

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1493 of 2003

1.Chitra
2.Minor Manikandan
3.Minor Manimozhi
(Minors 2&3 are represented
by Mother & Next Friend Chitra)
... Appellants/Respondents/
Plaintiffs

...Versus...

1. Rathnammal
2. Minor Kannayiram ... Respondent/Appellant/
Defendants
3. The District Superintendent of Police,
Kancheepuram,
Kancheepuram District.
... Respondent/Respondent/Defendant

PRAYER:

This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.33 of 2002 dated 30.04.2003 on the file of the Principal District Judge, Tiruvannamalai reversing the judgment and decree made in O.S.No.556 of 1998, dated 11.02.2002 on the file of the Additional District Munsif No.1, Tiruvannamalai.

For Appellants :: Mr.S.Vediappan

For R1&R2 :: Mr.R.Siddharth
for Mr.T.R.Rajaraman

For R3 :: No appearance

J U D G M E N T

The appellants herein are the plaintiffs in the suit filed for declaration and permanent injunction.

2. The first plaintiff is the legally wedded wife of one Velu alias Kasilingam and the second and third plaintiffs are son and daughter of the first plaintiff. The appellants/ plaintiffs in their pleadings have stated that the said Kasilingam, S/o.Kannu was working as Police Constable in Melmaravathur Police Station bearing P.C.No.804. Originally, the said Kasilingam married one Rose, after 4 years of matrimonial life, she died issue-less. After her demise, Kasilingam married the first plaintiff/Chitra on 27.03.1991 at Arulmighu Annamalaiyar Tirukoil, Tiruvannamalai. It is the contention of the first plaintiff that she had begotten two children namely the second and third plaintiffs, through the wedlock with Kasilingam. After the death of Kasilingam, the plaintiffs, as legal heirs of Kasilingam, claimed terminal benefits payable to the deceased Kasilingam.

3. In the written statement of the first defendant Rathna Ammal, it was stated that she is the legally wedded wife of Kasilingam. After the death of his first wife/Rose, the said Kasilingam married Rathna Ammal. Through the said wedlock, they had begotten one male child viz., Kannaiyram-the second defendant herein. The said Kasilingam died on 16.04.1998. At the time of his death, Kasilingam was working as Police Constable in Melmaravathur Police Station. Therefore, the defendants 1 & 2 made a claim, claiming the terminal benefits of Kasilingam payable by his employer. According to defendants 1 & 2, the first plaintiff Chitra did not live with Kasilingam in the matrimonial home at any point of time and did not begot the second and third plaintiffs through Kasilingam. Further, it was stated that the first plaintiff/Chitra was not a legally wedded wife of Kasilingam and she was the wife of one Velu alias Kasilingam and in the present case, Kasilingam never had such a pet name as Velu.

4. The suit was decreed declaring that the first plaintiff and second defendant are the legal heirs of the deceased Kasilingam and permanent injunction was granted holding that the first defendant should not be given the amount entitled for the deceased Kasilingam. The trial Court dismissed the suit so far as plaintiffs 1 & 2 are concerned.

5. Aggrieved by the Judgment and decree dated 11.02.2002 passed in O.S.No.556 of 1998 by the trial Court, the defendants 1 and 2 have preferred A.S.No.33 of 2002 before the learned Principal District Judge, Tiruvannamalai. The First Appellate Court reversed the decree and judgment passed by the trial Court and allowed the appeal holding that DW2, whose name finds place in Ex.A1-invitation, has deposed that no marriage took place between Kasilingam and the first plaintiff on 27.03.1991. Therefore, based on the deposition of DW2, the First Appellate

Court held that there could not be a marriage between the deceased Kasilingam and the first plaintiff/Chitra as pleaded. In such circumstances, the First Appellate Court held that there was no proof to show that there was a marriage solemnized between the deceased Kasilingam and the first plaintiff/Chitra on 27.03.1991. As against the Judgment and Decree of the First Appellate Court, reversing the judgment and decree of the trial Court, the present Second Appeal has been filed by the plaintiffs.

6. The above Second Appeal was admitted on 02.04.2004 on the following substantial questions of law:-

i) Whether the lower appellate Court is right in reversing the finding of the trial Court in regard to the marriage between the 1st plaintiff and deceased Kasilingam which was arrived at by the trial Court based on documentary and oral evidence available on record?

ii) Whether the lower appellate Court is right in holding that the marriage between the 1st plaintiff and deceased Kasilingam was proved when the same was admitted by the 1st defendant during the plaintiff's enquiry before the Revenue Authority and by the 3rd defendant in the written statement itself?

iii) Whether the lower appellate Court is right in holding that the marriage between the 1st defendant and deceased Kasilingam is proved and valid, when the marriage between the 1st plaintiff and deceased Kasilingam was not declared as null and void by any Court of law?

iv) Whether the lower appellate Court is right in discarding the evidence of P.W.2 that she might have deposed against the 1st defendant due to grudge against her, when the 1st defendant herself has not put any system to P.W.2 or stated in her evidence?

