

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED:21.11.2017

CORAM

THE HONOURABLE **MR.JUSTICE S.BASKARAN**

S.A. (MD) .No.466 of 2013

WEB COPY

Papammal

...Appellant/Defendant

Vs.

- 1.Andichiammal (died)
- 2.Rajendran
- 3.Stalin
- 4.Latha
- 5.Jegajothi

(R2 to R5 brought on record as LR's of the deceased RR1 vide memo Sr.No.4310 dated 06.09.2016 & order dated 14.11.2017 in SA(MD)No.466/13)

... Respondents/Plaintiffs

Prayer: This Second Appeal is filed under 100 of Civil Procedure Code, against the Judgment and Decree dated 10.10.2012 passed in A.S.No.66 of 2000 by the learned Subordinate Judge, Kovilpatti, confirming the judgment and decree dated 02.08.2011, passed in O.S.No.116 of 2000 on the file of the District Munsif, Kovilpatti.

For Appellants : Mr.Pon Senthil Kumaran  
For Respondents : Mr.B.Rajesh Saravanan  
for RR-2 to 5  
R-1 died

**JUDGMENT**

Challenging the judgment and decree dated 10.10.2012, passed in A.S.No.66 of 2000 by the learned Subordinate Judge, Kovilpatti, by confirming the judgment and decree dated 02.08.2011, passed in O.S.No. 116 of 2000 on the file of the learned District Munsif, Kovilpatti, the present second appeal has been preferred. The defendant, who lost before the courts below is the appellant herein.

2.For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the trial court.

3.The first plaintiff married the deceased Poochandi and out of their wedlock, she gave birth to 2 to 5 plaintiffs herein. The said Poochandi passed away on 12.05.2000. The said Poochandi served as a postman in the Postal Department and after retirement, he was receiving pension till his death. Poochandi married one

Saraswathi and after her demise, he married the first plaintiff herein. After the death of Poochandi, when the first plaintiff approached the Postal Department for disbursement of his death benefits, the same was objected to by the defendant herein claiming herself as the wife of the deceased Poochandi. The plaintiffs contend that the deceased never married the defendant and as such, she has got no right to interfere with the plaintiffs' right to receive the death benefits of Poochandi. Hence, the plaintiffs seek to declare themselves as legal heirs of deceased Poochandi and to restrain the defendant from interfering in the right of plaintiffs to receive the death benefits.

4. On the other hand, opposing the plaintiffs' claim, the defendant entered appearance and filed their statement refuting the averments made in the plaint. The defendant contends that the first plaintiff is her own sister and as the deceased Poochandi and the first plaintiff were employed, with the consent of first plaintiff, late Poochandi married the defendant to take care of the family. Further as the first plaintiff developed illicit relationship with another person and stayed away from the deceased Poochandi, their marriage was dissolved as such, as per the panchayat's decision and the marriage dissolution deed was registered on 14.07.1960. The certified copy of the same is produced as Ex.B.3. It is further stated by the defendant that her marriage with Poochandi took place in the presence of the first plaintiff with her consent only. It is further stated that no steps was taken by the first plaintiff to set aside the said marriage dissolution deed. Further, the dissolution of marriage between the first plaintiff and Poochandi took place only due to the illicit relationship developed by the first plaintiff herein. Thereafter, the first plaintiff filed O.S.No.73 of 1993, seeking maintenance and the order passed in I.A.No.677 of 1993 in the said suit is produced as Ex.B.10. It is further stated by the defendant that the deceased Poochandi in his office records has shown the defendant as nominee and she alone is entitled to receive the amounts due to deceased Poochandi. Thus, the appellant/defendant seeks for dismissal of the suit.

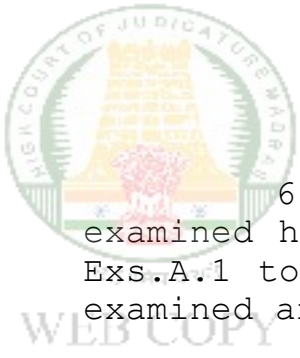
5. The trial court, on perusal of the pleadings, framed the following issues:

"1. வழக்கின் வாதிகள் மட்டுமே இறந்துபோன பூச்சாண்டியின் வாரிசுகளா?

2. தகுந்த தரப் பினர்களை சேர்க்காததால் வாதிகள் வழக்கு பாதிக்கப் பட்டுள்ளதா?

3. வாதி கோருகின்ற நிரந்தர தடை உறுத்துக்கட்டளை பரிகாரம்

வாதிகளுக்கு கிடைக்கத்தக்கதா?



