

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2018

PRONOUNCED ON : 20.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.409 of 2004

Chandira

...

Appellant

Vs.

1. P.Bhanu

2. The Madras Engineering Group,
Abilek Karialaya, Record Officer,
Madras, having their office
at Sivam Chetty, Garden Post Office,
P.B.No.4201, Bangalore.

3. Coord Pers Directorate,
E.I.A./Engineering Chief
Branch Army Headquarters,
DHO PO New Delhi 110011.

4. The Controller of Defence Accounts (Pension)
C.4, Section, P.E.A.Tech,
Alahabad, UP State.

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Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 06.09.2002 passed in A.S.No.10 of 2000 on the file of the Subordinate Court, Gudiyattam, reversing the Judgment and Decree dated 11.10.1999 passed in O.S.No.455 of 1990 on the file of the District Munsif Court, Gudiyattam.

For Appellant : Mr.A.Palaniappan

For Respondent : No appearance
No.1 set exparte
(vide order dt. 12.04.2018)

For Respondent : Mr.K.S.Jeyaganeshan
Nos.2 to 4

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 06.09.2002 passed in A.S.No.10 of 2000 on the file of the Subordinate Court, Gudiyattam, reversing the Judgment and Decree dated 11.10.1999 passed in O.S.No.455 of 1990 on the file of the District Munsif Court, Gudiyattam.

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 she is the mother of the deceased Naick S.Vijayan, who died in harness on 20.12.1987, while serving in the military, the Union of India and leaving behind the plaintiff and his wife, the first defendant as his legal heirs and accordingly, both the plaintiff and the first defendant are entitled to inherit the rights of the deceased Naick S.Vijayan and accordingly, both the plaintiff and the first defendant being the heirs, are entitled to all the emoluments and benefits, for which, the deceased was entitled at the time of his death and the plaintiff understands that the benefits of Family Pension, Army Group Insurance Funds, A.F.P.P Fund standing in the credit of the deceased, Death cum Gratuity benefits, on the death of the deceased, should devolve in equal shares both upon the plaintiff and the first defendant and even if, there is any nomination by the deceased, it is only to receive the benefits but in law, the benefits should be shared equally amongst the legal heirs and the nominee will not be entitled to in law to the whole of the benefits and the plaintiff understands that the first defendant is corresponding with the other defendants for claiming the benefits exclusively for herself and on coming to know of the same, the plaintiff corresponded with the defendants 2 to 4 and they had directed the plaintiff to produce the various records and in spite of the plaintiff producing the necessary records, no result is forthcoming and hence, the plaintiff issued a notice through her lawyer on 25.02.1998 requesting the defendants 2 to 4 not to make the payments to the first defendant alone and the plaintiff is also an old lady depending on her son for her livelihood and to the said notice, a reply came from the defendants that the family pension is payable to the wife and father and not to the plaintiff and the abovesaid decision of the defendants 2 to 4 seem to be based upon the statement given by the first defendant and thereupon, the plaintiff issued the statutory notice dated 24.01.1990 claiming that she is also entitled to the benefits, on the demise of her son and the defendants did not comply with the demand made under the said notice and hence, the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and it is true that the plaintiff is the mother of the deceased Vijayan and the deceased married the first defendant on 01.06.1987 and nominated her as his legal heir to estate and family pension and as such, she is entitled for all the death benefits. However, a sum of Rs.37,500/- being the 50% of AGI death benefits has been paid to the plaintiff. The petition sent by the plaintiff was referred to the recruiting organisation for investigation and after investigation, the same has come to be rejected stating that the father of the deceased is alive and the plaintiff has two other earning sons to look after her and her husband and accordingly, the same was communicated to the plaintiff. The first defendant is solely dependent upon the pension and she has no other income for her livelihood and her parents are also very poor and the first defendant reserves her right for filing a suit for partition in respect of the estate of the deceased against the plaintiff and others and the plaintiff is not entitled to get the reliefs sought for and hence, the suit is liable to be dismissed.

