

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
SA.No.339 of 2006
and
C.M.P.No.4606 of 2006

Vasantha ..Appellant/Plaintiff
Vs.
1.Saraswathi
2.The Sub Divisional Engineer,
Telephones, B.S.N.L.,
Chengalpattu.
3.The General Manager,
Telephones, B.S.N.L.,
Eldams Road, Chennai - 600 018.
4.The Chief General Manager,
Office of Chief General Manager,
Telephones, B.S.N.L., Anna Salai,
Chennai - 600 006. ..Respondents/ Respondents

Prayer:Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree of the learned Principal Subordinate Judge of Chengalpattu dated 19.08.2005 in A.S.No.14 of 2005, confirming the judgment and decree of the learned District Munsif of Chengalpattu dated 06.12.2004 in O.S.No.114 of 2002.

For Appellant : Mr.N.E.A.Dinesh

For Respondents : No appearance

JUDGMENT

The Second Appeal on hand is filed against the judgment and decree passed in O.S.No.114 of 2002 and the First Appellate order, confirming the judgment and decree passed by the Trial Court in A.S.No.14 of 2005.

2.The parties are referred as per the ranking in the Trial Court.

3.The facts in nutshell necessary to be considered for the purpose of deciding the Second Appeal are that the plaintiff Smt.Vasantha got married to

Mr.J.Kaliamoorthy(Deceased), who was working as Phone Mechanic(Sub Inspector) in the office of the Sub Divisional Engineer, Telephones, B.S.N.L, Chengalpattu. The plaintiff claims that after the solemnization of the marriage, the plaintiff as well as late Mr.J.Kaliamoorthy lived together as husband and wife. It was contended by the plaintiff that she came to know about the relationship between the 1st defendant and Mr.J.Kaliamoorthy in the suit. After knowing the fact that the said Mr.J.Kaliamoorthy had already married the 1st defendant, the plaintiff entered into a marriage agreement with the said Mr.J.Kaliamoorthy on 03.02.1983, to register the marriage with the plaintiff and the said Mr.J.Kaliamoorthy assured the plaintiff that he will not let the plaintiff on the street and he will continue to live with the plaintiff. However, late Mr.J.Kaliamoorthy frequently developed quarrels with the plaintiff on several occasions and finally deserted the plaintiff. The plaintiff lodged a Police complaint on 09.04.1992 before the Chengalpattu Police Station and thereafter on 15.04.1992, and in view of the fact that there was no action, she sent a legal notice to the 4th defendant / The Chief General manager, Telephones, Chennai - 2 and her husband Mr.J.Kaliamoorthy. On receipt of the notice, the said Mr.J.Kaliamoorthy settled with the plaintiff with a fear of losing his job. Lastly on 30.06.2001, the husband of the plaintiff again deserted her and settled with the 1st defendant, who is the first wife of late Mr.J.Kaliamoorthy. Thus, the plaintiff issued another legal notice on 20.08.2001, claiming maintenance from her husband. On 24.04.2002, her husband called the plaintiff through phone and decided to return back and expressed his willingness to live along with the plaintiff. However, on the next day, the plaintiff received a message that her husband late Mr.J.Kaliamoorthy died in mysterious circumstances in Chengalpattu Medical College Hospital. The plaintiff issued a legal notice to defendants 2 to 4 on 29.04.2002, not to disburse the death benefits of the deceased employee in favour of the 1st defendant. Thus, the plaintiff was constrained to file the suit for permanent injunction, restraining the defendants 2 to 4 from disbursing the death benefits of the deceased employee Mr.J.Kaliamoorthy in favour of the 1st defendant.

4.The 1st defendant in the suit contended that the plaintiff is not the wife of the deceased employee Mr.J.Kaliamoorthy and no marriage was solemnized as contended by the plaintiff during the year 1979. The statement of the plaintiff was disputed by the 1st defendant on the ground that the 1st defendant is the legally wedded wife of the deceased Mr.J.Kaliamoorthy and it was admitted that the said Mr.J.Kaliamoorthy died on

25.04.2002. The 1st defendant married the deceased employee Mr.J.Kaliamoorthy on 10.02.1974 at Chengalpattu Town and the 1st defendant was living with her husband at Chengalpattu. Out of the wedlock, two daughters and two sons were born and the marriage of the eldest daughter born to Mr.J.Kaliamoorthy was also solemnized during the year 1999. Late Mr.J.Kaliamoorthy had nominated the name of the children in his Service Register. After the death of the deceased employee Mr.J.Kaliamoorthy, the defendants 2 to 4 paid the death benefits to the 1st defendant, more specifically, the welfare fund. The payment of pension and other benefits are deferred on account of the suit filed by the plaintiff against the defendants.