4. வேறு என்ன பரிகாரம் வாதிடுவதற்கு கிடைக்கத்தக்கதா?"

6. During the course of trial, the first plaintiff examined herself as P.W.1 and another witness as P.W.2 and marked Exs.A.1 to A.5. On the side of the defendants, D.Ws.1 & 2 were examined and Exs.B.1 to B.10 were marked.

7. The trial court, on consideration of the pleadings as well as oral and documentary evidence, found that the dissolution of marriage between the deceased Poochandi and the first plaintiff is not established and as such, the alleged marriage between the deceased Poochandi and the defendant is illegal and on that basis, decreed the suit, holding that the plaintiffs and the children born to deceased Poochandi and defendant herein as legal heirs are the persons entitled to receive the amount due to the late Poochandi.

8. Aggrieved over the said judgment and decree of the trial court, the defendant/appellant filed A.S.No.66 of 2011 on the file of the Sub-Court, Kovilpatti. The lower appellate court, on going through the grounds of appeal framed the following point for determination:

"இந்த மேல்முறையீடு அனுமதிக்கத்தக்கதா? இல்லையா"

9. The lower appellate court, on the basis of available materials on record, held that the fact of marriage between first plaintiff and deceased Poochandi was dissolved on 14.07.1960 was not proved and as such, the marriage between the defendant and deceased Poochandi has taken place only during the subsistence of first marriage and as such, the said marriage between the deceased Poochandi and the defendant herein is not legal. Further, the first appellate court held that P.W.2/son of deceased Poochandi has categorically stated in his evidence that his father deceased Poochandi and his mother/first wife lived together till the death of Poochandi and other plaintiffs born to them were living with the parents only. Further, P.W.2, stated that he was born on 04.06.1961, as evidenced by Ex.A.5/S.S.L.C Book and 3 to 5 plaintiffs were all born subsequent to 1960 only. As per Ex.A.1/Death Certificate, Poochandi passed away on 15.05.2000. The first appellate court, pointing it out observed that if the first plaintiff and deceased were not living together, the other plaintiffs would not have born, after 1960 and as such, the claim of the defendant that the marriage between the first plaintiff and Poochandi was dissolved and they were living separately cannot be accepted. On the basis of the said conclusion, the first appellate court dismissed the appeal filed by the defendant by its judgment dated 10.10.2012. Challenging the legality of the same, the present second appeal is filed.



10. In the memorandum of grounds of appeal, the following substantial questions of are raised by the appellant/defendant:

"1. Whether the courts below are justified by granting decree, when Ex.B.3 shows the 1<sup>st</sup> plaintiff was divorced by the deceased Poochandi long back on 04.07.1960?

2. Whether the courts below justified in disbelieving the customary divorce between 1<sup>st</sup> plaintiff and Poochandi in the light of Ex.B.3?

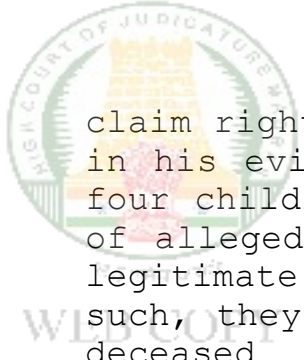
3. Whether the courts below are justified in granting the relief sought for by the plaintiff without challenging Ex.B.3?"

11. The learned counsel for the appellant/defendant vehemently contended that the courts below have failed to appreciate the fact that under Ex.B.3, the marriage between the deceased Poochandi and the first plaintiff was dissolved. Further, the claim of defendant that the divorce was given, as per the custom prevailing in their community was not appreciated properly. Further, Ex.B.3, dissolution deed is not set aside till date and it is a document of more than 30 years old and these factors were not taken into consideration by the courts below properly. Hence, the defendant/appellant seeks to set aside the finding of court below and seeks interference of this Court with the judgment passed in A.S.No.66 of 2011 by the first appellate court.

12. Per contra, the learned counsel for the respondents/plaintiffs would contend that there is nothing on record to prove the alleged marriage between the defendant herein and deceased Poochandi. Further, as the marriage between the first plaintiff and deceased was not dissolved and the fact of their marriage was in existence, at the time of alleged marriage of defendant and Poochandi, the second marriage cannot be a valid one and the same has been considered by the courts below elaborately and have reached a conclusion to uphold the claim of plaintiffs/respondents and as the findings are concurrent in nature, interference is not warranted at the hands of this court, while exercising jurisdiction under Section 100 of Civil Procedure Code. Thus, the learned counsel for the plaintiffs/respondents prays for dismissal of the second appeal.

