

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.165 of 2018
and C.M.P.No.4338 of 2018

A. Andi ... Appellant/Appellant/
Plaintiff

vs.
Chandra ... Respondent/Respondent/
Defendant

Prayer: This second appeal is filed under Section 100 of Code of Civil Procedure praying to set aside the Judgment and Decree made in A.S.No.51 of 2016 dated 29.08.2017 passed by the Principal Subordinate Judge, Salem by confirming the Decree and Judgment made in O.S.No.264 of 2014 dated 27.01.2016 passed by the I Additional District Munsif, Salem.

For Appellant : Mr.A.Nagarathinam

J U D G M E N T

The appeal is filed by the plaintiff, who has lost concurrently before the Courts below. The suit is filed for declaration that the defendant is not the legally wedded wife of the plaintiff.

2. It is stated in the plaint that the plaintiff had married one Unnamalai 20 years ago and they were living as husband and wife. The said Unnamalai died on 26.08.2009. Even during the subsistence of the said marriage the plaintiff had married the defendant Chandra and begotten a female child on 07.06.2009. Therefore, it is now contended by the plaintiff that the defendant is not his legally wife. The defendant also had filed M.C.No.3 of 2010 before the V Judicial Magistrate, Salem, claiming maintenance. She had admitted that even during the subsistence of the first marriage, she had married the plaintiff. Therefore, she cannot be the legally wedded wife.

3. The defendant remained exparte in the suit as well as in the appeal.

4. Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A3 were marked.

5. The Courts below had concurrently dismissed the suit. Hence, the second appeal.

6. Heard the learned counsel for the appellant.

7. The only question that is to be seen is as to whether the defendant is a legally wedded wife of the plaintiff?

8. Admittedly, the plaintiff had a first wife, namely, Unnamalai, who died on 26.08.2009. Even before her death, the plaintiff had married the defendant and gave birth to a child on 07.06.2009 and on that ground the plaintiff refused to give maintenance. Hence, the defendant had filed M.C.No.3 of 2010 before V Judicial Magistrate, Salem and it was allowed. The second marriage is admitted by the plaintiff. However, the marriage was during the subsistence of the first marriage, hence, it is stated that the defendant is not the legally wedded wife of the plaintiff. Admittedly, the first wife died on 26.08.2009. It is also admitted that a female child by name Nirmala was born to the plaintiff and the defendant on 07.06.2009. Even in the M.C., the defendant has claimed to be the wife of plaintiff, which was accepted by the criminal Court and maintenance was ordered. It is stated that there is no appeal or revision filed against the said order. When the factum of marriage is admitted and there had been long cohabitation between the plaintiff and the defendant, the child, born out of the said relationship, will have the right as per Section 16(3) of the Hindu Marriage Act. Besides, the presumption is that the defendant is deemed to be the wife of the plaintiff by virtue of the long cohabitation. A presumption of a valid marriage having regard to the fact that they had been residing together for a long time and has been accepted in society as husband and wife, could also be drawn. In the present case the plaintiff has admitted the marriage and birth of the child. Merely because Ex.A1-Death Certificate is produced to show that the first wife was alive when the child was born to the defendant, it will not disentitle her to be the wife of the plaintiff.

9. The Courts below had come to the conclusion that merely because the Criminal Court had directed him to pay the maintenance to the defendant and only in order to avoid the same as a counter blast the suit has been filed for declaration that the defendant is not the legally wedded wife. Hence, the Courts below had correctly found that the plaintiff is not entitled to the relief sought for and dismissed the suit. As there is no infirmity in the same, this Court is of the view that no question of law, much less, substantial question of law arises for consideration in this appeal.

10. In the result, the second appeal is dismissed, confirming the Judgment and Decree dated 29.08.2017 passed by the learned Principal Subordinate Judge, Salem in A.S.No.51 of 2016 and the Judgment and Decree dated 27.01.2016 passed by the learned I Additional District Munsif, Salem, in O.S.No.264 of 2014. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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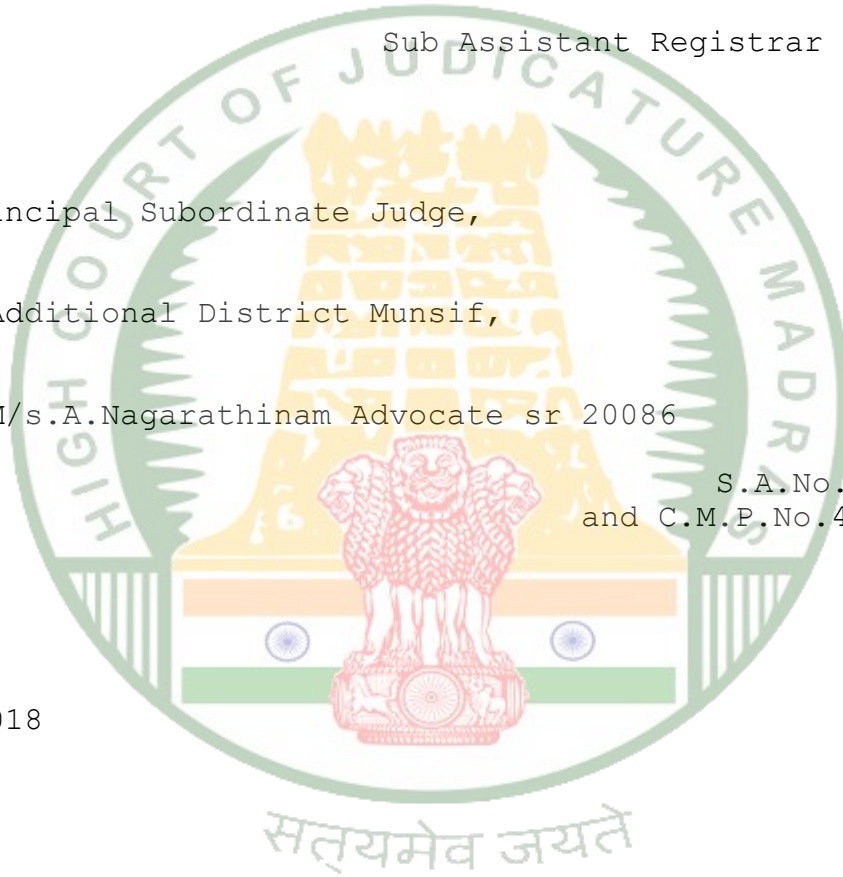
1. The Principal Subordinate Judge,
Salem.

2. The I Additional District Munsif,
Salem.

+1 cc to M/s.A.Nagarathinam Advocate sr 20086

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