5.The defendants 2 to 4 in the suit are official defendants and they remained ex-parte in the suit.

6.The Trial Court framed two issues and put the parties into the trial. The plaintiff was examined as P.W.1 and 12 documents in Ex.A1 to Ex.A12 were marked on her side. The Trial Court came to the conclusion that the plaintiff is not the legally wedded wife of the deceased Mr.J.Kaliamoorthy and further affirmed that the 1st defendant Smt.Saraswathi is the legally wedded wife of the deceased employee Mr.J.Kaliamoorthy. Thus, the Trial Court came to the conclusion that the plaintiff is not entitled for the relief of permanent injunction as prayed for in the original suit.

7.The First Appellate Court also formulated the issues akin to that of the issues framed by the Trial Court. The First Appellate Court also considered the issue, whether the plaintiff is the legally wedded wife of the deceased Mr.J.Kaliamoorthy or not? Even as per the documents produced by the plaintiff, the alleged marriage between the deceased Mr.J.Kaliamoorthy and the plaintiff was solemnized in the year 1979. However, the first marriage of the deceased employee Mr.J.Kaliamoorthy was solemnized with the first defendant Smt.Saraswathi even prior to the marriage of the plaintiff with the deceased employee. The suit was filed mainly to get the death benefits of the deceased employee, who was serving in the Telephones Department. The First Appellate Court considered the documents filed in Ex.A1, which is the marriage agreement alleged to be entered by late Mr.J.Kaliamoorthy with the plaintiff on 03.02.1983. As per the said document Ex.A1, the plaintiff and the deceased Mr.J.Kaliamoorthy were living as husband and wife from 1979 onwards. They agreed to register the marriage. However, a careful scrutiny of Ex.A1 would reveal that the date, month and year of the purchase of the Stamp paper over which it is scribed contains

correction. The plaintiff, during the cross-examination also admitted that the year 1986 has been corrected as 1983. Further the year of execution of the document has also been corrected from 1984 to 1983. The plaintiff has put up the date 03.02.1984 below her signature. But, the year '83' has been corrected as '84'. Thus, there are material alterations over the date of execution of the document namely Ex.A1.

8.Ex.A4 is the invitation printed in the name of the plaintiff and the deceased for the puberty ceremony of K.M.Vani, stating her to be their daughter. But the plaintiff, during the course of cross-examination, admitted that she was already married to one, namely, Thiru.Ekambaram and the said M/s.Vani was born through him and the said Thiru.Ekambaram and that her marriage with Thiru.Ekambaram is not legally dissolved so far. Ex.A6 is the legal notice, sent to the deceased Mr.J.Kaliamoorthy for the purpose of claiming maintenance. The First Appellate Court also considered the documents filed by the plaintiff before the Trial Court and came to a conclusion that the plaintiff was not the legally wedded wife of the deceased employee Mr.J.Kaliamoorthy. Even the agreement entered into between the plaintiff and the deceased Mr.J.Kaliamoorthy was not initially registered. It was agreed to register the marriage and there was a manipulation and correction of date even in that agreement, which was filed before the Trial Court as Ex.A1. By scrutinizing these doubtful documents and the corrections and alterations made in the agreement, the First Appellate Court came to a conclusion that the plaintiff is not the legally wedded wife of the deceased employee late Mr.J.Kaliamoorthy and accordingly, confirmed the judgment and decree passed by the Trial Court in O.S.No.114 of 2002 dated 06.12.2004.

9.At the admission of the present Second Appeal, this Court formulated the following substantial question of law:-

1. When the plaintiff and late J.Kaliyamoorthy were living as husband and wife from 1979 onwards and the recognition of plaintiff by late J.Kaliyamoorthy as his wife would be sufficient to presume the marriage between them under Section 114 of Evidence Act, whether the courts below are correct in declining to uphold her status as the wife of late J.Kaliyamoorthy?
2. When the intention of late J.Kaliyamoorthy is that the plaintiff should get all his service benefits after his death and as such his intention should be respected and given effect to whether the courts below are correct in deciding the suit against the will and intention of J.Kaliyamoorthy?