13. This Court considered the rival submissions and perused the impugned judgments passed by the courts below. The materials available on record was also considered by this Court. The fact that the first plaintiff and defendant are own sisters is admitted. Similarly, the claim of the first plaintiff that she was married to Poochandi and gave birth to four children is also admitted. Likewise, the fact that the deceased Poochandi was employed in Indian Postal Department and he was receiving pension till his death in 2000 is also admitted by both sides. The claim

of the plaintiffs is that the second defendant, who has no *locus standi* is preventing the plaintiffs from receiving the pensionary benefits and other amounts, due to the deceased Poochandi from the Postal Department. The rival claim of the defendant is based on her alleged marriage with Poochandi. Further, the defendant being the nominee, as per the records of the Postal Department, she claims that herself alone is entitled to receive the amounts due to Poochandi. The fact of Poochandi having died is established by Ex.A.1-Death Certificate. The contention of the plaintiffs is that the first plaintiff married the deceased Poochandi about 60 years ago and other plaintiffs are their children is not disputed by the defendant. It is only alleged by the defendant that subsequently, the first plaintiff developed illicit intimacy with some other person and went away from Poochandi's family and as such, the marriage was dissolved in the presence of panchayatars and the marriage dissolution deed copy is produced as Ex.B.3. However, the plaintiffs have disputed any such occurrence or execution of any marriage dissolution deed. Even assuming that such occurrence took place, the same cannot legally dissolve a marriage unless and until it is averred in the pleadings that such customary practice existed and substantiated with supporting evidence. In the case on hand, the plaintiffs have not averred in the plaint about the existence of any such customary practice in their community. In such circumstances, even if Ex.B.3 is a registered document, the same cannot be relied upon to conclude that the marriage between Poochandi and first plaintiff was dissolved. Further, the son of deceased and the first plaintiff, who deposed as P.W.2 stated that he was born on 04.06.1961 and as proof of his date of birth, his S.S.L.C Certificate/Ex.A.5 is produced as Ex.A.5. According to him, plaintiff Nos.2, 4 and 5 were born subsequently only. In such circumstances, the claim of defendant that the first plaintiff's marriage with Poochandi was dissolved during 1960 itself and they lived separately cannot be accepted as true. Further even assuming that the dissolution of marriage took place, in the absence of any pleadings and evidence to prove that such custom existed in the community of plaintiffs, Ex.B.3 is not sufficient to prove that the marriage between Poochandi and first plaintiff was dissolved. Further, the defendant in her evidence admitted that her marriage with deceased Poochandi took place, while the marriage between the first plaintiff and Poochandi was in force. D.W.1 also admitted in her evidence that Poochandi married her as second wife to take care of the family, since Poochandi and his first wife/first plaintiff herein were employed. Thus, it is clear that the first marriage of Poochandi with first plaintiff was not dissolved, when he married the defendant herein. In such circumstances, in the eye of law, the said marriage between Poochandi and defendant has no legal sanctity, since the earlier marriage was not dissolved in any manner known to law. Therefore, only the first plaintiff, who is the legally married wife of Poochandi and the other plaintiffs, who are their children can



claim right as legal heirs of Poochandi. It is admitted by P.W.2 in his evidence that out of wedlock of Poochandi and defendant, four children were born to them. The said four children born out of alleged wedlock of deceased Poochandi and defendant are also legitimate children under Section 16 of Hindu Marriage Act and as such, they are also entitled to claim share as the legal heirs of deceased Poochandi. The plaintiffs herein have expressed their willingness to give share due to the children born to defendant and deceased Poochandi herein. In such circumstances, the claim of the plaintiffs is just and proper and the same is to be accepted. Further, the defendant even if shown as nominee in the records, she can only receive the amount on behalf of the legal heirs and distribute the same. Apart from that, the defendant cannot claim any right in the property and amount due to the deceased Poochandi. In the light of the above said discussions, this Court is of the view that the conclusion arrived at by the courts below is based on proper appreciation of the materials available on record and the same needs no interference.

14. In the result, the second appeal is dismissed, by confirming the judgment and decree passed by the courts below. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Kovilpatti.
2. The District Munsif, Kovilpatti.
3. The Section Officer (Two copies)  
V.R Section,  
Madurai Bench of Madras High Court,  
Madurai.

VS

VB/GT/SAR4/31.01.2018/6P/5C

**Judgment made in**  
S.A.No. (md) .No.466 of 2013  
21.11.2017