6. The case of the defendants 2 to 4, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The deceased Vijayan, who died in harness, married the first defendant and nominated her as his legal heir to receive the estate and family pension and as such, she is entitled for all the death benefits and the petition dated 25.04.1988 by the plaintiff was not accepted and the result was duly intimated to the plaintiff and the nominee alone is entitled to receive all the death benefits and there is no cause of action for the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A6 were marked. On the side of the defendants, DWS1 & 2 were examined and Ex.B1 was marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court granted the relief of declaration as prayed for by the plaintiff and also granted the relief in favour of the plaintiff that she is entitled to receive 50% of the family pension from 1988 onwards, consequent to the demise of her son Vijayan. The first defendant preferred the first appeal challenging the judgment and decree of the trial Court and the first appellate Court, on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial Court and dismissed the suit laid by the plaintiff and aggrieved over the same, the present second appeal has been laid.

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

" (i).Whether the first appellate Court had erred in law in having held that Naick S.Vijayan who was serving the Army and had died while in service, on duty on 20.12.1987 during the operation of Indian Piece Keeping Force in Sri Lanka, had left behind his mother the appellant herein and the 1st respondent herein being his wife as legal heirs and both the appellant as well as the 1st respondent are not equally entitled to the death cum terminal benefits which includes the family pension along with the Army Group Insurance funds, A.F.P.P.Fund standing in the credit of the deceased, and death cum gratuity benefits and that the 1st respondent alone is entitled to the family pension?

(ii) Whether the first appellate Court has misdirected itself in holding that the entire suit is unsustainable in the light of Section 4 of the Pension Act 1871 and the application of Section 12 and Section 12 (a) of the Act is sustainable in law?

(iii) Whether the first appellate Court has committed a grave error in holding that Section 4, 12 and 12 (a) of the Pension Act 1871 would be applicable to the present case is totally without considering the application of Pension Regulation for the Army 1961 covered by part I pertaining to liberalisation of Special Family Pension which is meant and payable for the whole of the family and not only to the nominated person?

(iv) Whether the first appellate Court has erred in law in having held that in respect of the family pension the nominees shall only hold the amount paid by the employee as the pension for the deceased as a trustee for all the other class I legal heir of the said deceased and the nominee shall not usurp the entire

amount received by way of pension on the sole ground that the person is appointed as the nominee?

10. The main point involved in this matter is, whether the plaintiff, the mother of the deceased Vijayan, who had died in harness during the military service, is also entitled to receive the family pension. It is not in dispute that the first defendant is the wife of the deceased Vijayan. It is also seen, on the materials placed on record, that the deceased Vijayan had nominated the first defendant, his wife, to receive the family pension, and as regards the same also, there is no dispute as such. The plaintiff invokes Section 8 of the Hindu Succession Act, 1956, for claiming equal share in the family pension on the footing that she is also one of the Class-I heirs of the deceased Vijayan and thus, according to her, she should be given 50% of the family pension and the nomination of the first defendant by itself would not entitle her to receive the entire family pension and the first defendant, at the best, would be entitled to receive the family pension and apportion the same equally amongst the legal heirs i.e. the plaintiff and the first defendant and inasmuch as the defendants 2 to 4 had endeavoured to disburse the family pension exclusively to the first defendant, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

11. The defendants have taken the plea that inasmuch as the nomination had been made only in favour of the first defendant, the wife, and as per the pension rules, only the wife is entitled to receive the family pension and not the mother, the plaintiff and hence, the plaintiff's suit should fail.

12. Considering the provisions contained in the Pension Act, 1871 as well as Pension Regulations For The Army - 1961 (Part-I), it is found that as regards the payment of the family pension, it is only the wife, who is entitled to receive the same to the exclusion of the other heirs as listed thereunder and only in the absence of the wife, the other heirs would be entitled to receive the same on priority basis and accordingly, it is found that as per the eligible members, who are entitled to receive the family pension, as per the Regulation, 219, prescribing the conditions of eligibility for a family pension, a relative, specified in Regulation 216, shall be eligible for the grant of family pension. Regulation 216 describes as to who are the eligible members of the family for the grant of a special family pension, as follows:

"Eligible members of the family

216. The following members of the family of a deceased individual shall be

viewed as eligible for the grant of a special family pension, provided that they are otherwise qualified: -

(a) widow/widower lawfully married. It includes a widow who was married after individuals' release/retirement/discharge/invalidment.

