

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	24.10.2019
Judgment Delivered on	18.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

A.S.No.27 of 2011
and
CMP No.21781 of 2018

1.Kantharubi (Died) : 1st Appellant/D1
2.S.Rajinikanth
3.Vanitha : Appellants 2 and 3/Lrs of D1

Vs.

1.Gandhimathi
2.S.sunddesh Anand
3.s.sandeep Anand : R1 to R4/Plaintiffs
4.S.Sherly Anand
(Minor R4 rep.by hermother natureal guardian the 1st
Respondent)
5.The Director General,
Pay and Account Division,
(Pension IV Section)
Pushpahavan,
New Delhi-62. : R5/2nd Defendant

Prayer: Appeal Suit filed under section 19 of the
Family Courts Act r/w Order XLI Rule 1 of Code of Civil
Procedure, against the judgment and decree, dated 08.11.2010
made in O.S.No.60 of 2004 on the file of the Principal Family
Court, Chennai.

For Appellants : Mr.R.Marudhachalamurthy

For R1 to R5 : Mr.Illamparithi

For 5th Respondent : Mr.S.Simon

J U D G M E N T

T. KRISHNAVALLI, J

This Appeal Suit is directed against the judgment and decree, dated 08.11.2010 made in O.S.No.60 of 2004 on the file of the Principal Family Court, Chennai. The appellants are the defendants and the respondents 1 to 4 are the plaintiffs.

2. The case of the plaintiffs is that the 1st plaintiff and the deceased K.Subramanian were married according to Hindu Rites and Customs on 06.02.1981 and after the marriage, they lived together and out of wedlock, the plaintiffs 2 to 4 were born to them and the deceased K.Subramanian expired on 17.05.2001. The 1st defendant made a rival claim with the 2nd defendant as if she is the legally wedded wife of the deceased K.Subramanian for the purpose of death benefit and family pension. The deceased K.Subramanian had never married any other woman except the 1st plaintiff and the 1st defendant is neither his wife nor a concubine to the deceased K.Subramanian. Hence, the plaintiffs filed the suit in O.S.No.60 of 2004 on the file of the Principal Family Court, Chennai for the relief of declaration that the 1st plaintiff's marriage with the deceased K.Subramanian on 06.02.1981 is a valid marriage and further declaration declaring that the plaintiffs 1 to 4 are the only legal-heirs of the deceased K.Subramanian and consequential relief of declaration directing the 2nd defendant to pay the death benefit of the deceased K.Subramanian to the plaintiffs.

3. The case of the 1st defendant is that the plaintiff averments made by the plaintiffs in the plaint are utter false and that the deceased K.Subramanian is none other than the maternal Uncle's son of the 1st defendant and their marriage was solemnized on 15.03.1972 in Vazhagurunathan Temple Mandapam at Kitchipalayam, Salem and out of the wedlock, two children were born, namely S.Rajinikanth and S.Vinitha. The deceased K.Subramanian was working as a Commander in the Border Security Force and the 1st defendant never suspected the fidelity of her husband and he had great love and affection with the 1st defendant and her children. She came to know that on 17.05.2001, her husband died at Vadapalani and she along with their relatives went to take the body of the deceased to the native place Sankari and did all rites to him and even at that time, no one has informed or claimed that the deceased married the 1st plaintiff and she obtained succession certificate in accordance with law before the competent Civil Court. The 1st defendant had established before the trial court that she and her children alone legal heirs of the deceased and the 1st defendant is receiving family pension from the 2nd defendant and hence, prayed for dismissal of the suit.

4. The 2nd defendant filed a separate written statement contending that Late K.Subramanian voluntarily retired on 19.05.1995 and as per the pension form, he nominated Gandhimathi, Master Sandeep and Master Sudhish as his family members and it was duly signed by himself on 05.05.1995 without any legally valid certificate. The office of the 2nd defendant is not having any records to disclose about the marriage of the first plaintiff and her living with Late K.Subramanian and the names of the second and third plaintiffs exist on pension papers, but the name and age of the fourth plaintiff are not mentioned in the pension papers and the first plaintiff alone is the legal wife and she has submitted succession certificate issued by the Principal Sub Judge, Salem and prayed for dismissal of the suit.

