

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 02.07.2019]

[PRONOUNCED ON : 04.10.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1676 of 2000

1. Roseline
2. Aroquiammalle @ Ramani
3. Jayanthi @ Jayamari ... Appellants/Respondents 1 to 3/  
Plaintiffs 1 to 3

... Vs ...

1. Muthulakshmi
2. Munusamy ... 1 & 2 Respondents/Appellants/  
Defendants 3 & 4
3. The Commissioner,  
Pondicherry Municipality,  
Goubert Avenue, Pondicherry.
4. The Regional Provident Fund Commissioner,  
Tamil Nadu and Pondicherry States,  
Having its office at No.20, Royapettai High Road,  
Madras - 600 014. ... 3 & 4 Respondents/4 & 5  
Respondents/Defendants 1 & 2

Prayer : Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 13.10.1999 made in A.S.No.30 of 1998 on the file of the learned Principal District Judge, Pondicherry, reversing the judgment and decree dated 14.08.1997 made in O.S.No.1221 of 1994 on the file of the learned II Additional District Munsif Court, Pondicherry.

For Appellants : Mr.M.Baskar

For R-1 : Mrs.Muthulakshmi [Party-in-person]  
For R-2 : Mr.Munusamy [Party-in-person]  
For R-3 : Mr.B.Nambi Selvan,  
Additional Government Pleader  
(Pondicherry)

For R-4 : Mrs.V.J.Latha

## JUDGMENT

The unsuccessful plaintiffs are the appellants herein challenging the judgment and decree dated 13.10.1999 passed by the learned Principal District Judge, Pondicherry, in A.S.No.30 of 1998, reversing the judgment and decree dated 14.08.1997 passed by the learned II Additional District Munsif, Pondicherry, in O.S.No.1221 of 1994.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The case of the plaintiffs is that they have filed a suit in O.S.No.1221 of 1994 before the learned District Munsif, Pondicherry, seeking for a declaration declaring that they are the legal heirs of late Anthonisamy @ Kasinathan, who died on 07.02.1994. The deceased Anthonisamy @ Kasinathan, who was working as Sanitary Assistant in the Municipality, was moving with the first plaintiff since 1975 and they have been living as husband and wife. Since the first plaintiff's father opposed their love, they could not marry and second plaintiff was born to them in the year 1977 and third plaintiff was born in the year 1981. Subsequent to the birth of the third plaintiff, the first plaintiff convinced her father and because of the intervention of others, their marriage under "Suya Mariyathai" form was conducted in August, 1981. The deceased Anthonisamy @ Kasinathan garlanded and tied thali to the first plaintiff in the presence of friends and relatives and they have been treated as husband and wife since 1975. The deceased Anthonisamy @ Kasinathan was allotted a residential house in the Municipal Quarters with Door No.G/40 and he died on 07.02.1994 while he was in service. After the completion of 16th ceremony, the first plaintiff had approached the Commissioner of Pondicherry for getting the death benefits due to the death of the said Anthonisamy @ Kasinathan and a job on a compassionate ground and as the same was not considered, the first plaintiff had issued a lawyer's notice on 11.07.1994, asking for the death benefits due to her. But she was informed to get a decree from the Court stating that she is the legal heir of the said deceased Anthonisamy @ Kasinathan. The second defendant viz., The Regional Provident Fund Commissioner, Tamil Nadu and Pondicherry States, is holding the Provident Fund amount due to late Anthonisamy @ Kasinathan and hence, the second defendant is impleaded as party respondents.

4. Per contra, the case of the defendants is that the 3rd defendant is the legally wedded wife of Kasinathan and the 4th

defendant is their legitimate son. It is incorrect to state that the 1st plaintiff was married to Anthonisamy @ Kasinathan and they have been living as husband and wife since 1975 and "Suyamariyathai" type of marriage was underwent in the year 1981. The third defendant alone was married to Kasinathan and she is the legally wedded wife and they have been living as husband and wife in the Municipality quarters No.G/40. On the death of her husband, she has filed a suit in O.S.No.979 of 1994 on the file of the learned Principal District Munsif, Pondicherry, claiming herself and her son to be the legal heirs of the deceased Kasinathan and the said suit was decreed. Only the defendants 3 and 4 are the legal heirs of the said Kasinathan. The plaintiffs have no connection with the defendants 3 and 4 and the deceased Kasinathan and hence, they were not made as parties to the proceedings. Though in the cause title, the first plaintiff has expressed herself as Hindus, in the plaint, no averment is made to the effect that she is originally Hindu and converted into Hinduism from Christianity.

