

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on :	Delivered on:
10.12.2019	18.12.2019

CORAM:

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

S.A.No.1144 of 2008

1. Savithiramma
2. Minor Shailaja
3. Minor Kavithavani
4. Minor Pavithra
5. Minor Mahendran ... Appellants/Plaintiffs
(Minors rep by their natural guardian mother 2 to 5)
vs.

1.Sudhamma
2.The Assistant Elementary Educational Officer,
Kelamangalam, Denkani Kottai,Dharmapuri.
3.The District Elementary Educational Officer,
Dharmapuri.
4.The Accountant General,
No.26, 1 Annasalai, Chennai. Respondents /Respondents

Prayer: Second Appeal is filed against the judgement and decree dated 27.10.2006 in A.S.No.22 of 2005 on the file of the Sub Court, Hosur, confirming the judgment and decree in O,.S.No.54 of 2004 on the file of the District Munsif Court, Denkanikottai, dated 4.4.2005.

For Appellants :: Mr.V.Raghavachari

For respondent :: Mr.M.V.Krishnan for R1

Mr.P.Raja, GA for R2 & R3

Mr.T.S.Selvarani for R4

JUDGMENT

This Second Appeal has been preferred against the decree and judgment dated 27.10.2006 in A.S.No.22 of 2005 passed by the Sub Judge, Hosur, confirming the judgment and decree in O.S.No.54 of 2004 of the District Munsif Court, Denkanikottai, dated 4.4.2005.

2. The appellants herein are the plaintiffs and the respondents are the defendants. For the sake of convenience, the parties are referred as 'the plaintiffs and 'the defendants'.

3. Originally, a suit was filed by the plaintiffs, praying for permanent injunction against the defendants 3 and 4 restraining them from disbursing the retirement benefits payable to the deceased Late Thiru K.Kotappa, who was claimed to be the husband of the first plaintiff and the father of the other plaintiffs. The case of the plaintiffs is that the first plaintiff is the wife of the deceased Kotappa and from their wedlock, the plaintiffs 2 to 5 were born and therefore, they are also entitled to 50% share in the retirement benefits payable to the deceased employee along with the first defendant who was also a wife of the said deceased employee.

4. The trial Court, after hearing the parties to the suit and considering the evidence available on record, has dismissed the suit, stating that the first plaintiff is not legally wedded wife since her marriage with the deceased employee was during the subsistence of the first marriage between the deceased employee and the first defendant one Sudhamma in the suit. However, in regard to the claim of 50% of the retirement benefits for the children of the second marriage, the trial Court dismissed the claim on the ground that they did not choose to file any application for issuance of succession certificate and in the absence of any succession certificate, they were not entitled to any relief in the injunction suit. The trial Court has finally held that no relief could be granted in the injunction suit and dismissed the same.

5. As against the decree and judgment of the trial Court, an appeal in A.s.No.22 of 2005 has been preferred by the plaintiffs before the Sub Court, Hosur and the same was also dismissed by the Sub Court vide judgment dated 27.10.2006 while confirming the decree and judgment of the trial Court. As against that, the present Second Appeal has been preferred by the aggrieved plaintiffs.

6. Shri V.Raghavachari, learned counsel appearing of the plaintiffs would submit that even illegitimate children are entitled to share in the property of the deceased employee and therefore, the plaintiffs 2 to 5 herein also are entitled to 50% of the retirement benefits due and payable to the deceased employee along with the share of the first defendant/first wife of the deceased Kotappa. In fact, he would take this Court to various provisions of Pension Rules and also Government instructions on the subject matter, stating that how the illegitimate children are also entitled to the share

in the retirement benefits. According to the learned counsel, in fact, the trial Court has appreciated those provisions of Pension Rules and also instructions, ultimately dismissed the suit on the ground that the succession certificate has not been obtained by the legal heirs of the deceased employee.

