to obtain the terminal benefits of the deceased Kannan and the suit is liable to be dismissed.

12. From the materials placed and the evidence adduced by the deceased Kannan's mother examined as DW.2, his brother examined as DW.4, it is seen that Kannan had married the second defendant in the year 1966 itself and out of the said marriage, they got a female child and the said marriage has subsisted till the death of Kannan. This fact is also specified clearly in the M.C proceedings instituted by the plaintiffs against the deceased Kannan, wherein, the deceased Kannan contesting the claim of the plaintiffs had filed a counter, marked as Ex.A2, whereunder, the deceased Kannan had clearly stated that he had legally married only the second defendant and out of the said wed lock they got a female child and as he and the second defendant had no male issue, it is stated by the deceased Kannan in the counter that he had a marriage contract with the first plaintiff and out of the said marriage contract the plaintiffs 2 to 4 were born and accordingly, repudiated the claim of the maintenance sought for by the plaintiffs. It is thus found that the deceased Kannan himself, in the counter filed in MC proceedings marked as Ex.A2, has admitted the valid marriage with the second defendant and it has been specifically stated by him that the marriage was in force and subsistence, when he had a marriage contract with the first plaintiff and accordingly, it is also stated by him that he had nominated the second defendant as his nominee to receive the benefits in the Service Register and it is thus

found that from the documentary evidence and the oral evidence placed on behalf of the second defendant, as above stated, the Courts below have correctly held that Kannan had validly contracted the marriage only with the second defendant and the marriage was not dissolved till his death.

13. From the above evidence and the materials placed, it is seen that inasmuch when there is no male issue born to Kannan and the second defendant, it is found that he had a marriage contract with the plaintiff and it is further seen that accordingly, he also married the first plaintiff and this could be seen from the registration certificate of the marriage, marked as Ex.A3 and on a perusal of Ex.A3 would go to show that Kannan had married the first plaintiff as per Hindu customs by tying thali in the subramania Swamy temple on 27.06.1979 and therefore, from Ex.A3, it is found that Kannan had contracted a second marriage with the first plaintiff and no doubt, during the subsistence of the marriage with the second defendant, it is further seen that the marriage invitation card of the first plaintiff has also been marked as Ex.A4, which buttresses the plaintiffs' case of the first plaintiff's marriage with the deceased Kannan. Therefore, from a cumulative reading of the documents marked as Exs.A2 to A4 and the evidence adduced in the matter, it could be seen that as determined by the Courts below, Kannan had contracted second marriage with the first plaintiff and accordingly, there marriage was also registered under

Ex.A3 and out of the said wedlock, they begot the plaintiffs 2 to 4. Despite the position that Kannan had contracted a second marriage with the plaintiff and out of the said wed lock, the plaintiffs 2 to 4 were born to them, it is found that on the date of the second marriage, the first marriage of Kannan with the second defendant was subsisting and it was in force till his death and in such view of the matter, it is found that as per law, the marriage between the deceased Kannan and the first plaintiff cannot be declared to be valid marriage and resultantly, it could be seen that as determined by the Courts below, the first plaintiff cannot be declared as the lawful wedded wife of the deceased Kannan. Accordingly, it is found that the Courts below have rightly declined the above relief of declaration sought for by the first plaintiff and no interference is called for with reference to the same. In the light of the above position, based on the materials placed, it is seen that the second defendant has established her valid marriage with the deceased Kannan and therefore, it is seen that the Courts below have rightly upheld the marriage of the deceased Kannan and the second defendant and had rightly declared the second marriage of the deceased Kannan and the first plaintiff as invalid and in such view of the matter, the second substantial question of law formulated in this second appal is answered against the plaintiffs and in favour of the second defendant.

14. Despite the invalidity of the second marriage between the first plaintiff and the deceased Kannan, it is seen on materials that the plaintiffs 2 to 4 were born only out of the said wed lock. It is also the determination of the Courts below that the plaintiffs 2 to 4 were born out of the wed lock between the deceased Kannan and the first plaintiff. Accordingly, it is seen that the trial Court, taking into consideration, the Panchayat Muchilika executed between the parties, marked as Ex.B1 and the other materials, by invoking the section 16 (3) of the Hindu Marriage Act 1955, held that the plaintiffs 2 to 4 are entitled to 1/3 share of the employment prospects and the terminal benefits of the deceased Kannan from the first defendant as determined by it and accordingly, disposed of the plaintiff's suit. However, the first appellate Court, despite holding that Kannan had contracted a second marriage with the first plaintiff, however holding that the said marriage is invalid and also though further holding that the plaintiffs 2 to 4 were born out of the wed lock between the deceased Kannan and the first plaintiff, proceeded to dismiss the plaintiffs' suit in entirety. This determination of the first appellate Court is now mainly under challenge in these second appeals.

