

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NO.1173 OF 2019

AND

CMP.NO.25582 OF 2019

1. Vijaya Lakshmi
2. R.Ravichandran
3. R.Jaichandran

.. Appellants/
3-5 Defendants

Versus

1. M.Vasanthi
2. M.Jayasudha
3. M.Gridharan
Minor, Rep.by his Mother &
Natural Guardian D.Vasanthi (Ist Plaintiff)

...1 to 3 Respondents/
1,2,3 Plaintiffs

4. The General Manager,
Integral Coach Factory, Chennai-38.
5. The Chief Personal Officer (CPO)
Integral Coach Factory, Chennai-38.
6. Ordinance Clothing Factory,
Avadi (OCF), Chennai-600 054.

... 4 to 6 Respondents/
1, 2, 6 Defendants

Prayer:-

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 03.09.2018 in A.S.No.343/2014 on the file of learned V Additional City Civil Court Chennai in confirming the original judgment and decree passed by the learned XVI Assistant City Civil Judge, Chennai in O.S.No.3991/2010, dated 31.07.2014 allowing the suit filed by the respondents 1 to 3 herein in respect of the disbursement of the retirement benefit of Late D.Mari payable by the employer to the Integral Coach Factory, Chennai 38.

For Appellants : Mr.N.A.Kareem

JUDGMENT

The appellants are the defendants 3 to 5 in O.S.No. 3991 of 2010. The suit came to be filed by the respondents 1 to 3 herein for declaration that they are the only surviving legal heirs of late Mari son of late Duraisamy and for a consequential direction to the defendants 1 and 2 to pay the death benefits to the plaintiffs.

2. The case of the plaintiffs in brief is that the first plaintiff was married to late Mari on 23.01.1989 according to the Hindu Rites and Customs at Mangadu Temple and through the lawful wedlock, the plaintiffs 2 and 3 were born to them. The Tahsildar, Purasaiwalkam after enquiry issued legal heir certificate in favour of the plaintiffs 1 to 3. The first plaintiff's husband was appointed as Khalasi in ICF and later he was working as Junior Engineer-Grade II.

3. It is alleged that the third defendant is the wife of one late Rajaram and the defendants 4 and 5 are the sons born to the third defendant through the said Rajaram. It is further stated that the first plaintiff's husband neglected the plaintiffs and during March 2001, he was moving very close with the third defendant and hence, a complaint was preferred before the All Women Police Station and the same was registered in CSR.No.286/CSR/WIPS/2001 and a complaint was also given to the first defendant in the year 2001. Subsequently, the said Mari started to act in an indifferent manner in the family and later, he died due to cardiac arrest on 08.12.2009. The third defendant without having any right is claiming the service benefits, hence the suit.

4. A written statement was filed on behalf of the appellants stating that there was no legal marriage between the deceased Mari and the first plaintiff and there is no documentary evidence to prove the same. The first plaintiff had an illicit affair with the said Mari and taking advantage of the soft nature and addiction to alcohol, the plaintiffs started using his name for protection in the Society. It is further stated that after the death of the third defendant's husband Rajaram in the year 1985, she married the deceased Mari on 19.06.1991 and the same was registered in SRO, Kodambakkam. According to the third defendant, she is the only legally wedded wife of the deceased Mari as per law and prayed for dismissal of the suit.

5. Before the Trial Court, on behalf of the plaintiffs PWs.1 and 2 were examined and Exs.A1 to A20 were marked and on behalf of the defendants DWs1 to 3 were examined and Exs.B1 to B10 were produced. After considering the oral and documentary evidence, the Trial Court decreed the suit. Aggrieved over the same, the

defendants 3 to 5 preferred an appeal in A.S.No.343 of 2014. The Appellate Court confirmed the finding of the Trial Court. Challenging the same, the present appeal is filed.

6. Mr.N.A.Kareem, learned counsel for the appellants strenuously contended that the plaintiffs have not proved the alleged marriage between the first plaintiff and the deceased Mari in the manner known to law and on the other hand, the third defendant married the said Mari and the same was registered. It is further contended that the defendants 1 and 2, who were the employer of the deceased Mari, supported the case of the defendants 3 to 5, but without considering those aspects, the suit was decreed.