5. After hearing both sides and perusing the entire materials available on record, the trial court decreed the suit holding that the marriage between the 1st plaintiff and the deceased K.Subramanian was solemnized on 06.02.1981 as per Hindu Rites which is valid and the plaintiffs 1 to 4 are the only legal heirs of the deceased K.Subramanian and the 2nd defendant was directed to pay the death benefits of the deceased Subramanian to the 1st plaintiff. Aggrieved by the judgement of the trial court, the appellants/defendants are before this court.

6. Heard both sides and perused the materials available on record.

7. This court frames the following points for consideration:-

(1) Whether the first plaintiff is the legally wedded wife of the deceased Subramanian or the first defendant is the legally wedded wife of the deceased Subramanian?

(2) Whether the plaintiffs are the legal heirs of the deceased Subramanian or the first defendant and her children are the legal heirs of the deceased Subramanian?

(3) Whether the plaintiffs are entitled to the relief of declaration as prayed for?

(4) Whether the judgement passed by the Court below is correct?

(5) Whether the appeal is liable to be allowed? and

(6) To what relief the appellants are

entitled to ?

Points Nos.1 to 5:-

8. The main contention raised on the side of the appellants is that the first appellant/1st defendant is the legally wedded wife of the deceased K.Subramanian and the first plaintiff is not the legally wedded wife of the deceased K.Subramanian and the plaintiffs 2 to 4 are not the legal heirs of the deceased K.Subramanian. The legal-heirship certificate filed by the plaintiffs was issued by the Tahsildar and the Tahsildar has no power to issue the legal-heirship certificate and mere nomination will not clothe any right over the amounts and the nomination is only intended for the purpose of collecting the amounts and disbursement of the same among the legal-heirs of the deceased K.Subramanian. The marriage between the 1st appellant/1st defendant and the deceased K.Subramanian was solemnised as per the Hindu Rites and Ceremonies on 15.03.1972 and the two children were born through the wedlock and the plaintiffs are not the legal heirs of the deceased K.Subramanian and the plaintiffs are not entitled to the relief as prayed for and the judgement of the trial court has to be set aside and this appeal suit has to be allowed.

9. On the other hand, on the side of the respondents 1 to 4/plaintiffs, it is argued that the 1st plaintiff is the legally wedded wife of the deceased K.Subramanian and the plaintiffs 2 to 4 are the legal heirs of the deceased K.Subramanian. The 1st defendant is not the legally wedded wife of the deceased K.Subramanian and the 1st defendant has made a rival claim with the plaintiffs, claiming herself to be the legally wedded wife of the deceased K.Subramanian. There were several correspondences between the first plaintiff and the 1st defendant regarding the claim of the monetary benefits of the deceased K.Subramanian and due to the rival claim made by the 1st defendant, the plaintiffs filed the suit and prayed that the plaintiffs are entitled to the relief as prayed for.

10. In this case, the first plaintiff claimed that she is the legally wedded wife of the deceased K.Subramanian and the plaintiffs 2 to 4 are the children born through the wedlock, but the 1st defendant claimed that she is the legally wedded wife of the deceased K.Subramanian. Hence, it is necessary to decide whether the first plaintiff is the legally wedded wife of the deceased or the 1st defendant is the legally wedded wife of the deceased K.Subramanian.

11. To prove that the first plaintiff is the legally wedded wife of the deceased, Ex.A1 marriage invitation, Ex.A2 Pension Payment Order book and Ex.A4 legal-heirship certificate issued by Tahsildar, Egmore, Nungambakkam Taluk,

were produced.

12. The contention of the 1st defendant is that the marriage between the 1st defendant and the deceased was solemnised on 15.03.1972. The plaintiffs produced Ex.A18 to show that the deceased has not married the 1st defendant on 15.03.1972. Ex.A18 is the declaration made by the deceased K.Subramanian and it was given on 28.09.1973. On a perusal of Ex.A18, it is seen that the deceased K.Subramanian was unmarried. If he had really married the 1st defendant on 15.03.1972, he would have definitely stated in Ex.A18 that he was married. But in Ex.A18, it is stated that the deceased as on 28.09.1973, was unmarried. Hence, the contention of the 1st defendant stating that the marriage between the 1st defendant and the deceased K.Subramanian was solemnised on 15.03.1972 is not at all acceptable.