7. Mr.M.V.Krishnan, learned counsel appearing for the 1st defendant would stoutly resist the claim of the plaintiffs on the ground that the first plaintiff is not legally wedded wife as she was merely a concubine of the deceased employee. Therefore, the children born from such concubinage would not be entitled to any share in the retirement benefits of the deceased employee. He would draw the attention of this Court to the evidence on that aspect stating that the marriage with the first plaintiff was not proved at all and therefore, in the absence of proof marriage, the entire claim of the so-called legal heirs of the second wife was invalid and cannot be sustained in law or on facts.

8. Mrs.T.S.Selvarani, learned counsel appearing for the 4th defendant/Accountant General, during the course of one of the hearings, has circulated the proceedings of the 4th respondent office, which read as under:

"Office of the Accountant General
(Accounts & Entitlements), Tamil Nadu
S.A.No.1144/2008 filed by Smt.Savithiramma and
four others

Submissions for the Forth Respondent (Accountant
General (A&E), Chennai

.....

Smt.Savithiramma and four others had filed OS.No.50/2001 before the Sub Court, Hosur praying for an injunction not to disburse the death benefits payable in respect of late Sri K.Kotappa to the First Defendant and to grant such other relief as may be deemed fit. OS.No.50/2001 (OS.No.50/2004 before the District Munsif Curt, Denkanikottai) and the corresponding AS.No.15/2005 filed before tthe Sub-Court of Hosur having been dismissed. Smt.Savithiriammal and four others have filed SA.No.1144/2008 seeking a share in the death benefits payable in respect of the deceased Government servant Sri K.Kotappa.

Sri K.Kotapa served as Headmaster, Panchayat Union Primary School, Doddabelur, Kelamangalam and died on 26.02.2000 while in service.

50% of the family pension payable in respect of late.Sri K.Kotappa was authorised in favour of

Smt.Choodamma, his first and legitimate wife under PPO No.FC/538080 EDP on 05.02.2001. 100% of the gratuity was also authorised in her favour on the strength of the nomination dated 05.07.1980 filed by Sri K.Kotappa conferring on Smt.Choodamma the right to receive the DCRG in the event of his death.

The remaining 50% of the family pension is payable to the children born through the second wife Smt.Savithriamma till they attain 25 years of age or get married or get employed whichever is earlier.

Accordingly, 50% of family pension was authorised in favour of Kum Sailaja as payable through her guardian Smt.Savithiramma for the period from 27.02.2000 to 14.07.2002 (till she attained majority) under PPO No.538081/EDP) on 19.03.2002. On her attaining the age of majority, family pension was authorised from 15.07.2002 to 14.07.2009 as payable directly to her under PPO No.FC 530189/EDP on 03.03.2003.

It is further submitted that on cessation of her eligibility, based on the proposals received on 28.08.2012, 50% of the family pension was authorised in favour of another daughter Kum.K.Pavithra for the period from 15.07.2009 to 18.01.2018 under PPO No.FC 531383 on 28.09.2012.

It is submitted that the application for family pension has been forwarded by the department in favour of Selvan K.Mahendra. However, the same has not been accompanied by Income certificate issued by the Revenue authority. Besides, the Pension Payment Order Book (PPO No.FC 531383 issued in favour of Kum Pavithra) which was valid upto 18.01.2018, has to be received back from the Treasury Officer, Krishnagiri alongwith Certificate of Last Payment.

On receipt of the same, family pension, if found admissible, would be authorised in favour of Selvan K.Mahendra.

Sd/- Senior Accounts Officer
(Legal Cell) "

She would therefore submit that the issue whether the legal heirs of the deceased Kotappa born through his second wife, are entitled to the benefits payable to the deceased employee or not, had been answered by the Department itself in favour

of the plaintiffs 2 to 5 and 50% of the family pension has been paid to the legal heirs as on date as could be seen from the above proceedings.