5. The case of the formal party viz., The Commissioner, Pondicherry Municipality is that one Kasinathan son of Munisamy was working as a Sanitary Assistant in Pondicherry Municipality and nobody by name Anthonisamy @ Kasinathan was working in the Municipality. During the life time, the deceased Kasinathan had nominated the third defendant namely, Muthulakshmi as his wife and fourth defendant namely, Munusamy as his son in Form-3 containing the details of the family and in Form-I nomination form for death-cum-retirement gratuity and on such nomination, the family pension and death-cum-retirement gratuity amount is to be paid to the said Muthulakshmi provided she proves that she is the legally wedded wife and Munusamy is the legitimate son of the deceased Kasinathan. Subsequently, the said Kasinathan also nominated one Rosaline, the first plaintiff as his wife in the Group Savings linked Insurance Scheme nomination form and as per the nomination form, the amount is payable to the said Roseline/first plaintiff provided that she proves that she is the legally wedded wife of Kasinathan. No marriage certificate is filed to prove that the first plaintiff is the wife of the deceased Kasinathan and no birth certificates are also produced to show that second and third plaintiffs are children born to them.

6. The case of the second defendant viz., the Regional Provident Fund Commissioner, Tamil Nadu and Pondicherry States is that the Pondicherry Municipality does not come within the purview of Employees Provident Fund and Miscellaneous Provisions Act, 1952 as it has not satisfied the condition laid down under Section 1(3)(a) or (b) read with Section 16 of the said Act. The second defendant has been impleaded as a party due to

misconception of the fact that the General Provident Fund accounts of late Anthonisamy is maintained by him and the second defendant is not maintaining any General Provident Fund account.

7. Before the Trial Court, on behalf of the plaintiffs, the first plaintiff examined herself as P.W.1 and another three witnesses were examined as P.Ws.2 to 4 and documents Exs.A.1 to A.8 were marked. On behalf of the defendants, the third defendant examined herself as D.W.1 and another two witnesses were examined as D.Ws.2 and 3 and documents Exs.B1 to B6 were marked. Further, on behalf of the second defendant, documents Exs.X.1 to X.4 were marked.

8. The trial Court, based upon the materials available on record, has rendered a finding that the plaintiffs and the defendants 3 and 4 are the legal heirs of the deceased Anthonisamy @ Kasinathan. The Lower Appellate Court, on re-appreciation of evidence, allowed the appeal in A.S.No.30 of 1998 filed by the defendants 3 and 4 and consequently, dismissed the suit in O.S.No.1221 of 1994 filed by the plaintiffs and hence, the plaintiffs have preferred the above Second Appeal before this Court.

9. At the time of admitting the above second appeal, the following substantial questions of law were framed for consideration:

"[1] Whether the lower appellate Court erred in law in reversing the judgment and decree of the trial Court by holding that the first plaintiff/first appellant is not the wife of the deceased Anthonisamy @ Kasinathan while deceased himself declared and accepted the first plaintiff as his wife and nominated her as his nominee under Ex.X.4, an undisputed document marked through D.W.2?

[2] Whether the lower appellate Court erred in law in not appreciating Ex.A.1 to A.5 and A.8 in a proper and perspective manner which are unshakable documentary evidence to prove the marriage of the first plaintiff with the deceased Kasinathan?"

10. Substantial Question of Law No.1:-

This Court, vide C.M.P.No.5512 of 2019, has marked documents Exs.B.7 and B.8 viz., Birth Certificates of the second plaintiff and one Sathiya, wherein, the second plaintiff's name is mentioned as Aroquiamarie and her father's name is mentioned as Andonissamy. The father's name of the Sathiya is mentioned as Perumal.

11. Learned counsel appearing for the appellants/plaintiffs would contend that in view of the nomination made under Ex.X.4, the document marked through D.W.2, staff from the Pondicherry Municipality, the plaintiffs have to succeed.

12. As stated supra, the letter issued by the Commissioner of Pondicherry Municipality authorising one Mr.R.Durairaj, Junior Assistant to attend the hearing of the case No.1221 of 1994, dated 12.02.1997, was marked as Ex.X.1. Ex.X.2 is the Form-I, nomination for death-cum-retirement gratuity of Kasinathan, who had nominated one Muthulakshmi, the third defendant herein. Ex.X.3 is the Form-3, which contains the details of family and which is an attested true copy of Commissioner of Pondicherry Municipality. The document, which is now proceeding to serve by the appellants/plaintiffs is Ex.X.4/Form-IV for appointment of beneficiary Thiru.Kasinathan has nominated one Rosaline and the same is the copy attested by the Commissioner of Pondicherry.