10. With reference to the question of law, this Court is of an opinion that both the Trial Court as well as the First Appellate Court, the issue was framed to find out whether the plaintiff is the legally wedded wife of the deceased Mr. J. Kaliamoorthy. The question of law framed are more related to the facts than that of the legal principles. The Apex Court as well as the Hon'ble High Court had repeatedly ruled that concluded facts and circumstances can never be interfered with in a Second Appeal under Section 100 of the Code of Civil Procedure. The facts adjudicated in a complete form and concluded by the Trial Court as well as by the First Appellate Court, can never be interfered with by the High Court in a Second Appeal unless such recording of facts are absolutely perverse and erroneous. In the absence of establishing that the recording of the basic facts by the Trial Court or by First Appellate Court is perverse, the Hon'ble High Court cannot interfere with the judgment and decree passed by the Trial Court, which was confirmed by the First Appellate Court in respect of the appreciation of the facts and circumstances placed and recorded. Thus, the question of law mainly to be considered in the Second Appeal is with reference to the validity of the marriage solemnized between the plaintiff and the deceased Mr. J. Kaliamoorthy.

11. Admittedly, the 1st defendant was living with the late Mr. J. Kaliamoorthy at Chengalpattu for long time and from and out of their wedlock, two daughters and two sons born. This apart, the marriage between the deceased Mr. J. Kaliamoorthy and the 1st defendant Smt. Saraswathi was solemnized prior to the agreement submitted before the Trial Court by the plaintiff. As per the deposition, the marriage between the deceased Mr. J. Kaliamoorthy and the 1st defendant, Smt. Saraswathi was solemnized during the year 1974 itself. This apart, Ex. A1 was considered as a doubtful document in view of the fact that corrections were made and certain manipulations were identified during the cross-examination by the Trial Court as well as by the First Appellate Court.

12. Even if the plaintiff got married with the deceased Mr. J. Kaliamoorthy, the same cannot be validated on account of the fact that the said marriage was alleged to have been solemnized during the life time of the 1st wife, who is the 1st defendant. The second marriage solemnized during the life time of the first wife is null and void. Thus, the second wife is not entitled for any death benefits due to the deceased employee Mr. J. Kaliamoorthy. This apart, the name of the plaintiff was not even nominated in the Service Registers of late Mr. J. Kaliamoorthy. As per the Pension Rules also, the

legally wedded wife alone is entitled to get the death benefits as well as the pensionary benefits due to a Government employee. In view of the fact that the plaintiff had failed to establish that she is the legally wedded wife of the deceased employee late Mr.J.Kaliamoorthy. This Court is of an opinion that the Trial Court as well as the First Appellate Court has rightly come to the conclusion that the relief as such sought for to grant permanent injunction, restraining the defendants 2 to 4 from settling the death benefits in favour of the 1st defendant cannot be granted at all.

13.Considering the facts, circumstances and the issues decided both by the Trial Court as well as by the First Appellate Court, this Court is also of an undoubted opinion that the marriage between the plaintiff as well as the deceased employee late Mr.J.Kaliamoorthy is null and void and therefore, the 1st defendant, who is the first wife of the deceased employee alone is entitled to get the death benefits as well as the pensionary benefits due to the deceased employee. Accordingly, the Trial Court as well as the First Appellate Court has not committed any error both on facts or on legal principles. This apart, the question of law raised in this regard was answered in accordance with law and there is no infirmity as such. Thus, this Court has no hesitation in coming to the conclusion that there is no perversity in respect of the judgment and decree passed by the Trial Court in O.S.No.114 of 2002 dated 06.12.2004 and the judgment and decree dated 19.08.2005 passed in A.S.No.14 of 2005 and both are confirmed.

14.Thus, the Second Appeal is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते Assistant Registrar(CS iv)

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Sub Assistant Registrar

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To

1.The learned Principal Subordinate Judge,
Chengalpattu.

2.The District Munsif,
Chengalpattu.

Copy To:-

The Section Officer

VR Section, High Court,Madras.(2 copies)

+1cc to Mr.V.Nicholas, Advocate SR.No. 77518

SA.No.339 of 2006

ASK(20/12/2018)