

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2017

PRONOUNCED ON : 05.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1371 of 2002 and

CMP.No.11357/2002 &

VCMP.No. 22/2007

Pushpavathi Ammal @ Pusan @ Pusana ... Appellant/4th Defendant

Vs.

1. Sendhamari @ Meenakshi1st Respondent/Plaintiff

2. Head Master,
Government primary School,
Kakkanampalayam Village,
Tirupattur Taluk,
Vellore District.

3.The District Primary Education Officer,
Fort, Vellore, Vellore District.

4.Assistant Primary Education Officer,
Tirupattur, Vellore District. ... Respondents 2 to 4/
Defendants 1 to 3

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.16 of 2002 dated 29.04.2002 on the file of the Additional District Judge, Tirupattur, Vellore District reversing the judgment and decree passed in O.S.No.195 of 1997 dated 16.11.1999 on the file of the District Munsif Court, Tirupattur, Vellore District.

For Appellant : Ms.Chitra Gomathi
For Respondent No.1 : Mr.B.Manohar
For Respondent Nos.
2 to 4 : Mr.T.Jayaramaraj
Government Advocate (CS)

JUDGMENT

This second appeal is directed against the judgment and decree dated 29.04.2002 passed in A.S.No.16 of 2002 on the file of the Additional District Judge, Fast Track Court, Tirupatthur, Vellore District reversing the judgment and decree dated 16.11.1999 passed in OS.No.195 of 1997 on the file of the District Munsif Court, Tirupattur, Vellore District.

2. Parties are referred to as per their rankings in the trial Court

3. Suit for Declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the plaintiff married the deceased Chamraj on 09.09.1973, who was working as a Teacher, as per the Hindu Rites and Customs and out of the said wedlock, they were blessed with two sons viz., Vijayakumar and Govindaraj and one daughter viz., Narmadha and after the marriage, during the year 1986, misunderstanding arose between the plaintiff and her husband Chamraj and on account of the same, the plaintiff has been forced to live separately in her mother's residence leaving her husband and thereafter, the plaintiff heard that Chamraj had married the 4th defendant on 08.09.1986 against law and in this connection, the plaintiff has lodged Criminal Complaint against the deceased Chamraj and others in CC.No.1550 of 1989 on the file of the Judicial Magistrate Court No.1, Thiruppathur and the petitioner has also preferred OS.No.87 of 1989 against Chamraj claiming maintenance and on account of the compromise between the parties through the Mediators, the plaintiff did not prosecute the above said criminal case and the civil suit. However, the plaintiff status as the wife of Chamraj was subsisting and continued and Chamraj died in harness on 02.02.1997 and in the invitation card, with reference to the death ceremonies of Chamraj, the name of the 4th defendant has been printed suppressing the status of the plaintiff as the wife of the deceased Chamraj and the plaintiff has also learnt that the defendants 1 to 3 are making attempts to disburse the death benefits of the deceased Chamraj in favour of the 4th defendant to which the 4th defendant is not entitled to and in this connection, the plaintiff has sent a notice and the same is under process and the plaintiff has also been informed that the name of the 4th defendant has been entered in the service register of the deceased Chamraj as his nominee entitled to receive the death benefits, however, inasmuch as the plaintiff being the legally wedded wife of the deceased Chamraj and entitled to receive the death benefits, she has been necessitated to lay the suit for appropriate relief.

5. The case of the defendants 1 to 3, in brief, is that the defendants are not aware about the marriage between the plaintiff and Chamraj on 09.09.1973 and also not aware of the circumstances under which the plaintiff is living separately from her husband from 1986 onwards and also not aware of the proceedings instituted by the plaintiff against her husband in the Criminal Court and Civil Court, as stated in the plaint. The deceased Chamraj while working as Teacher, died in harness and accordingly, the 4th respondent and the children of the deceased Chamraj presented a requisition for disbursing the death benefits and while so, the plaintiff also presented a petition claiming that she alone is entitled to receive the death benefits and the allegation of the plaintiff that the defendants 1 to 3 are attempting to disburse the death benefits to the 4th defendant against the provisions of law is incorrect and the defendants are bound by the orders that may be passed in the suit and ready to comply with the directions of the Court and hence the suit is liable to be dismissed.