7. Heard both sides and perused the records.

8. The Trial Court, after going through the oral and documentary evidence, has held that there is no proof to show that the marriage solemnized between Kasilingam and the first plaintiff was dissolved in a manner known to law. Therefore, even assuming that the marriage between the first defendant and

deceased Kasilingam was solemnized, such marriage solemnized during the subsistence of the marriage between the first plaintiff and deceased Kasilingam, cannot be regarded as a valid marriage. At the same time, since the second defendant-Kanniyaram was born from the wedlock between the said Kasilingam and the first defendant, the second defendant can be construed as a legal heir of the deceased as contemplated under Section 16 (3) of The Hindu Marriage Act. Accordingly, the Trial Court concluded that the first plaintiff and the second defendant are the legal heirs of the deceased Kasilingam and, therefore, they are entitled to the terminal benefits payable to the deceased Kasilingam. The Trial Court, however, concluded that the paternity of the plaintiffs 2 and 3 with that of the Kasilingam, was not proved in the manner known to law and disallowed the claim of the plaintiffs 2 and 3. However, the trial Court granted the relief only to the first plaintiff and the second defendant. The plaintiffs 2 and 3 were born out and, therefore the plaintiffs 2 and 3 cannot be regarded as legal heirs of Kasilingam.

9. The learned counsel for the appellants/plaintiffs would contend that the marriage solemnized between the first plaintiff and the deceased Kasilingam has been proved by adducing positive evidence under Ex.A1/Marriage invitation, coupled with Ex.A5 to A15 marriage photographs. The First Appellate Court refused to accept the photographs under Exs.A5 to A15 without any valid reasons.

10. Learned counsel for the appellants also drew my attention to the fact that in the written statement filed by third defendant, it was stated that the deceased Kasilingam was employed as a Constable bearing P.C.No.804 in Melmaravathur Police Station and at that time, he lived with the first defendant/Rathna Ammal and the alleged marriage between the deceased Kasilingam and first defendant had taken place in the year 1995, however, such marriage has not been proved in the manner known to law. Ex.B3, the marriage invitation produced on behalf of the first defendant would contradict the claim of the first defendant with respect to the date and place of marriage.

11. It remains to be stated that to prove the solemnization of marriage between the deceased Kasilingam and the first defendant, Ex.B3 marriage invitation, was marked on behalf of the first defendant, but it does not tally with the deposition spoken to by D.W.2, uncle of first defendant and this also assumes significance. It has to be stated that the marriage between Rathna Ammal and Kasilingam was projected to have been solemnized subsequent to the marriage solemnized between the first plaintiff/Chitra and the deceased Kasilingam. There was no positive evidence on record to show that the marriage between

the first defendant and the deceased Kasilingam was solemnized in the manner known to law.

12. This Court is conscious of the fact that both the Courts below have negatived the legitimacy of the plaintiffs 2 and 3/appellants 2 and 3 to assert a claim that they are born to the deceased Kasilingam through the first plaintiff and the learned counsel for the appellants has not advanced any arguments in respect of the claim of the appellants 2 and 3. Further, he would contend that the finding rendered by the lower Appellate Court regarding solemnization of marriage between the said Kasilingam and 1st plaintiff Chitra, is unsustainable in law.

13. On a perusal of the documents produced before the trial Court, it is clear that Exs.A5 to A14 demonstrates that the solemnization of marriage between Kasilingam and Chitra-first plaintiff was at the temple of the Tiruvannamalai as per Ex.A1-marriage invitation dated 27.03.1991. It is further seen that following the marriage ceremony and other functions, photographs have been taken and the same has been marked and hence, the finding rendered by the lower Appellate Court that no positive evidence had been placed to substantiate solemnization of marriage between the first plaintiff-Chitra and the said Kasilingam, appears to be without any basis. Accordingly, the said finding rendered by the lower Appellate Court is hereby vacated and the finding rendered by the trial Court is hereby restored.

14. At this juncture, it is to be stated that as per Exs.A16 and A17, when the petition for issuance of succession certificate has been filed by the first defendant, an enquiry by the Revenue Authorities had been conducted, wherein the first defendant has categorically given a statement to the Revenue Authorities regarding the solemnization of marriage between Kasilingam and Chitra and the said statement given by the first defendant and her relatives were also marked as Exs.A16 and A18 which also lends support to the case of the plaintiff.

