



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

S.A. (MD) No. 721 of 2016

S. Kanakambujam .. Appellant/Appellant/Plaintiff

Vs.

1. Santhimathi

2. Selvamani

3. Ganesan

4. State of Tamilnadu represented by

The District Collector,

Thanjavur.

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Principal District Judge, Thanjavur passed in A.S.No.64 of 1999, dated 18.09.2000 confirming the decree and judgment of the Subordinate Judge, Thanjavur passed in O.S.No.194 of 1993, dated 19.12.1997.

For Appellant

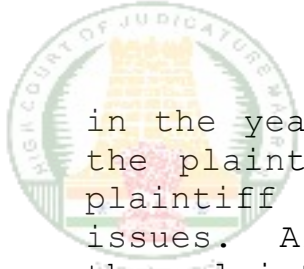
: Mr. V.K. Vijayaragavan

JUDGMENT

The above Second Appeal arises against the judgment and decree passed in A.S.No.64 of 1999, on the file of the Principal District Court, Thanjavur, confirming the judgment and decree passed in O.S.No.194 of 1993, on the file of the Subordinate Court, Thanjavur.

2. The plaintiff is the appellant and the respondents are the defendants in the suit. The plaintiff filed the suit in O.S.No.194 of 1993 for declaration that she is the legally wedded wife and she is entitled for pension and other benefits and for partition and separate possession of the plaintiff's 1/3rd share in the suit properties.

3. According to the plaintiff, the suit properties are originally belonged to Late K. Singaram, who died intestate on 03.03.1993 leaving the plaintiff and the defendants 1 to 3 to succeed to his estate. The defendants 1 and 2 are the daughters of Late K. Singaram through his first wife Ammani Ammal, who died



in the year 1970. After the death of his first wife, he married the plaintiff on 19.09.1981. At the time of her marriage, the plaintiff was a divorcee. The plaintiff and Singaram had no issues. After the death of Singaram, the defendants insisted that the plaintiff should not claim any right over "A" schedule property and also leave "B" schedule property after receiving some amount for her maintenance, for which the plaintiff was not agreeable. The defendants also prevented the plaintiff from getting succession certificate from the Tahsildar, Thanjavur. The defendants also disputed the status of the plaintiff as the wife of Singaram. In these circumstances, the plaintiff has filed the suit.

4. According to the defendants, the plaintiff never married Singaram. The plaintiff is not the legally wedded wife to get the pensionary benefits of Late.Singaram. According to the defendants, the plaintiff is not entitled to receive any family pension. Further the defendants have stated that Singaram did not die intestate. During his life time, he had executed a Will dated 18.06.1992 bequeathing his properties to the second defendant. After the death of Singaram, the Will has come into effect. The plaintiff cannot claim any right or interest in the suit properties. In these circumstances, the defendants prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, 6 witnesses were examined and 12 documents viz., Exs.A.1 to A.12 were marked and on the side of the defendants, 7 witnesses were examined and 18 documents viz., Exs.B.1 to B.18 were marked. The trial Court, after taking into consideration the oral and documentary evidences let in by the parties, dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.64 of 1999 and the lower Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved over the concurrent findings of the Courts below, the plaintiff has filed the above Second Appeal.

6. In the Second Appeal, the appellant/plaintiff has raised the following Substantial Questions of Law:

"1. Whether the decree and judgment of the lower Appellate Court is liable to be set aside for simply translating the trial Court judgment?

2. Whether the Courts below are correct in upholding the genuineness of Will under Exhibit B.14 merely on the evidence of D.W.7, the attester?

3. On the facts and circumstances of the case, whether the Courts below are correct in dismissing the suit filed by the appellant?"

<https://hcservices.ecourts.gov.in/hcservices/>

7. Heard Mr.V.K.Vijayaragavan, learned Counsel appearing for the appellant.



8. Though the plaintiff had contended that she is the legally wedded wife of Late Singaram, the said contention was not established by her by adducing proper evidence. The Courts below concurrently found that she is not the legally wedded wife of Singaram. So far as the case of the defendants is concerned, they contended that Late Singaram had executed Ex.B.14 - Will dated 18.06.1992 in favour of the second defendant. In order to prove the said Will, the defendants examined D.W.7 who is the attester of the Will. The evidence of D.W.7 is categorical with regard to the execution of the Will dated 18.06.1992 by Late Singaram. He also spoke about the mental capacity of the testator. Since the defendants had clearly established that Ex.B.14 Will is true and genuine Will, the trial Court accepted the case of the defendants. Since the plaintiff had failed to prove that she is the legally wedded wife of the deceased Singaram, the Courts below have concurrently dismissed the suit.

9. In these circumstances, I do not find any ground much less any substantial question of law to interfere with the concurrent findings of the Courts below. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Principal District jUDGE, Thanjavur.

2. The Subordinate Judge, Thanjavur.

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