6. The case of the 4th defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the plaintiff married the deceased Chamraj in the year 1973 and out of the said wedlock, two sons and one daughter were born to them and it is false to state that the deceased Chamraj illegally married the 4th defendant as second wife on 08.09.1996 and on the other hand, on account of the illicit relationship developed by the plaintiff with others during the subsistence of her marriage with the deceased Chamraj, love having lost between the two, the plaintiff was sent out of the residence by the deceased Chamraj and thereafter, the plaintiff has been living separately having no connection with the deceased Chamraj whatsoever and on account of the immoral character of the plaintiff and other activities, the deceased Chamraj was put to great loss and hardship and the criminal case and the civil suit laid by the plaintiff, as stated in the plaint, were dismissed and it is false to state that the plaintiff continue to be the legally wedded wife of the deceased Chamraj and in the presence of Panchayatars named in the written statement as per the Custom prevalent in the community of the parties, the plaintiff had removed her Thali and handed over the same to the deceased Chamraj and thereby, the marriage between the plaintiff and the deceased Chamraj was put to an end and thereafter, the plaintiff is not entitled to claim that she still is the legally wedded wife of the deceased Chamraj and accordingly, thereafter, the deceased Chamraj married the 4th defendant and accordingly, the deceased Chamraj has entered only the name of the 4th defendant as his nominee in the service records for receiving his death benefits and the plaintiff has also not attended his death obsequies. It is only the deceased Chamraj and the 4th defendant, who had celebrated

the marriage of the daughter Narmadha and even in the marriage invitation card of the Narmadha, the 4th defendant has only been described as the wife of the deceased Chamraj and hence, the 4th defendant, as the legally wedded wife of the deceased Chamraj, she alone is entitled to receive the death benefits and the plaintiff is not entitled to claim any right to the same and hence, the plaintiff is not entitled to obtain the reliefs sought for in the suit.

7. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A6 were marked and on the side of the defendants, DWS1 to 7 were examined and Exs.B1 to B10 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made the trial Court was pleased to dismiss the suit by the plaintiff. On appeal, the first appellate Court, on a re-appreciation of the materials placed on record, was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether the judgment of the lower appellate Court is wrong because it has not discussed the oral and documentary evidence let in on behalf of the appellant?

2. Whether law requires that a custom should be proved by document?

3. Whether the nominee is entitled to receive gratuity and other payments due to the deceased person?

4. Whether an injunction preventing payment of gratuity and other amounts to a nominee can be granted by a Civil Court?

10. It is not in dispute that the plaintiff and the deceased Chamraj got married on 09.09.1973 and out of the said wedlock, they were blessed with two sons and one daughter. Even as per the case of the plaintiff, on account of the misunderstanding between her and her husband, she had been forced to live separately from her husband from 1986 onwards. It is thus found that after the above said separation, the plaintiff did not continue to live with her husband and only

living separately and in this connection, the plaintiff examined as PW1, during the course of cross examination has admitted that from 1986 onwards, she had not jointly lived with her husband and her children are staying only with her husband and thereafter, she had not even seen her children and she had also not attended the death ceremony of her husband and learnt that it is only the 4th defendant, who had performed the death obsequies of her deceased husband and also admitted that she was not informed about the marriage of her daughter Narmadha and she came to know about the daughter's marriage after it was celebrated and does not know whether any children were born to her daughter Narmadha and according to her, on the demise of her husband, she had removed the thali as per the customs at her residence. From the above evidence of PW1, it is found that on account of the love having been lost between the plaintiff and her husband Chamraj, the two had been living separately since 1986 onwards and thereafter, there had been no reunion amongst the two.