(b) Son actual and legitimate/including validly adopted.

(c) Daughter, actual and legitimate/(including validly adopted).

(d) Father.

(e) Mother.

(f) Brother

(g) Sister

Further, the note for the readers reads as follows:

" Note for the Readers

If any member of family is denied any share in the property of the individual under a will or deed such member shall be debarred for spl. Family Pension Order of priority in which payable. In the case of personnel below officer rank

(i) Nominated heir and on her/his disqualification or death to other member, one at a time as per priority vide Regulation 216.

(ii) In the absence of nomination, to the widow and on her disqualification or death to the eligible child. In case there is no widow/widower the eligible child, it shall be paid to the father and in his absence to the mother."

13. On a perusal of the same, it is found that the mother is placed in the 5th position, whereas, the widow /widower is placed in the first position for the entitlement of the special family pension. As per the Regulations 219, a relative specified in Regulations 216 shall be eligible for the grant of family pension, but, there is a proviso to the Regulation 219, which

reads as follows:

" Conditions of eligibility for a family pension
219. A relative specified in Regulation 216 shall be eligible for the grant of family pension, provided;

General

(i) he or she is not in receipt of another pension from Government;

(ii) he or she is not employed under Government

Widow

(iii) a widow has not remarried.

This condition shall not apply to a widow who remarried her deceased husband's brother, and continues to live a communal life with and/or contributes to the support of the other living eligible heirs.

Son

(iv) a son is below the age of 25 years.

Daughter

(v) a daughter until she attains the age of 25 years or marriage whichever is earlier.

Parents

Second life Awards (special family Pension) shall be admissible to the parent (s) of the deceased and in the absence of the parents, eligible brother and sisters of the deceased of the rate of 50% of the special family pension determined vide Regulation 227(a), if the claimants was/were largely dependent on the deceased for support and is/are in pecuniary need.

Mother

(vi) a mother who is a widow at the time of her son's death or who becomes a widow

thereafter, has not remarried. If she had remarried before her son's death, she shall remain eligible for the special family pension, unless and until she again becomes a widow and remarries.

Brother/Sister

(vii) The brothers/sisters were largely dependent on the deceased for support and are in pecuniary need.

(viii) In the case of brother he has not completed the age of 25 years.

(ix) In the case of sister, she has not completed the age of 25 years or has not married."

Further, as to whom the original grant of family pension could be made, Regulation 220 prescribes the following:

"To whom the original grant of family pension is made

220. (a) Where there is a nomination: -

(i) If on the date on which the pension sanctioning authority decides that the claim to family pension is admissible the nominated heir is alive and eligible, the pension shall be granted to him or her.

(ii) If on the date referred to above, the nominated heir is dead or disqualified, the pension shall be granted to the heir who stands highest in the list of living heirs specified in Regulation 216 and is eligible under Regulation 219.

(iii) If an heir (other than the widow) who is nominated for the family pension waives his or her claim in favour of the widow, the pension shall be granted to her, provided she is eligible on the date referred to at sub-clause

(i) above.

(iv) Obsolete

(v) Obsolete

Note- The date on which the pensions sanctioning authority decides that the claim to family pension is admissible shall mean the date on which the draft pension payment order is approved by the (CDA (P)) and the action for actual grant and notification thereof is commenced.

Note for the Readers: -An OR can nominate a member of his family for pension.

A Gorkha OR can nominate alternate heir also. The nomination can be revised.