13. On a perusal of Ex.X.4, it is none other than the Form-IV for appointment of beneficiary whereby, a nomination seems to have been made by Kasinathan in favour of the first plaintiff. Admittedly, the marriage of the first plaintiff with the said Kasinathan was conducted in the year 1982 but according to the first plaintiff, she married the said Kasinathan as early as in the year 1975. According to the third defendant Muthulakshmi, she married the said Kasinathan as early as on 26.09.1971 as per Ex.B.1-Marriage certificate and out of the legal wedlock between the said Kandasamy and the third defendant, the fourth defendant was born on 11.01.1974 as could be seen from the Birth Certificate of Ex.B.2 and thus, this Court finds that in the absence of any valid document to show that the marriage between the said Kasinathan with the third defendant Muthulakshmi was dissolved in the manner known to law, she cannot obtain legal status of her alleged marriage, because, for the simple reason that the marriage of the third defendant Muthulakshmi with Kasinathan was conducted in the year 1971 and as per the evidence of P.W.1, the first plaintiff is said to have celebrated her marriage in the Suyamariyathai mode only in the year 1982 and hence, during the subsistence of the first marriage, the second marriage alleged to have been conducted in the year 1982 cannot give the legal status to the plaintiffs.

14. It remains to be stated that as per Exs.X.1, X.2 and X.3, Kasinathan [now deceased] has given the family particulars under the service records to the Pondicherry Municipality wherein, he had declared the family status of the respondents 1 and 2/defendants 3 and 4 and in view of the documents Exs.X.2

and X.3, the mere nomination to receive the benefit in the savings scheme does not help the case of the appellants/plaintiffs. A similar finding rendered by the Lower Appellate Court is well considered and well merited. Taking into consideration the fact that while Exs.X.2 and X.3 relate to service benefits and appointment of his wife for the death-cum-gratuity, while Ex.X.4 is only a savings scheme wherein, the plaintiffs said to have been nominated to receive as a beneficiary in savings scheme and hence, the finding rendered by the Lower Appellate Court in this regard does not warrant any interference as the same does not suffer from any illegality or irregularity and hence, the substantial question of law No.1 is answered in negative against the appellants/plaintiffs.

15. Substantial question of Law No.2:-

Learned counsel appearing for the appellants/plaintiffs made submissions in support of the second substantial question of law while the party-in-person viz., fourth defendant Munusamy has appeared in person and marked Exs.B.7 and B.8-Birth Certificates wherein, the second appellant's father's name is mentioned as Andonissamy and not as Kasinathan. It is further submitted that the trial Court has categorically given a finding that the plaintiffs have not proved the birth extract of both two persons namely, appellants 2 and 3/plaintiffs 2 and 3 and hence, he has filed the documents obtained from Pondicherry Municipality under the RTI Act.

16. After perusing the documents Exs.A.1 and A.2, the same does not advance the case of the appellants herein/plaintiffs while Ex.A.6 is the death certificate of the said Kasinathan showing that he died on 07.02.1994. As per Ex.A.5, it appears that it is an invitation printed for the celebration of the puberty function of the second and third appellants in the name of Anthonisamy @ Kasinathan and the first appellant. Ex.A.4 is the civil supplies family ration card and Ex.A.3 is the photocopy of the identity card issued by the Slum Clearance Board showing the address and hence, this Court is of the considered view that Exs.A.1, A.2, A.3, A.4, A.5 and A.6 are not advanced the case of the appellants/plaintiffs.

17. As stated supra, Ex.X.4 is the declaration made by Kasinathan nominating the first appellant for the benefit due to him under the group saving linked insurance scheme which was marked through the staff from the municipality namely, D.W.2. P.W.2 and P.W.3 have stated that Kasinathan was a Hindu and he does not know to which religion the first appellant belongs to. Both P.W.2 and P.W.3 claimed that a Suyamariyathai form of marriage was organised as mode of marriage under the Hindu Marriage Act which prescribed a simplified form as against

customary form of marriage provided under the Hindu Marriage Act. It is a form of marriage wherein marriages are celebrated by garlanding and tying of thali. Though the first plaintiff claimed to be the Hindu, the mere statement that she married Anthonisamy @ Kasinathan in the form of Suyamariyathai without any tangible evidence, it is hard to accept the mere statements. The evidence of P.W.2 and P.W.3 does not inspire the confidence of the Court, in view of the fact that they does not claim any permanent address, though the marriage was said to have been celebrated in the presence of Nattamai viz., village elders and one Varunamuthu, who were admittedly present, but they were not examined before the Court. For the reasons best known to the plaintiffs, the presence of P.W.2, at the time of alleged performance of marriage, was not spoken to by P.W.3 also assumes significance.