11. From the materials placed on record, it is found that as per the case of the plaintiff itself, the deceased Chamraj had married the 4th defendant. However, according to the plaintiff, inasmuch as her marriage with the deceased Chamraj is still subsisting and not annulled as per law, the marriage between the 4th defendant and the deceased Chamraj is illegal and void and cannot be legally approved. However, it is the case of the 4th defendant that on account of the illicit behaviour of the plaintiff, misunderstanding arose between the plaintiff and the deceased Chamraj and thereafter, the plaintiff started living separately leaving her husband and at the intervention of the Mediators, as per the custom prevalent amongst the community of the parties, the plaintiff had removed her Thali and handed over the same to her husband and thereby putting an end to their marriage and therefore, as per the custom, the marriage between the plaintiff and the deceased Chamraj had come to an end and thereafter, the deceased Chamraj had married the 4th defendant as his wife and accordingly, it is only the 4th defendant, who had been since all long living with the deceased Chamraj and looking after the family and it is only the 4th defendant, who had celebrated the marriage of the daughter Narmadha and it is only the 4th defendant, who has performed the death obsequies of her deceased husband Chamraj and accordingly, the deceased Chamraj himself has nominated the 4th defendant as his nominee to receive his death benefits in his service records, thereby, recognised the status of the 4th defendant as his legally wedded wife and therefore, according to the 4th defendant, the plaintiff cannot be allowed to say that she is still the legally wedded wife of the deceased Chamraj and entitled to the death benefits and hence according to the 4th defendant, the plaintiff is not entitled to obtain the reliefs claimed in the plaint.

12. Per contra, according to the plaintiff, her marriage with the deceased Chamraj had not been put to an end as claimed by the 4th defendant. Further according to her, there is no custom prevailing in their community for putting an end to the marriage by removing Thali and handing over to the husband and such is not the practice in the community of the parties and therefore, the marriage between her and the deceased Chamraj having not been dissolved duly in accordance with law, it is her contention that she still continues to be the legally wedded wife of the deceased Chamraj and entitled to the death benefits of her husband, deceased Chamraj.

13. No doubt, though it is admitted that the plaintiff had married the deceased Chamraj, according to the 4th defendant, the marriage between the plaintiff and the deceased Chamraj had been annulled by the customary practice prevailing in the community of the parties concerned. When the above said claim of the 4th defendant is seriously controverted by the plaintiff, it is found that it is only the 4th defendant, who has to establish that such a custom was prevalent in the community of the parties and thereby following the above said custom, the plaintiff had removed the Thali and handed over to her husband and thereby putting an end to her marriage with the deceased Chamraj.

14. As per Section 29 (2) of the Hindu Marriage Act, 1955, it is found that nothing contained in the act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu Marriage, whether solemnized whether before or after the commencement of the Act. Therefore, it is seen that the marriage solemnized between the plaintiff and the deceased Chamraj could also be dissolved, if the custom is prevalent in the community of the parties which permits the dissolution of the marriage by the removal of Thali. With reference to the above case of the 4th defendant, it is found that according to the 4th defendant, the plaintiff's periamma (bghpak;kh) herself had dissolved her marriage with the plaintiff's father as per the custom prevalent in their community, i.e., by removing Thali and handing over to her husband and she had since then been living separately and thereafter, according to the 4th defendant, the plaintiff's father had married the plaintiff's mother and therefore, it is contended that such a custom is prevailing in the community of the parties concerned. In this connection, though the plaintiff examined as PW1 has disputed that such a custom is prevalent in their community, however, during the course of cross examination, has admitted that before his father had contracted the marriage with her mother, her father had married one Rajammal, daughter of Duraisamy Gounder and she does not know

whether Rajammal is living separately from her father and does not know why she is living separately and she had also not enquired as to why Rajammal had been living separately away from her husband and why her father had contracted the second marriage with her mother and however, she has denied the suggestion that inasmuch as her father and Rajammal had got separated by way of the customary practice and as Rajammal had handed over the Thali to her father and thereby, their marriage had been put to an end and thereafter, her father had married her mother. The fact however remains that as per the admission of the plaintiff, her father's first wife Rajammal is living separately and the plaintiff's father had thereafter contracted the marriage with the plaintiff's mother and it is thus found that as there had been a customary practice amongst the community for dissolving the marriage by removing Thali, it is found that accordingly, the plaintiff's father had got separated from Rajammal and thereafter married the plaintiff's mother.