13. Further, the first defendant during her evidence stated that after the marriage between her and the deceased K.Subramanian, the deceased had sent several letters to her. To prove it, the first defendant filed only the covers, which were marked as Exs.B2 to B5 and B8. It is seen from the covers that in some of the covers, the 1st defendant was mentioned as daughter of Perima and in some of the covers, the name of the 1st defendant alone is mentioned. In none of the covers, the 1st defendant was mentioned as the wife of the deceased K.Subramanian. Further, the first defendant has not filed the letters, which relate to the covers marked as exhibits. No explanation was given by the 1st defendant for non filing of the letters alleged to have been sent by the deceased to the 1st defendant. If at all the first defendant filed the letters, we can very well find out the relationship between the first defendant and the deceased K.Subramanian. Without filing the letters, mere filing of the covers is not sufficient to prove that these letters were sent by the deceased K.Subramanian to the first defendant as her husband.

14. To prove that the first defendant is the wife of the deceased, she filed Ex.B13 Succession Certificate. The first defendant filed SOP No.3 of 2003 during the year of 2003. The first defendant has not chosen to implead the plaintiffs in the SOP No.3 of 2003. Hence, the plaintiffs are not the parties in the SOP No.3 of 2003. Therefore, the order passed in SOP No.3 of 2003 will not bind on the plaintiffs.

15. To prove that the deceased had submitted to his superior officers that only the plaintiffs are his legal heirs, the first plaintiff filed Ex.A19. On a perusal of Ex.A19, it is seen that the first plaintiff is the wife of the deceased K.Subramanian and the plaintiffs 2 to 4 are shown as the children of the deceased. The deceased has not given

the names of the 1st defendant and her children to his superior officials for getting his monetary benefits in case of his death. The letter correspondences between the 1st defendant and the Accounts Officer in the previous sanction in the matter of granting family pension, are marked as Exs.B11, B12, B17, B23, B30 and B33. As per the request of the superior officials, the 1st defendant submitted the death certificate of the deceased K.Subramanian and the succession certificate and the legal heirship certificate issued by the Tahsildar. The deceased K.Subramanian retired during the year 1985 and died during the year 2001. The deceased Subramanian received his monetary benefits and the 1st defendant only received the family pension. The first defendant filed Ex.B32 certificate issued by the Village Administrative Officer, Salem to prove that the marriage between the first defendant and the deceased K.Subramanian was solemnized. But along with Ex.B32, no statement of the witnesses were filed. Hence, the certificate issued by the Village Administrative Officer cannot be relied upon, since it does not contain the statement of the witnesses examined by the Village Administrative Officer, Salem. Further, the first defendant, to prove that she and her children were the legal heirs of the deceased K.Subramanian, filed Ex.B29 Voters List, marriage invitation of her son Rajinikanth, Transfer certificate of the first defendant's son Rajinikanth. Exs.B28 and B29 are the documents that came into existence after the suit documents and hence, they cannot be relied upon.

16. The first plaintiff filed Passport of her sons in Exs.A13 and A17 to prove that they are the legal heirs of the deceased K.Subramanian. On a perusal of Exs.A13 and A17, the father of the sons of the first plaintiff was shown as K.Subramanian. The dispute between the first plaintiff and the first defendant arose during the year 2001. Ex.A19 contains the family members of the deceased, which was given on 05.05.1995 by the deceased to his superior officers and the 4th plaintiff was born after 05.05.1995. Hence, her name was not stated in Ex.A19. In Ex.A2 Pension Payment Order, the joint photo of the 1st plaintiff and the deceased was affixed. Hence, the above documents reveal that the first plaintiff is the wife of the deceased K.Subramanian and that the deceased is the father of the sons of the first plaintiff.

17. The learned counsel appearing for the 1st defendant submitted that the first plaintiff belonged to Christian religion, but the deceased belonged to Hindu religion, hence the marriage between the first plaintiff and the deceased is not valid and hence, the plaintiffs are not entitled to get the legal heirs of the deceased K.Subramanian.