9. In view of the action taken by the 4th respondent Office in considering the claim of the legal heirs, i.e. Plaintiffs 2 to 5 herein in their favour, and due payments to the extent of 50% of the pensionary benefits have been paid to them, this Court does not think that there is any scope for consideration of the appeal itself since the relief as prayed for by the plaintiffs 2 to 5 has been granted by the 4th respondent Office itself. At this, the learned counsel appearing for the plaintiffs would submit that there were considerable observations of the trial Court which were confirmed by the lower appellate Court against the entitlement of the plaintiffs 2 to 5 and that observations may be held against them in case of any dispute in future between the parties. In view of the stand of the 4th respondent and considering the right of the plaintiffs 2 to 5 towards their entitlement to 50% of the pensionary benefits, which have also been paid to them as could be seen from the above extracted portion, this Court is of the considered view that any observations of the trial Court against the entitlement of the plaintiffs 2 to 5 herein towards 50% of the pensionary benefits along with the entitlement of the first defendant, who is the first wife of the deceased employee, shall stand deleted and any confirmation of such observation by the lower appellate Court shall stand removed.

10. The Second Appeal is disposed of on the above observation. Both parties shall bear their own costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

suk

To

1.The Subordinate Judge,
Hosur.

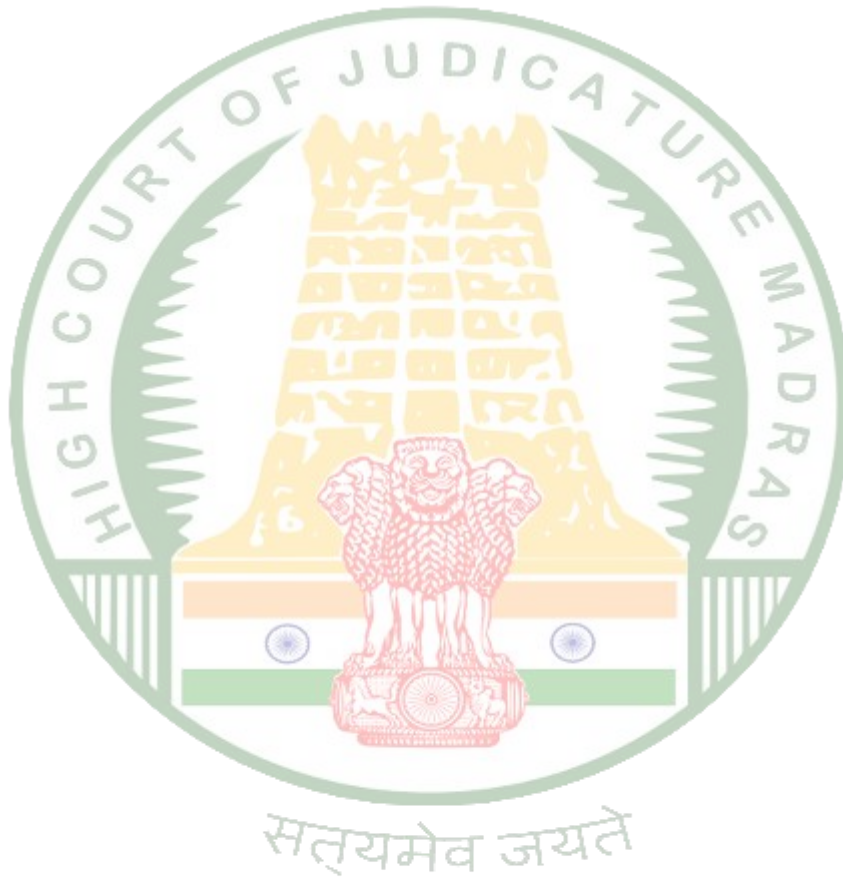
2.The District Munsif,
Denkani Kottai.

Copy to:The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.105183
+1cc to Mr.M.V.Krishnan, Advocate SR.106175

S.A.No.1144 of 2008

MP (CO)
CB (21/01/2021)



WEB COPY