15. To establish that such a customary practice is prevalent in the community of the parties, the 4th defendant examined as DW1 has tendered evidence. That apart, she has also, with reference to the same, examined independent witnesses and in this connection, Thiru.Deivasigamani examined as DW2, who is none other than the sister's husband of the deceased Chamraj has deposed that a Panchayat was convened between the plaintiff and the deceased Chamraj in the presence of various panchayatars including him and in the said Panchayat, it has been resolved to give a sum of Rs.25,000/- to the plaintiff and thereby, the plaintiff should withdraw the criminal case and the civil suit laid by her against the deceased Chamraj and thereby, after the said cases had been withdrawn, the plaintiff, in the presence of Panchayathars on 17.04.1992, had removed her Thali and handed over the same to her husband Chamraj and thereby, the marriage between the plaintiff and the deceased Chamraj had been put to an end and thereafter, the plaintiff did not claim any right as the legally wedded wife of the deceased Chamraj and living separately and it is his assertion that such a customary practice is prevalent in the community of the parties and also deposed that the plaintiff's father had also got separated from first wife Rajammal likewise and also testified that thereafter the deceased Chamraj had married the 4th defendant and it is only the 4th defendant, who had celebrated the marriage of the daughter Narmadha and the plaintiff had not attended the said marriage and the plaintiff had not attended the death ceremony of deceased Chamraj and therefore, from his evidence, it is found that as there had been a custom prevalent in the community of the parties for putting an end to the marriage by removing Thali, it is found that he has convincingly spoken about the dissolution of the marriage between the plaintiff and the

deceased Chamraj as per the above said customary practice and also testified about the similar dissolution of the marriage of the plaintiff's father with Rajammal and therefore, considering the admission of the plaintiff that her father's first wife Rajammal is living separately till date and thereafter, her father had married her mother, cumulatively seen, would only lead to the conclusion that such a custom is prevalent in the community of the parties for putting to an end to the marriage. Despite cross examination, nothing has been culled out from DW2 to disbelieve his version.

16. Likewise, Raji examined as DW3 has testified that the plaintiff sister is his brother's wife and also stated that in the panchayat held, the plaintiff as per the customary practice had removed the Thali and handed over the same to her husband and accordingly, the marriage between the plaintiff and the deceased Chamraj had been put to an end and therefore, from his evidence also, it could be seen that as per the custom prevalent in the community of the parties, the marriage between the plaintiff and the deceased Chamraj had been dissolved. He has also deposed during the course of cross examination that the plaintiff was given a sum of Rs.25,000/- as per the decision of the panchayatars and thereafter, the plaintiff did not prosecute the litigations preferred by her against the deceased Chamraj and DW3 being a person, aged about 65 years would be in the know of things about the custom prevalent in the community of the parties and accordingly, deposed about the said custom of dissolution of marriage by the parties and therefore, from the evidence of DW3 also, which buttresses the evidence of DW2, it is seen that the custom is prevalent in the community of the parties concerned for the dissolution of the marriage by removal of Thali. DW2 stood firm in his version and accordingly, nothing could be culled out from him during the course of cross examination to discredit his testimony in any aspect.

17. DW4, Govindasamy, who is aged 73 years and who was also the village panchayat president for more than 10 years had also deposed that in the panchayat held as regards the dissolution of the marriage between the plaintiff and the deceased Chamraj, a sum of Rs.25,000/- was handed over to the plaintiff by the deceased Chamraj and accordingly, the plaintiff had agreed to withdraw the case preferred by her, against her husband and thereafter, in the presence of panchayatars, the plaintiff had removed the Thali and handed over the same to her husband and the marriage between the plaintiff and the deceased Chamraj had been dissolved and accordingly, the plaintiff has ceased to be the wife of the deceased Chamraj. The evidence of DW4 strengthens the case of the 4th defendant as well as the testimony of DWs 2 and 3 about the custom prevalent in the community of the parties as to the dissolution of the marriage

by the removal of Thali and despite cross examination, nothing has been elicited from the mouth of DW4 to disbelieve his version as regards the customary practice prevalent in the community of the parties with reference to the dissolution of the marriage.