(b) Where there is no nomination: -

(i) The pension shall be granted to the living heir who stands highest in the list in Regulation 216 and who is eligible under Regulation 219, on the date on which the pension sanctioning authority decides that the claim to pension is admissible.

(ii) Obsolete"

14. As far as the special family pension is concerned, as per the Regulation 215, it is seen that it is intended for the support of all the eligible members of the family, irrespective of in whose name it stands.

15. In this matter, we are mainly concerned with the family pension. As far as the eligibility of members, who are entitled to receive the family pension, it is found that the mother is placed in the 5th position as such, as per the conditions of eligibility provided in Regulation 219. As above seen, the mother is similarly placed in the 5th position in the order of priority of the eligible members, who are entitled to receive the special family pension. Even as regards the entitlement of the family pension, the widow, who has not married, occupies the first place. As per note for the readers appended to Regulation 216, as above pointed out, as regards the order of priority in which payable, in the case of personnel below officer rank, the nominated heir and on her/his disqualification or death, to other member, one at a time as per priority vide Regulation 216 and it further provides that in the absence of nomination, to the widow and on her disqualification or death, to the eligible

child and in case, there is no widow/widower scheme, the eligible child, it shall be paid to the father and in his absence, to the mother. Thus, it is found that only in the absence of widow/widower, the eligible child, the father, only thereafter the mother would be entitled to receive the family pension and such being the Regulations provided for the disbursement of the family pension under the Pension Regulations For The Army - 1961 (Part-1), it is found that the plaintiff, the mother of the deceased, cannot have any precedence or claim of any equality in respect of the family pension, which is payable on the death of the deceased Vijayan.

16. Further, as per The Pensions Act, 1871, it is found that the nominee shall be entitled to receive the pension to the exclusion of all other persons and Section 12-A reads as follows:

12-A. Nomination by pensioner to receive moneys outstanding on account of pension.— Notwithstanding anything contained in Section 12 or in any other law for the time being in force—

(a). any person to whom any pension mentioned in Section 11 is payable by the Government of India or out of the Consolidated Fund of India (such person being hereinafter referred to as the pensioner) may nominate any other persons (hereinafter referred to as the nominee), in such manner and in such form as may be prescribed by the Central Government by rules, to receive after the death of the pensioner, all moneys payable to the pensioner on account of such pension at, before or after the date of such nomination and which remain unpaid immediately before the death of the pensioner; and

(b). the nominee shall be entitled on the death of the pensioner, to receive, to the exclusion of all other persons, all such moneys which have so remained unpaid:

Provided that if the nominee predeceases the pensioner, the nomination shall so far as it relates to the right conferred upon the said nominee, become

void and of no effect:

Provided further that where provision has been duly made in the nomination, in accordance with the rules made by the Central Government, conferring upon some other person the right to receive all such moneys, which have so remained unpaid, in the event of the nominee predeceasing the pensioner, such right shall, upon the decease as aforesaid of the nominee, pass to such other persons."

17. In the light of the abovesaid legal position, it is found that the plaintiff, the mother of the deceased Vijayan would not be entitled to claim any share in the family pension, to which, only the first defendant, the widow, who would be legally entitled to receive the same in full.

18. However, the counsel for the appellant contended that as per Section 8 of the Hindu Succession Act, 1951, when admittedly the plaintiff is also one of the Class - I heirs along with the wife and the deceased and the first defendant having no issue, it is stated that the plaintiff is also entitled to receive all the benefits including the family pension equally along with the first defendant and hence, on that basis, the Court should uphold the claim of the plaintiff. However, the abovesaid contention, as such, does not merit acceptance.

19. In this connection, in the decision reported in (1991) 1 Supreme Court Cases 725 (Smt.Violet Issaac and others Vs. Union of India and others), while holding that the family pension cannot be bequeathed by Will, as it does not form part of the estate of the employee and only the designated persons, viz., the widow and minor/unmarried children of the deceased employee would be entitled to the family pension under the Rules, accordingly, declined the claim of the brother of the deceased employee for family pension on the basis of a Will made by the deceased in his favour and the abovesaid case is found to be in connection with the Railway Family Pension Rules, 1964, Rule 801.

