

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

APPEAL SUIT No.1373 OF 1998

JUDGMENT:

Plaintiff in O.S.No.39 of 1995 on the file of the Court of the Judge, Family Court, Hyderabad is the appellant in the present Appeal Suit preferred under Section 96 of the Code of Civil Procedure, 1908. In the present Appeal Suit, challenge is to the judgment and decree, dated 19.11.1996, in O.S.No.39 of 1995.

2. Heard Sri M.V.Bharati, learned counsel for the appellant, and Sri T.Venkat Raju Goud, learned Standing Counsel for the respondents.

3. The appellant herein instituted the present suit for a declaration that she is the legally wedded wife of late Sri Macha Hanumanthu and she is entitled to get family pension benefits and other benefits from the office of Sena Seva Corps, Abilekh Yantrik Parivahan, ASC Records (MT), Bangalore.

4. Defendant No.2/respondent No.2 filed written statement resisting the suit instituted by the appellant herein and defendant No.1/respondent No.1 filed a memo adopting the same.

5. On the basis of the pleadings available on record, the learned Judge framed the following point for consideration:

“Whether the plaintiff is entitled for the declaration that the plaintiff is the wife of late Macha Hanumanthu and entitled to receive all pension benefits and other benefits from the office of defendants 1 and 2?”

6. During the course of trial, apart from examining herself as P.W.1, plaintiff also examined her father as P.W.2 and marked Exs.A-1 to A-10 and on behalf of the defendants, D.W.1 was examined and Exs.B-1 to B-7 were marked.

7. The learned Judge, by virtue of the impugned order and decree, dated 19.11.1996, dismissed O.S.No.39 of 1995. This Appeal Suit challenges the validity and the legal sustainability of the said decree rendered by the Court below.

8. The point that arises for consideration before this Court is as under:

“Whether the Court below correctly appreciated the oral and documentary evidence available on record and whether the impugned judgment warrants any interference of this Court under Section 96 C.P.C.?”

9. **POINT** :- According to the learned counsel for the appellant, the order impugned is highly erroneous, contrary to law and in utter disregard of the oral and documentary evidence available on record. It is also the submission of the learned counsel that the Court below grossly erred in discarding the evidence of P.W.2 and the reasons assigned by the Court below for discarding the said evidence is neither sustainable nor tenable in the eye of law. It is further submitted by the learned counsel that the appellant herein was given appointment in the Telephone Department on compassionate grounds in the place of late Sri Macha Hanumanthu, who died while in service.

10. On the contrary, it is contended vehemently by the learned Standing Counsel for the respondents that there is no error nor

there exists any infirmity in the impugned order and the Court below is perfectly justified in dismissing the suit instituted by the appellant herein. It is the further submission of the learned counsel that only after elaborately considering the oral and documentary evidence available on record, the Court below rendered the impugned order, as such, the same does not warrant any interference of this Court under Section 96 C.P.C. It is the further submission of the learned counsel that the plaintiff/appellant herein did not implead Smt Beronika Kisputa, who was shown as nominee of the deceased, Sri Macha Hanumanthu, nor the appellant produced any evidence with regard to her marriage with late Sri Macha Hanumanthu.

11. The sum and substance of the case of the plaintiff/appellant is that at the time of her marriage with late Sri Macha Hanumanthu, both of them were minors and after the marriage, Sri Hanumanthu joined as sepoy in the military and after his discharge from the military service, he joined the Telephone Department at Hyderabad and that during their wedlock, plaintiff gave birth to a female child on 24.06.1979 at Military Hospital, Alwal. It is the further case of the plaintiff that while working in the Telephone Department as a Driver, Sri Macha Hanumanthu died in an accident on 22.01.1989 and thereafter, on compassionate grounds, plaintiff was given employment as a Water Woman in the Telephone Department, Suryalok Complex, Hyderabad. On the other hand, the case of the defendants is that late Sri Macha Hanumanthu joined in the army service on 22.08.1963 and discharged from the army service on 31.08.1980

and at the time of discharge, he nominated Smt Beronika Kisputa as his wife and accordingly, defendants sanctioned family benefits in favour of Smt Beronika Kisputa and she received all the pensionary benefits from the defendants. In order to demonstrate the same, the defendants pressed into service Ex.B-1 document, which is the Declaration Certificate of Marriage filed by Smt Beronika Kisputa, and Ex.B-6 was also pressed into service by the defendants, which is the original Confidential Report of late Sri Macha Hanumanthu wherein it is mentioned that Smt Beronika Kisputa is the wife of late Sri Macha Hanumanthu. To further strengthen their case, they also filed Ex.B-7 - Confidential File maintained by late Sri Macha Hanumanthu. The Court below took note of the statement of the plaintiff with regard to the length of service rendered by late Sri Macha Hanumanthu and recorded a finding that the plaintiff is not aware as to how many years late Sri Macha Hanumanthu served in the army. It is also significant to note that the plaintiff/appellant herein did not file wedding card also nor she filed any certificate to prove that she gave birth to a female child in Military Hospital, Alwal. It is also important to note that the plaintiff also did not examine any independent witness in support of her case nor she impleaded Smt Beronika Kisputa in the present suit. Obviously taking into consideration all these aspects, the learned Judge declined to grant any relief in favour of the plaintiff/appellant herein. A perusal of the impugned order reveals that the learned Judge assigned cogent and convincing reasons for arriving at the conclusions. Therefore, this Court is not inclined to meddle with the well articulated judgment rendered

by the learned Judge. Accordingly, the point is answered against the appellant.

12. Accordingly, the Appeal Suit is dismissed. There shall be no order as to costs.

13. Miscellaneous petitions pending, if any, in this Appeal Suit shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 07.12.2017
AMD



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