18. Similarly, DW5 Thirupathi, aged about 55 years has also deposed about the panchayat convened between the plaintiff and her husband, the deceased Chamraj and as per the custom prevalent in the community of the parties, deposed about the removal of Thali by the plaintiff and handing over the same to her husband and thereby, the annulment of the marriage between the two. Further, DW4, has also spoken about the dissolution of the marriage in the above said manner by one Kuzhanthai Gounder with his wife Chinnathayam and subsequent thereto, the marriage of Kuzhanthai Gounder with one Babyammal and also spoken about the dissolution of marriage in the above said manner between one Ramakrishnan and his wife Mangaiyamma. Despite cross examination, nothing has been culled out from DW5 to discredit the testimony in any aspect and therefore, from the evidence of DW5, it could be seen that such a custom is prevalent widely in the community of the parties and accordingly, he is able to give two to three instances of the dissolution of the marriage by the customary procedure as prevalent in the community and therefore, from the evidence of DW5, it is found that the marriage between the plaintiff and the deceased Chamraj has been put to an end as per the customs.

19. As above seen, out of the wedlock between the plaintiff and the deceased Chamraj, two sons and one daughter were born to them and the daughter is Narmadha and the said daughter has been examined as DW6 and she has in her evidence clearly testified that for the past 15 years, the plaintiff had not lived in the family and her marriage was celebrated only by her father and the 4th defendant and in her marriage invitation card, only the 4th defendant has been shown as the wife of the deceased Chamraj and also testified about the customary practice prevalent in the community and the factum of the plaintiff removing Thali and handing over the same to Chamraj during the year 1992 and thereafter, the marriage between her father and the 4th defendant was settled and as per the customary practice, the marriage between the plaintiff and her father had been annulled and thereafter, the plaintiff had not been associated with the family in any manner and not attended the death of her husband and staying separately away from the family. DW6 stood firm in her statement about the customary practice prevalent in the community and also of the dissolution of the marriage as per the customary practice between the plaintiff and her father Chamraj. As rightly argued, DW6, being the daughter of the plaintiff, normally the daughter would not speak against her mother,

however, in this case, inasmuch as the plaintiff had been living separately away from the family since 1986 onwards and as the marriage between the plaintiff and the deceased Chamraj had been dissolved as per the custom prevalent in the community of the parties and as DW6 is aware of all the things, accordingly, had testified about the said facts in a clear and acceptable manner and from the evidence of DW6, it has been clearly establish that such a custom had been in vogue in the community of the parties and accordingly, the marriage between the plaintiff and the deceased Chamraj had been dissolved in the year 1992 by the removal of Thali by the plaintiff and handing over the same to Chamraj in the presence of panchayatars.

20. In the light of the evidence of DWs.1 to 6 and when it is found that DWs 2 to 6 being independent and disinterested witnesses and has nothing to gain by deposing against the case of the plaintiff had clearly given testimony about the customary practice prevalent in the community of the parties about the dissolution of the marriage by removal of Thali and accordingly, from their unimpeachable and consistent evidence, the custom prevalent in the community of the parties is found to be established and accordingly, as per the said custom, the marriage between the plaintiff and the deceased Chamraj had been put to an end and thereafter, the deceased Chamraj had contracted the marriage with the 4th defendant and since then, it is only the 4th defendant, who has been recognised as the legally wedded wife of the deceased Chamraj and accordingly, the deceased Chamraj had also nominated only the 4th defendant as his legally wedded wife in the service records for obtaining the death benefits and such being the position, it is found that the 4th defendant through the evidence of DWs 2 to 6 has clearly established that the custom is prevalent in the community of the parties with reference to the dissolution of the marriage by the removal of Thali and by way of the said custom it has been clearly established without any doubt that the marriage between the plaintiff and the deceased Chamraj had been dissolved the claim of the plaintiff. Hence the claim of the plaintiff that she is still the legally wedded wife of the deceased Chamraj, as such, cannot be countenanced.

21. The first appellate Court, on a single stroke has held that the evidence of DWs.2 to 6 are not cogent. However, as rightly put up by the 4th defendant's counsel, the first appellate Court has not given any reason as to in what respects, it had determined that the evidence of Dws.2 to 6 are not cogent and convincing and without any discussion on their evidence, has simply brushed aside the evidence as not cogent. This approach of first appellate Court, as rightly argued, without considering the merits of the evidence tendered by the witnesses is nothing but illegal, perverse and cannot be appreciated in any manner.