18. In this case, the first plaintiff was examined as PW1. PW1 during her evidence stated that she used to go to

Church prior to her marriage, but her marriage with the deceased was held in her house and only in the presence of Priest, their marriage was solemnised. While cross examining PW1, the learned counsel appearing for the first defendant put a suggestion that the 1st plaintiff and the deceased are not the wife and husband and they only lived together for sometime. Hence, the 1st defendant admitted that the deceased and the 1st plaintiff lived together for sometime. In Ex.A19, the deceased himself admitted that the 1st plaintiff is his wife during year 1995. In the Passports, the name of the father of the plaintiffs 2 and 3 was shown as K.Subramanian.

19. PW1 has not stated that after the marriage, she used to go to Church. No contra evidence was let in on the side of the first defendant to prove that the 1st plaintiff belonged to Christian religion. The learned counsel appearing for the 1st defendant argued that the marriage between the 1st plaintiff and the deceased was opposed by the 1st defendant. Hence, it is the bounden duty of the plaintiffs to prove that the first plaintiff is the wife and the plaintiffs 2 to 4 are the legitimate children of the deceased, but the plaintiffs failed to prove that they are the legal heirs of the deceased K.Subramanian and hence, they are not entitled to any relief as prayed for. For this submission, the learned counsel appearing for the 1st defendant submitted a ruling reported in 2000(1) DMC 392 (Kesari Bai and others Vs. Parwati and others). In that case, the marriage was solemnised with regard to Brahmin community. Hence, it is established therein that Section 7(ii) of the Hindu Marriage Act is applicable. But in this case, the deceased K.Subramanian belonged to Adi-Dravidar Community. In the community of Brahmin, Saptapadi is essential. But in the Adi-Dravidar community, Saptapadi is not essential. Hence, the above ruling cited by the first defendant is not applicable to this case.

20. Further, on the first defendant's side, it is stated that presumption of marriage can be drawn by long cohabitation of a man and woman, provided they live together and have been treated by relatives and Society as husband and wife and that the first defendant and the deceased lived as wife and husband for a long time and hence, she is the legally wedded wife of the deceased. For this submission, the first defendant has submitted a ruling reported in 1999(III) CTC 136 (Singaram @ Velayudha Udayar and two others Vs. Subramainam and three others).

21. In the above case also, it is stated that when a man and woman lived together and had long cohabitation, then they can be treated as husband and wife. On a careful perusal of the evidence and documents filed on the side of the plaintiffs, it reveals that the first plaintiff and the

deceased lived together as wife and husband for a long time. In the case on hand, in the passport of the plaintiffs 2 and 3, the father of the plaintiffs 2 and 3 is shown as K.Subramanian during the year 1992. The first defendant has not filed any document to show that she is the wife of the deceased K.Subramanian.

22. Further, in this case, the first defendant failed to prove through the documents and oral evidence that she is the legally wedded wife of the deceased k.Subramanian. The 1st plaintiff has filed the passport of his son, in which the father of his son was mentioned as K.Subramanian during the year 1992. In the relevant documents, K.Subramanian has mentioned the first plaintiff as his wife. She is mentioned as wife of the deceased in Ex.A-19 during the year 1995. Hence, the nomination issued by the deceased in favour of his wife and children is not contrary to law. Hence, the plaintiffs have proved by way of oral and documentary evidence that they are the legal heirs of the deceased K.Subramanian and the first defendant had failed to prove that she is the legally wedded wife of the deceased K.Subramanian. Hence, it is held that the plaintiffs are entitled to the reliefs as claimed by them. Accordingly, the points for consideration are answered in favour of the plaintiffs.

23. In view of the foregoing discussion, this court is of the considered view that the appellant/1st defendant is not entitled to get any relief and accordingly, the judgement and decree of the trial court are confirmed.

24. In the result, the Appeal Suit is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

er/cs

To

The Principal Judge, Family Court, Chennai.

+1cc to Mr.S.Ilamparithi, Advocate SR.101584

+1cc to Mr.R.Marudhachalamurthy, Advocate SR.105422

AS No.27 of 2011

RSI (CO)

CB(24/01/2020)