20. Thus, it is found that in the abovesaid position, considering import of the Railway Family Pension Rules, 1964, Rule 801, holding that the family pension does not form part of the estate of the employee, the apex Court has culled out the position of law as follows:

" The Family Pension Scheme under the

Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The employee has not title nor any control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition. Accordingly, in the present case the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased."

and also followed the decision of the apex Court reported in (1980) 4 SCC 306 (Jodh Singh V. Union of India) as follows:

"In Jodh Singh V. Union of India [1980] 4 SCC 306, this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The Court observed: (SCC p.310, para 10)

"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

The Court further held that what was not payable during the life time of the deceased over which he had no power of

disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition."

21. Accordingly, it is found that, from the abovesaid decisions of the apex Court, the family pension, not forming part of the estate of the deceased, does not entitle the employee to dispose of the same by way of the testamentary disposition.

22. Further, in the decision reported in (1996) 1 Supreme Court Cases 558 (State of Gujarat through Chief Secretary and others Vs. Savitri Devi), the apex Court, while dealing with the family pension Rules of Gujarat state, held that considering the position under the said Rule that the mother is not included as an eligible member for the receipt of the family pension under the definition of family as provided under Rule 3 of the concerned Rules held that the mother is not entitled to the benefit of the family pension.

23. In the decision reported in (2016) 16 Supreme Court Cases 229 (Nitu Vs. Sheela Rani and others), while dealing with the Family Pension Scheme, 1964 of the Punjab Government holding that as per the relevant rules, the mother not being included in the definition of the family, was not entitled to receive the pension on the footing that she is also one of the Class-1 heirs as provided under Section 8 of the Hindu Succession Act and the position of law, as regards the same, has been elucidated by the apex Court in the following manner:

" 16. So far as the provisions of the Hindu Succession Act, 1956, are concerned, it is true that the properties of a Hindu, who dies intestate would first of all go to the persons enumerated in class I of the schedule as per the provisions of Section 8 of the said Act and therefore, so far as the properties of late Shri Yash Pal are concerned, they would be divided among the respondent mother and the appellant wife, provided there is no other family member of late Shri Yash Pal alive, who would fall within class 1 heirs, but position in this case, with regard to

pension, is different.

17. It is pertinent to note that in this case the pension is to be given under the provisions of the Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it. Similar issue had arisen before this Court in the case of Violet Issaac (Smt.) v. Union of India (1991) 1 SCC 725 and after considering the relevant provisions, this Court came to the conclusion that family pension does not form part of the estate of the deceased and therefore, even an employee has no right to dispose of the same in his Will by giving a direction that someone other than the one who is entitled to it, should be given the same. In the instant case, as per the provisions of the Scheme, the appellant widow is the only family member who is entitled to the pension and therefore, the respondent mother would not get any right in the pension. Of course, it cannot be disputed that if there are other assets left by late Shri Yash Pal, the respondent mother would get 50% share, if late Shri Yash Pal had not prepared any Will and it appears that late Shri Yash Pal had died intestate and no Will had been executed by him.

18. For the aforesaid reasons, in our opinion, the High Court committed an error by giving a direction that the respondent mother should also get 50% share in the pension. In view of the aforesaid legal position, the entire pension would be payable to the appellant widow.

24. The Supreme Court, in the abovesaid decision relied upon the decision already referred to reported in (1991) 1 Supreme Court Cases 725, (Smt. Violet Issaac and others Vs. Union of India and others). In the light of the above decisions, it is found that the family pension is not forming part of the estate of the deceased and accordingly, even an employee has no right to dispose of the same by way of a Will etc., and the same could be disbursed only as per the rules pertaining to the pension scheme, hence it is found that the mother would not be entitled to seek the family pension benefits on the death of the deceased Vijayan.