15. It is contended by the plaintiffs' counsel that once the plaintiffs 2 to 4 are established to have been born to the first plaintiff

and the deceased Kannan out of the wed lock, though the marriage between them is declared to be an invalid marriage, despite the same, it is contended that as per the Section 16(3) of the Hindu Marriage Act, the plaintiffs 2 to 4 would be entitled to receive their share of the terminal benefits and the other benefits of the deceased Kannan and accordingly, it is stated that the first appellate Court had erred in dismissing the suit in entirety.

16. In this connection the decisions reported in **2011-3-L.W. 255 (Revanasiddappa & another Vs. Mallikarjun & others), 2012-2-L.W. 486 (Krishnaveni & others Vs.Meera @ Devaki & others) and (2014) 7 MLJ 441 (Sivabakiam and others Vs. Parvathathammal and others)** are relied upon. The principles of law outlined in the above said decisions are taken into consideration and accordingly, it is found that when the marriage between the first plaintiff and the deceased Kannan had been established, despite the said marriage being either void or voidable, still under Section 16 of the Hindu Marriage Act, the children begotten of the such a marriage would be entitled to get the benefits of the father.

17. Per contra, the counsel for the second defendant relied upon the decision reported in **(1989) 2 LW 197 Mohan and another Vs. Santha Bai ammal and others** and also the decision of the High

Court dated 17.08.2017, passed in A.S.No.276/2004, before the Madurai Bench of Madras High Court and the decision dated 17.08.2017, passed in Second Appeal No.1584/2000. It is found that in those cases considering the facts and circumstances of the case involved in them, as the marriage between the concerned parties are not established, hence, it has been held in the said decisions, on the failure of the establishment of the marriage between the concerned parties, the children born to the mother could not be declared to be entitled to the property of the father, even on the footing that they are the illegitimate children of the father and thus, the plaintiffs in those cases are found to be not entitled to invoke Section 16 of the Hindu Marriage Act. However, in so far as the facts and circumstances of the case at hand, in the light of the above discussions and as admitted by the deceased Kannan himself, when it is found that the marriage had been celebrated between him and the first plaintiff and the said marriage had also registered and no doubt, the said marriage being an invalid marriage, on account of the first marriage between the deceased Kannan and the second defendant and in such view of the matter, it is seen that the plaintiffs 2 to 4 admittedly born to Kannan and the first plaintiff, out of the said invalid marriage, would be entitled to invoke Section 16 of the Hindu Marriage Act for claiming the benefits from the father and accordingly, it is seen that the trial Court had granted necessary reliefs in favour of the plaintiffs. Thus, the

principles of law outlined in the above said decisions relied upon by the counsel for the second defendant are taken into consideration and followed as applicable to the case at hand.

18. Accordingly, it is seen that the first appellate Court erred in dismissing the suit in entirety and on the other hand, it is found that the trial court has rightly considered the issues involved in its entirety and in all aspects, both factually and legally and accordingly, determined that the plaintiffs 2 to 4 are entitled to their share of the benefits of the deceased Kannan as determined by it.

19. It is thus seen that the first appellate Court has wrongly dismissed the suit in toto without considering the applicability of Section 16(3) of the Hindu Marriage Act to the facts and circumstances of the case and in such view of the matter, it is found that the dismissal of the suit in entirety by the first appellate Court cannot be sustained and the same is liable to be set-aside. Accordingly, it is held that the plaintiffs 2 to 4 are entitled to obtain the employment prospects and the terminal benefits of the deceased Kannan from the first defendant, as determined by the trial Court and accordingly, the first substantial question of law formulated is answered in favour of the plaintiffs and against the second defendant.

20. In conclusion, and in the light of the above discussions, the judgments and decrees of the first appellate Court passed in A.S.No. 70 of 1999 & A.S.No. 82 of 1999 are accordingly set-aside and the judgment and decree dated 09.06.1999 passed in O.S.No.433 of 1994 are confirmed. Resultantly, the above second appeals are accordingly disposed of. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any is closed.

28.11.2017

Index : Yes/No

Internet:Yes/No

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To

1. The Principal District Court, Dharmapuri.
2. The District Munsif Court, Krishnagiri.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.Nos.44 & 49 of 2001

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