



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.01.2018
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

S.A.(MD)No.25 of 2018 and
C.M.P.(MD)No.471 of 2018

The Senior Superintendent of Post Office,
Thanjavur Division,
Thanjavur.

... Appellant/Appellant/2nd Defendant

Vs.

1. Vasuki ... 1st Respondent/1st Respondent/Plaintiff

2. Chandra ... 2nd Respondent/2nd Respondent/1st Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C., to call for records from the Courts below and to set aside the Decree and Judgment, dated 29.10.2014 in A.S.No.5 of 2014 on the file of the learned Principal Subordinate Judge, Thanjavur, confirming the Decree and Judgment, dated 18.02.2013 in O.S.No.498 of 2010 on the file of the learned District Munsif, Thanjavur, by allowing the Second Appeal.

For Appellant : Mr.G.Rajaraman

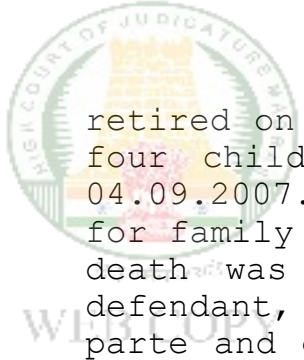
JUDGMENT

This Second Appeal is filed against the Decree and Judgment, dated 29.10.2014 in A.S.No.5 of 2014 passed by the learned Principal Subordinate Judge, Thanjavur, confirming the Decree and Judgment, dated 18.02.2013 in O.S.No.498 of 2010 passed by the learned District Munsif, Thanjavur.

2. Heard the learned counsel appearing for the appellant.

3. The second defendant in the Suit in O.S.No.498 of 2010 on the file of the learned District Munsif, Thanjavur, is the appellant in the Second Appeal. The first respondent in this Second Appeal filed the Suit in O.S.No.498 of 2010 for declaration declaring that she is the legally wedded wife of Late.Mr.Pitchai and to pass a Decree directing the second defendant, namely, the appellant herein, to disburse the pension benefits and other service benefits due to the death of her husband, Late.Mr.Pitchai.

4. It is the case of the plaintiff that she is the legally wedded wife of Late.Mr.Pitchai and that their marriage took place on 26.04.1967. It is also submitted that the plaintiff's husband



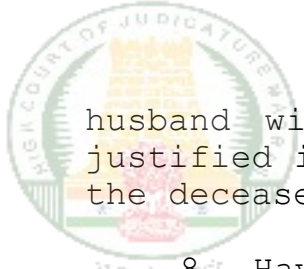
retired on 30.06.1994. It is the case of the plaintiff that she has four children through her husband and that her husband died on 04.09.2007. Since the plaintiff's request to the second defendant for family pension and other retirement benefits after her husband's death was negatived, the plaintiff filed the Suit. The first defendant, the first wife of the plaintiff's husband remained ex-parte and did not contest the Suit. The Suit was contested only by the appellant, namely, the second defendant. It is the case of the second defendant that the plaintiff was only the second wife of the deceased Pitchai and that pursuant to a confidential enquiry, it was found that the first defendant, namely, the first wife of the deceased Pitchai was separated long back. It is further stated that though the first defendant was asked to produce certain documents, she had not produced. Stating that the family pension is payable only to the widow of the deceased Government servant under Rule 54 (6) and 81 of C.C.S(Pension Rules) and that the existence of first wife being admitted, the claimant/plaintiff was asked to prove her marriage and the details of valid dissolution of the first marriage.

5. It is to be noted that the second defendant has stated in paragraph No.11 of the written statement as follows:-

"11.The defendant submits that Smt.P.Chandra, the first defendant in her statement, dated 13.11.2010 confirmed herself appraisal affidavit, dated 22.12.2009 and intimated that she was married to Sri.P.Pitchai on 04.07.1965 and the same was cancelled before village prominent persons. She added that she did not have any documentary proof for her marriage with him and for separation from him; then she married Sri.P.Posangu and lived at Mullakudi village with her two children."

6. The first defendant remained ex-parte before the lower Court. Having regard to the specific statement given by the first defendant stating that the marriage between herself and the deceased Pitchai was dissolved, it is no wonder why the claim of the plaintiff was not contested. Despite the specific stand regarding the admission of the first defendant in the Suit, the claim of the plaintiff for family pension and other retirement benefits was negatived only on the ground that the first wife of the deceased Pitchai is living and that the marriage between the plaintiff and the deceased Pitchai is not valid so as to enable her to claim the status of legally wedded wife for the purpose of getting family pension and other retirement benefits of her husband.

7. The trial Court decreed the Suit as prayed for and the Judgment and Decree was confirmed by the learned Principal Subordinate Judge, Thanjavur, in A.S.No.5 of 2014, dated 29.10.2014. Both the Courts below have elaborately discussed the issue and confirmed that the plaintiff is the legally wedded wife of the deceased Pitchai. Since the first marriage was dissolved and the first wife of the deceased Pitchai is living along with her second



husband with whom she got married later, the Courts below have justified in recognizing the plaintiff as the legally wedded wife of the deceased Pitchai.

8. Having regard to the admitted facts in this case, it is established that the plaintiff is the person who is entitled for family pension and other retirement benefits of her deceased husband. Though it is admitted that the first defendant is the first wife of the deceased, it is clarified that the said marriage came to an end by a process which is recognized by custom and that the first wife herself has contracted another marriage and living with another man. This Court is able to see that the findings of the Courts below are unassailable. Despite the fact that the second defendant obtained a statement from the first wife of the deceased Pitchai to the fact that her marriage with Mr. Pitchai was dissolved and that the first wife of the deceased Pitchai was living away from the family, the second defendant has not disbursed the family pension and other service benefits to the plaintiff. It is admitted that the deceased employee himself has submitted the form showing the plaintiff as his wife.

9. Having regard to the admitted facts and circumstances in this case, this Court is unable to find any substantial question of law, to entertain this Second Appeal.

10. As a result, the Second Appeal is dismissed and the Judgment and Decree passed by the learned Principal Subordinate Judge, Thanjavur, in A.S.No.5 of 2014, dated 29.10.2014, is confirmed. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Thanjavur.
2. The District Munsif, Thanjavur.
3. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.G.Rajaraman, Advocate SR.No. 44893

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