On the other hand, the trial Court had analysed the evidence of above said witnesses in a detailed manner and discussed their statements thoroughly and firmly come to the conclusion that they being disinterested witnesses had spoken truly about the customary practice prevalent in the community of the parties and accordingly, testified clearly about the dissolution of the marriage between the plaintiff and the deceased Chamraj as per the said custom and thus found and held that the 4th defendant has established the dissolution of the marriage between the plaintiff and the deceased Chamraj through the testimony of DWs.2 to 6.

22. The first appellate Court has also disbelieved the case of the 4th defendant on the footing that she has not placed any document to establish such a custom prevails in the community of the parties. However, as rightly put forth, for establishing the custom in vogue, one could not be expected to place documentary proof to substantiate the same and on the other hand, as rightly argued, the same could only be established through oral evidence of the people who are acquainted with the said custom and accordingly, it is found that the 4th defendant had established that such a custom had been followed in the community of the parties, with reference to the dissolution of the marriage, through the cogent, convincing, trustworthy and acceptable evidence of DWs 2 to 6. Accordingly, it is found that as the marriage between the plaintiff and the deceased Chamraj had been dissolved and thereafter, even prior to the same also, the plaintiff did not participate or associate with the family affairs of the deceased Chamraj in any manner and in fact, not even attended his death ceremony and the fact also remains that even, the daughter's marriage of the plaintiff, namely, DW6, had been celebrated only by the 4th defendant as the wife of the deceased Chamraj and the plaintiff was kept in the dark about the marriage of DW6 and all these would only go to show that inasmuch as the marriage between the plaintiff and the deceased Chamraj had been put to an end as claimed by the 4th defendant, it is found that the plaintiff's connection with the family of the deceased Chamraj had been severed from the dissolution of the marriage as per the custom and accordingly, it is seen that plaintiff cannot seek any declaration that she is the legally wedded wife of the deceased Chamraj.

23. Further, the case of the 4th defendant is also strengthened by the entries in the voters list, marked as Exs.B8 & B9, wherein, it is found that name of the plaintiff has been entered in the voters list showing only the father's name not with the name of the deceased Chamraj and on the other hand, the name of the 4th defendant has been shown as the wife of the deceased Chamraj along with the name of the deceased Chamraj and this would only go to show that the marriage between the

plaintiff and the deceased Chamraj had been dissolved as per the custom.

24. The first appellate Court seems to have been carried away by the endorsement of the deceased Chamraj found in the service register as if the marriage between the plaintiff and him had been dissolved through Court process. A perusal of the service register along with the enclosures contained therein marked as Exs.B11 and B12 would go to show that considering the panchayat effected between the plaintiff and the deceased Chamraj and the handing over of a sum of Rs.25,000/- to the plaintiff and the consequent dismissal of the criminal and civil cases preferred by the plaintiff against the deceased Chamraj thereafter, and the subsequent panchayat held between the parties as per the custom and the removal of Thali by the plaintiff and handing over the same to Chamraj and thereby, the marriage had come to an end, accordingly, it is found that deceased Chamraj had enclosed the result of the criminal and civil litigations preferred by the plaintiff in his service register and made an endorsement that following the arrangement between the parties, the conclusion of the Courts proceedings above stated, the marriage between them had come to an end and therefore, by way of the said settlement of the deceased by itself, could not be held to mean that the marriage between them had been put to an end only through Court process and on the other hand, the said submission of the deceased could only be construed that the marriage had been dissolved as per the custom which has the force of the Court's dissolution and accordingly, based on the above said submission of the deceased, it is found that the first appellate Court has erroneously disbelieved the case of the 4th defendant as if there is no document placed about the dissolution of the marriage between the plaintiff and the deceased Chamraj through Court process and hence, the plaintiff alone is the legally wedded wife of deceased Chamraj. Considering the copies of the orders passed in the criminal and civil litigations preferred by the plaintiff against the deceased Chamraj and the dismissal of the same, as enclosures in the service register, it is found that looking at from the testimony given by DWs. 2 to 6 in a cumulative manner, it is found that deceased had only meant the dissolution of the marriage between him and the plaintiff through Court process as of only the dissolution of the marriage by the custom prevalent in the community. Such being the position, the determination of the first appellate Court otherwise, as such, cannot be countenanced in any manner. If the plaintiff had continued to retain the status as the wife of the deceased Chamraj, as rightly argued, that plaintiff would have participated in all the affairs of the family of the deceased Chamraj and on the other hand, when it is found that the plaintiff has severed her links with the family of the deceased Chamraj and not even

participated in the marriage of DW6 and even in the death ceremonies of deceased Chamraj would only go to show that since her marriage with the deceased Chamraj had been dissolved as per the custom, she has not taken part in any of the affairs of the family of the deceased Chamraj.