25. Though it is provided under the Pension Regulations For The Army 1961 (Part-I) that the mother is also one of the eligible members to receive the family pension, however, considering the conditions of the eligibility for the same as provided under the Regulation 219 as well the Regulation 216, when it is found that on a conjoint reading of the same, only the nominated heir i.e. the first defendant would be entitled to receive the family pension wholly and only in her absence or on her disqualification, the other eligible members would be entitled to receive the same as per the priority vide Regulation 216. Thus, it is found that the mother being placed in the last position cannot claim precedence over the wife, the first defendant, with reference to the receipt of the family pension and equally also cannot claim parity in the receipt of the family pension on the same lines as that of the wife viz., the first defendant.

26. The abovesaid regulations were also considered by the Delhi High Court in the decision reported in 2004 (77) DRJ 497 (Smt. Bashiram Vs. Union of India (UOI) and Ors.) and after considering the same in detail, the Division Bench of the Delhi High Court has held the position of law as follows:

" 14. Bare reading of the regulations shows that the order of priority in which pension is payable is set out in unambiguous terms . In the case of personnel below officer rank, pension is payable to :

(i) a nominated heir and on her/his disqualification or death to the other member, one at a time, as per priority vide Regulation 216.

(ii) In the absence of nomination, to the widow and on her disqualification or death to the eligible child. In case there is no widow/widower the eligible child, it shall be paid to the father and in his absence to the mother.

15. Examination of the above rule position would also show that the respondent no. 6 being the widow is the eligible heir as per the Army Instructions 51/1980 as well as, as per Regulation 216. The Army Instructions 51/1980 and the Rule position do not envisage division of the family

pension even between eligible legal heirs. Pension regulations postulate devolution of pension strictly in accordance with the priorities set out in the Regulations. The mother of a deceased army personnel has been listed at serial no. "e" i.e. at the fifth position of priority, whereas the widow has been placed at the top.

16. The records produced before us show that the deceased was required to submit a kindred role and the names of his heirs to the respondent nos. 1 to 4. The deceased had unequivocally cited his wife i.e. the respondent no. 6 to be his nominee entitled to all benefits upon his demise. Therefore the widow was also the sole nominee of the deceased late Ex-Rfn. Kadar Khan on the date the pension sanctioning authority was deciding the admissibility to the claim to family pension of his heirs.

Family pension cannot legally be divided between even the eligible legal heirs. The widow, respondent no. 6, was therefore an eligible and duly nominated heir and was clearly exclusively entitled to the grant and disbursement of the family pension.

27. In the light of the abovesaid discussions, it is found that the first appellate Court has rightly determined that it is only the first defendant, the widow would be entitled to receive the family pension exclusively and the plaintiff, the mother of the deceased would not be entitled to claim the same either by way of precedence or on parity with the widow and in such view of the matter, the judgment and decree of the first appellate Court, on the above aspect, do not warrant any interference.

28. The contention has been put forth by the plaintiff's counsel that the nomination by itself would not entitle the first defendant to receive the family pension exclusively and by way of the same, she would be entitled to receive the family pension only on behalf of all the eligible members and therefore, the plaintiff's case should be accepted on that principle. However, when it is found that the family pension has to be disbursed only as determined by the provisions of the

scheme applicable thereto as above discussed and further, when it is found that the family pension does not form part of the estate of the deceased and therefore, the plaintiff, as the mother, not entitled to lay any claim of share in the same by relying upon Section 8 of the Hindu Succession Act 1956, it is found that the abovesaid contention put forth for entitling the plaintiff to receive the family pension does not merit acceptance.