7. In the case on hand, the case of the plaintiffs is that the first plaintiff married Mari on 23.01.1989 according to the Hindu Rites and Customs at Mangadu Temple. During the lawful wedlock, the second plaintiff was born on 05.08.1990 and the third plaintiff was born on 02.08.1994. It is not in dispute that the said Mari was working in ICF since 18.10.1983 and died on 08.12.2009. To prove the case of the plaintiffs, one of the neighbours of the first plaintiff was examined as PW2 and he supported the case of the plaintiffs. That apart, the photographs, the birth certificates of the plaintiffs 2 and 3 and the complaint given against her husband before the Police as well as before the employer were marked as Exs.A1 to A8.

8. It is true that the third defendant was made as a nominee in the service register of the deceased Mari maintained in the ICF. It is also not disputed that the marriage between the said Mari and the third defendant was registered and to prove the same Ex.B5 was marked. The Trial Court and the Appellate Court after independently analysing the evidence both orally and documentary came to the conclusion that the deceased Mari married the first plaintiff in the year 1989 and when the marriage was subsisting, he married the third defendant. Hence, the second marriage between the deceased Mari and the third defendant is void. It is appropriate to note that merely, because the third defendant was made as a nominee of the said Mari in the service records, it would not automatically confer any right to her to claim as legal heir of the deceased.

9. In my considered view, both the Courts below, on proper appreciation of evidence, have rendered the findings that the plaintiffs are the LRs of the deceased Mari, hence no warrant of interference is required in this appeal. This appeal has been filed assailing the factual findings and no question of law arises for consideration before this Court. In that view, the

appeal is dismissed as devoid of merits. No costs. Consequently,
connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pvs

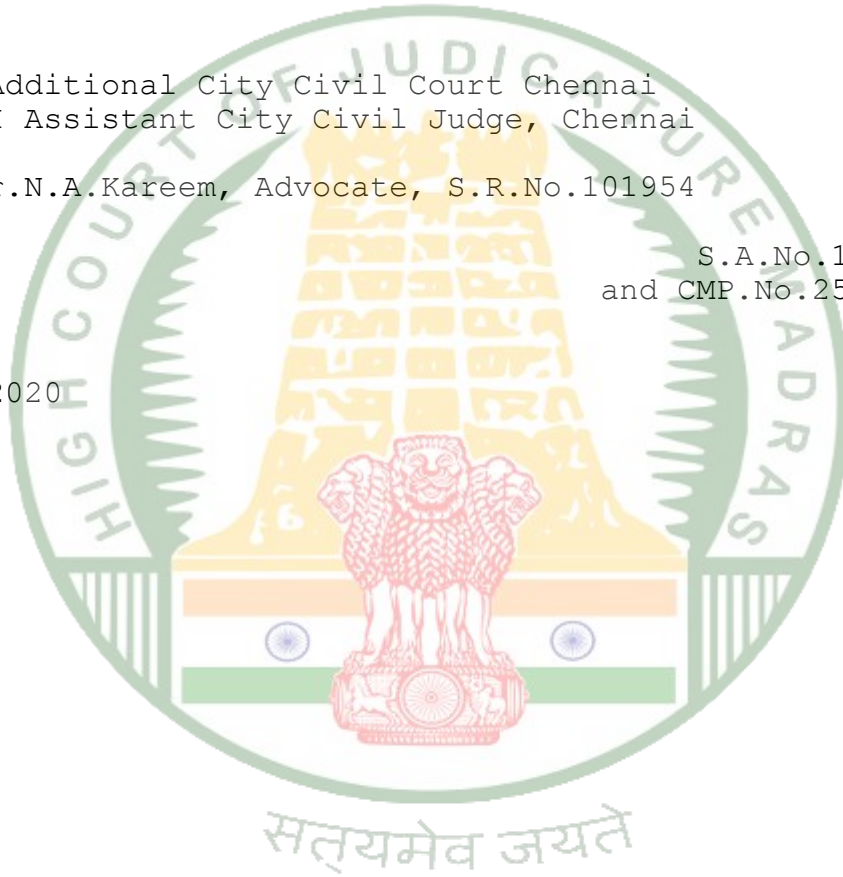
To

1. The V Additional City Civil Court Chennai
2. The XVI Assistant City Civil Judge, Chennai

+1cc to Mr.N.A.Kareem, Advocate, S.R.No.101954

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CA (CO)
CS/31/07/2020



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