

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :30.01.2018
CORAM :
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
S.A.No.65 of 2018

N.Kamalam

... Appellant/Plaintiff

1. The District Collector,
District Collectorate,
State Bank Road,
Coimbatore - 18.

2. The Tahsildhar,
Coimbatore North,
Balasundaram Road,
Coimbatore-18.

3. M.Arunachalam
4. M.Karunanithi

... Respondents/Defendants

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 22.08.2017 on the file of the III Additional Sub Judge, Coimbatore in A.S.No.9 of 2016 confirming the judgment and decree in O.S.No.1967 of 2013 dated 28.09.2015 on the file of the Principal District Munsif, Coimbatore.

For Appellant : Ms.Srividhya Aravindan
for Mr.M.Ravi

सत्यमेव जयते
J U D G M E N T

The Second Appeal is filed by the plaintiff against the dismissal of the suit concurrently by both the Courts below.

2. The suit is filed by the plaintiff for declaration that she is the legally wedded wife of one deceased Natarajan. The appellant / plaintiff claims that she is the wife of the said Natarajan, who died on 01.10.2012. The defendants 3 and 4 are the brothers of the said Natarajan. The mother of the said Natarajan pre-deceased him. The plaintiff claimed to be the sole legal heir of the deceased Natarajan, as she is claiming

to be his wife.

3. The suit property belonged to the said Natarajan and after his demise, the legal heirship certificate is required for the purpose of transferring the Revenue particulars in the name of the plaintiff.

4. Resisting the suit, the defendants 3 and 4 contended that the appellant is not the wife of the deceased Natarajan and already she was married to one Santhalingam in the year 1971 and also got a male child out of the wedlock. The marriage of the plaintiff with the said Santhalingam is in subsistence. It is further contended that the said Natarajan died without any marriage. Hence, the defendants prayed for dismissal of the suit.

5. Before the trial Court, the plaintiff examined herself as P.W.1 and one more witness was examined as P.W.2 and marked Exs.A1 to A10. On the side of the defendant, the third defendant examined himself as D.W.1 and marked Exs.B1 to B3.

6. After appreciating the oral and documentary evidence, both the Courts below have concurrently held that the plaintiff cannot be the wife of the deceased Natarajan, as admittedly her marriage with the first husband, namely, Santhalingam is in subsistence and not dissolved in the manner known to law. It is also held that the plaintiff had not established the marriage held between the deceased Natarajan and herself by any substantial evidence, except filing Exs.A7 and A-8 photocopies of sale deeds. In fact, P.W.1 in her cross examination has specifically admitted that in the year 1971, she was married to one Santhalingam and got a male child in the year 1971 out of the said wedlock. She has further admitted that after the birth of the child, her husband had deserted her and there was no divorce was granted dissolving the said marriage in the manner known to law. Based on her own admission, the Courts below have held that even presuming that there was a long cohabitation by the appellant/plaintiff with the said Natarajan, it would not lead to a presumption of marriage. In the absence of earlier marriage not being dissolved, the plaintiff cannot be called as the wife of the deceased Natarajan.

6. On the above said grounds, the plaintiff was non-suited by both the Courts below. This Court sees no infirmity in the findings of the Courts below and no interference is warranted in the absence of any question of law, much less substantial question of law arising out of the said facts. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srn
To

1. The III Additional Sub Judge,
Coimbatore
2. The Principal District Munsif,
Coimbatore.

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The Record Keeper
VR Section
High Court
Madras

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