15. After perusing Ex.B3, which is same as Ex.A23, it is seen that the said document does not convey a complete address and on viewing the marriage invitation, it appears to have been made for the purpose of the case. Furthermore, regarding the genuineness of the documents, certain answer was elicited in the cross-examination of P.W.1 wherein, D.W.1 has categorically stated that he is related to the first defendant as a maternal uncle and further, he also stated that there are certain omissions in Ex.B3, and hence, in view of the inherent defects found in Ex.B3, as admitted by D.W.1, this Court is of the considered view that the version of D.W.1 did not pass the test of reliability and in respect of the alleged marriage

invitation-Ex.B3 in support of the first defendant's case and hence, this Court has no hesitation to hold that Ex.B3 cannot be relied upon for want of genuineness.

16. At this juncture, it is relevant to be stated that the third defendant/third respondent-The District Superintendent of Police, Kancheepuram, who is the employer of the deceased Kasilingam, had filed a written statement wherein, it is stated that the first defendant had lived with the deceased Kasilingam and had begotten the second defendant. However, the first defendant never married and it was further stated by the third defendant that there was no dissolution of marriage between the first plaintiff and Kasilingam. This written statement also supports the case of the appellants/plaintiffs.

17. Taking into consideration the entirety of the circumstances of the case, the finding of the Court below regarding the legitimacy of the birth of the plaintiffs 2 & 3, does not call for any interference. Further considering the fact that the first defendant had merely lived together with the plaintiff, and in the absence of any judicial order dissolving the marriage between the first plaintiff and Kasilingam, which was solemnized on 23.07.1991, the first appellant/first plaintiff and Kasilingam by operation of law, continued to be the legally wedded wife and she is entitled for one share. While the second defendant who is admittedly son of the Kasilingam born through the first defendant is entitled to one share.

18. Accordingly,

(i) this Second Appeal is partly allowed. No costs.

(ii) The judgment and decree of both the Courts below are hereby modified to the limited extent that in respect of the terminal benefits available at the hands of the third defendant/third respondent, the first appellant-Chitra and the second respondent-Minor Manikandan are entitled to equal share.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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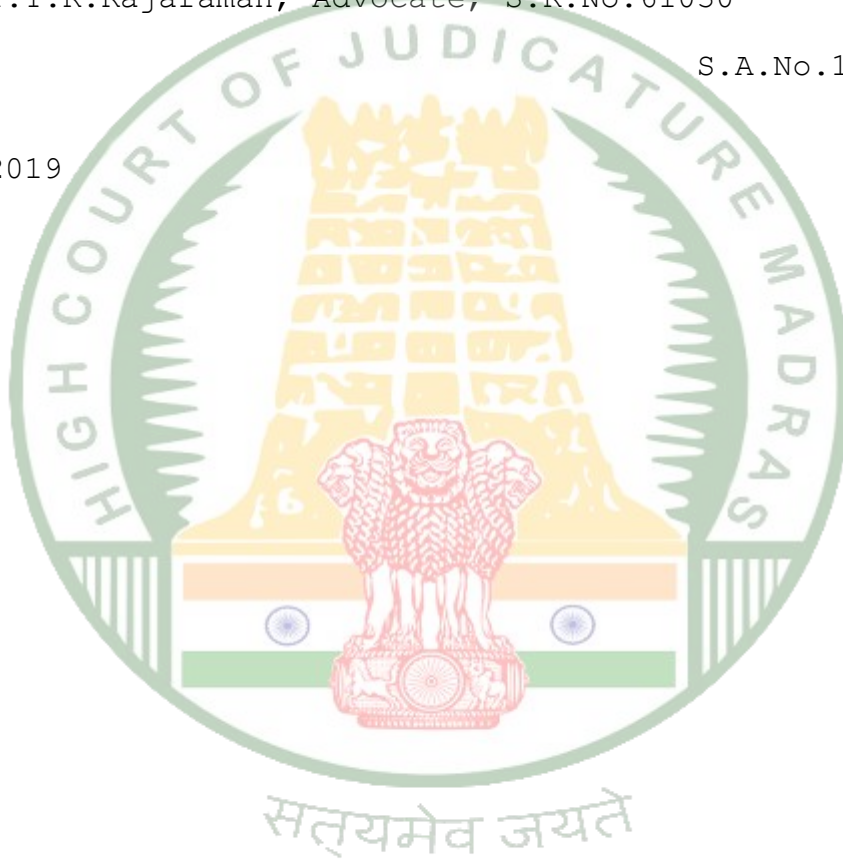
1. The Principal District Judge,
Tiruvannamalai
2. The Additional District Munsif No.1,
Tiruvannamalai.
3. The V.R.Section,
High Court, Madras.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.60624

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.61030

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RSV(CO)
CS/27/11/2019



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