29. The first appellate Court in addition to holding that the first defendant alone is entitled to receive the family pension wholly and that, the plaintiff is not entitled to receive the same, also proceeded to hold that the civil suit laid by the plaintiff is not maintainable and by way of the same, the jurisdiction of the civil Court to entertain the lis preferred by the plaintiff for the claim of the pension amount has been held to be not maintainable. However, the abovesaid approach of the first appellate Court seems unacceptable and also not in accordance with law. Neither the first defendant nor the defendants 2 to 4 have raised any challenge/question, questioning the jurisdiction of the civil Court to entertain the lis preferred by the plaintiff. Accordingly, it is found that the trial Court had not framed any issue as regards the maintainability of the suit as such and proceeded with the case and disposed of the same on the merits of the matter as determined by it. In specific, the defendants 2 to 4 have not raised the maintainability of the civil suit laid by the plaintiff. On the decreeing of the suit, the defendants 2 to 4 have not preferred any appeal, but only the first defendant had preferred the appeal and in the first appellate Court, the first defendant has not raised any ground questioning the maintainability of the plaintiff's suit, as if the civil Court is not having the competency to decide the issues involved in the matter. In such view of the matter, it does not stand to reason as to on what basis the first appellate Court proceeded to take the point as regards the maintainability of the civil suit to decide the issue and thus, it is found that the abovesaid determination of the first appellate Court, as regards the maintainability of the suit, is found to be untenable and not warranting. Section 21 of the Civil Procedure Code deals with the objection to jurisdiction and Section 21 (1) & (2) reads as follows:

21. Objections to jurisdiction- [1] [(1)]
No objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues or settled at or before such settlement, and unless there

has been a consequent failure of justice.

[2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

30. On a perusal of the same, it is found that considering the fact that the defendants having not raised any issue in specific questioning the jurisdiction of the civil Court in trying the suit in the written statement at the first instance or before the settlement of issues as contemplated under Section 21 CPC and further, the defendants 2 to 4 having not preferred any first appeal as against the judgement and decree of the trial Court and in the first appeal preferred by the first defendant, the competency of the civil Court to try the issue having not been raised as a ground and that apart, when it is found that the defendants have also not established that by way of the civil Court, determining the issues involved in the matter, had caused any injustice to them, it is found that the first appellate Court has erred in holding that the civil Court has no jurisdiction to entertain the suit laid by the plaintiff. In this connection, a useful reference may also be made in the decision of the apex Court reported in AIR 1993 SC 2094 (R.S.D.V. Finance Co. Pvt. Ltd., V. Shree Vallabh Glass Works Ltd.,). Thus, it is found that when none of the conditions envisaged under Section 21 CPC has been complied with, it could be seen that the first appellate Court has erred in going into the question of the competency of the civil Court to entertain the suit and the determination of the same by the first appellate Court as regards the same is found to be not tenable and unwarranted in the eyes of law as above discussed.

31. In the light of the above discussions, considering the fact that the plaintiff would not be entitled to lay any claim of share in the family pension and the first defendant, being the widow as well as the nominee, who alone would be entitled to receive the family pension on the death of the deceased Vijayan, it is found that the first appellate Court is justified in rejecting the plaintiff's claim of right to receive the family pension and further, when it is found that the plaintiff cannot invoke Section 8 of the Hindu Succession Act, 1956, for claiming any right to receive the pension as being one of the Class - I heirs of the deceased, in view of the decisions above

referred to, the judgment and decree of the first appellate Court uphold the first defendant's claim to receive the pension wholly and declining the plaintiff's claim of right to receive the pension do not warrant any interference. As regards the determination of the first appellate Court holding that the civil suit laid by the plaintiff is not maintainable, considering the above discussions, the said determination of the first appellate Court on that point is unwarranted and also not tenable in the eyes of law, particularly, the same having not been raised as a defence by the defendants in any manner. As it has been held that the plaintiff is not entitled to receive the family pension as above discussed, the further question of whether the civil Court has got the jurisdiction to entertain the suit in the light of Section 5 of the Pension Act, 1871, in any considered opinion, is not required to be answered and accordingly, the said question is left open. The substantial questions of law formulated in this second appeal are accordingly answered.

For the reasons aforesaid, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

sms

To

1. The Subordinate Court, Gudiyattam.
2. The District Munsif Court, Gudiyattam.
3. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.A.Palaniappan, Advocate SR.No.29605

S.A.No.409 of 2004

SVI (CO)
GN(11/05/2018)