18. In this case, though P.W.4 was examined to support the case of the plaintiffs for the alleged marriage of the first plaintiff with the said Kasinathan, she does not know the preliminary details as to whether any marriage invitation was printed and she also stated that there is absolutely no record to substantiate the alleged marriage or birth of the second and third plaintiffs to Kasinathan. P.W.1, in her evidence, has admitted that she has not filed any birth certificate of the third appellant and she also admitted that she has given the name of Aroquia Ammal as the name of the second appellant while her birth was registered and she also admitted that the second plaintiff/second appellant was born in hospital and her name is registered as Jayamari. For the reasons best known, P.W.1 has not marked the birth certificate.

19. At this juncture, it remains to be stated that as per the documents that were marked in this appeal as Ex.B.6 and B.7, it is true that the third appellant was not born to the said Anthonisamy @ Kasinathan as could be seen from the public document issued by the Pondicherry Municipality, which maintains the register under the Registration of Birth and the Death Act. Further, in her evidence, she has admitted that she forgot to give the name of Anthonisamy while giving registration. This Court is unable to understand such an explanation given by P.W.1, who claims to be the wife of the said Kasinathan and thus, this Court finds that the evidence of P.W.1 and the admission of P.W.1 regarding non-production of any birth certificate for the appellants 2 and 3/plaintiffs 2 and 3 and non inclusion of the name of the husband and as the name of the father in the birth certificate was not filed by P.W.1 and no positive evidence has been filed before the Court and in the above said circumstances, the Lower Appellate Court has rightly come to the conclusion that in the absence of any tangible

evidence, the Lower Appellate Court refused to declare the first appellant as the legally wedded wife of the said Kasinathan and the connected finding that there is no proved or tangible evidence to show that the appellants 2 and 3 were born to the said Kasinathan cannot be interfered with, in the absence of any positive evidence to that effect.

20. At the same time, it remains to be stated that in view of the documentary evidence Exs.B.6 and B.7, now taken on record at the instance of the respondents, this Court finds that the name of the father of the second appellant mentioned in the birth extract destroy the case of the appellants and hence, this Court is of the considered view that the Lower Appellate Court has rightly appreciated the document Ex.X.4, in the light of Exs.X.2 and X.3 and in the absence of any positive evidence, much less any documentary evidence to substantiate the alleged marriage of the first appellant with the said Kasinathan and in the absence of any documentary evidence to show that the appellants 2 and 3/plaintiffs 2 and 3 were born to the said Kasinathan and the first plaintiff, the Lower Appellate Court has rightly negatived the claim of the appellants in dismissing the suit and in view of the presence of Ex.B.6 and B.7, this Court has no hesitation to hold that the second appellant was not born to the said Kasinathan coupled with the admission by P.W.2 in her evidence that she has not filed any birth certificate in the Court, this Court finds that the plaintiffs have wantonly suppressed the documents viz., Exs.B.6 and B.7 from the purview of the judicial scrutiny and in view of the presence of Ex.X.2 and X.3 coupled with Ex.B.1, the Lower Appellate Court has rightly come to the conclusion that the defendants 3 and 4/respondents 1 and 2 are the legal heirs of the deceased Kasinathan and the plaintiffs are not entitled to any relief.

21. In this view of the matter, both the substantial questions of law are answered in negation against the appellants. The order of the Lower Appellate Court is well considered and well merited which does not warrant any interference by this Court. Accordingly, the Second Appeal is devoid of merits and the same is liable to be dismissed.

22. In the result,

[i] The Second Appeal is dismissed and the judgment and decree dated 13.10.1999 passed by the learned Principal District Judge, Pondicherry, in A.S.No.30 of 1998, reversing the judgment and decree dated 14.08.1997 passed by the learned II Additional District Munsif, Pondicherry, in O.S.No.1221 of 1994, are confirmed.

[ii] However, there shall be no order as to costs.

Sd/-  
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

Jr1

To

1. The Principal District Judge,  
Pondicherry.
2. The II Additional District Munsif,  
Pondicherry.

+5cc to Mrs.Muthulakshmi & Others, Party-in-Persons SR.No.85559

S.A.No.1676 of 2000

SSD (CO)  
GMY (08/11/2019)



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