25. Further, if the marriage between the plaintiff and the deceased Chamraj had not been dissolved in the manner known to law, as rightly argued, the deceased Chamraj would not have been permitted to nominate the 4th defendant as his legally wedded wife to receive the death benefits in the service records and on the other hand, inasmuch as the department had also accepted the dissolution of the marriage between the plaintiff and the deceased Chamraj as per the custom and accordingly, considering the dismissal of the civil and criminal litigations preferred by the plaintiff against her husband, recognised the marriage of the deceased Chamraj with the 4th defendant and had permitted the deceased Chamraj to nominate the 4th defendant as his wife for receiving the death benefits etc., Therefore, the reasonings of the first appellate Court that and inasmuch as the 4th defendant has not placed any Court order or other documentary proof as to the dissolution of the marriage between the plaintiff and the deceased Chamraj, her case could not be accepted, as such does not merit acceptance in any manner and on the other hand, it is found that above said approach and the determination of the case by the first appellate Court is found to be erroneous, one sided and perverse without analysing the materials on records in the proper perspective and sound reasonings.

26. It is found that the First Appellate Court is wrong in branding the evidence of Dws.2 to 6 as not cogent when it is seen that it has not made any discussion about the oral evidence adduced by the above said witnesses. Holding that no documentary evidence has been let in by the 4th defendant and therefore, the determination of the first appellate Court that the evidence of DWs.2 to 6 or being not cogent is found to be erroneous, unacceptable in the eyes of law. Similarly, it is found that the first appellate Court has erred in insisting that the documentary proof should be placed for establishing the custom, when it is found that the custom prevalent in a community could not be normally established by a document and only could be proved through the evidence of the persons acquainted with the custom and accordingly, when the same had been established by the 4th respondent through Dws.2 to 6, it is seen that the first appellate Court has erred in insisting the production of the documentary proof for proving the custom. Considering the facts and circumstances of the case, it is found that inasmuch as the 4th defendant has established the dissolution of the marriage between the plaintiff and the deceased Chamraj and her marriage with the deceased Chamraj

thereafter and the fact that the deceased Chamraj had nominated only the 4th defendant as his nominee to receive the death benefits, it is found that the 4th defendant is entitled to receive the death benefits from the defendants 1 to 3 and the same could not be prevented by the plaintiff by seeking an order of injunction. Accordingly, the substantial questions of law formulated are answered in favour of the defendant and against the plaintiff.

27. The Counsel for the appellant in support of her contention placed reliance upon the decisions reported in 1996-L.W.702 (Pownammal and 2 others Vs. Janakiammal), (1981) AIR (J&K) (Smt. Rano devi Vs. Rishi kumar). Similarly, the counsel for the first respondent in support of his contentions placed reliance upon the decision reported in I (2000) DMC 164 (SC) (Rameshwari devi Vs. State of Bihar & Ors). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

28. In conclusion, the Judgment and decree passed in A.S.No.16 of 2002 dated 29.04.2002, on the file of the Additional District Judge, Tirupattur, Vellore District are set-aside and the judgment and decree passed in O.S.No.195 of 1997 dated 16.11.1999 on the file of the District Munsif Court, are confirmed and accordingly the second appeal is allowed with costs. Connected CMP.No.11357/2002 & VCMP.No. 22/2007 are also closed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

sk/sli

To

1. THE ADDITIONAL DISTRICT JUDGE,
TIRUPATTUR, VELLORE DISTRICT.

2. THE DISTRICT MUNSIF,
TIRUPATTUR, VELLORE DISTRICT.

+1cc to Mr.A.SANKARASUBRAMANIAN, Advocate, S.R.No. 884
+1cc to the Government Pleader, S.R.No. 1280

Pre-delivery Judgment in
S. A.No.1371 of 2002

KJI (CO)
TR(06/03/2018)