

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1362 of 2005

N.K.Kaliyamurthy

....Appellant/ 1st Respondent
/ 1st Defendant

Vs

1.K.Vijayalakshmi

... 1st Respondent / 1st Appellant
/ Plaintiff

2.The Head Master
Panchayat Union School
Gunamangalam
Cuddalore Taluk.

3.The District Educational Officer
Cuddalore.

4.The Assistant Educational Officer
Cuddalore.

5.L.I.C. of India
Rep by its Branch Manager
Cuddalore.

6.South Arcot Central Co-operative Bank
Rep by its Branch Manager
Pudupalayam, Cuddalore.

7.UCO Bank
Rep by its Branch Manager
Cuddalore.

8.Indian Bank
Rep by its Branch Manager
Cuddalore.

.... Respondents / Respondents 2-8
/ Defendants 2-8

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree of the I Additional Sub Court at Cuddalore, passed in A.S.No.19 of 2004

dated 11.10.2004 against the judgment and decree dated 31.10.2003, in O.S.No.272 of 2002 on the file of the Additional District Munsif at Cuddalore,

For Appellant : Mr.N.Suresh

For Respondents : Mr.R.Gururaj [R1]
Mr.R.S.Anandan [R5]
Mr.R.Arumugam [R6]
- (No Appearance)
No Appearance - R2, R3, R4 & R8

JUDGMENT

The defendant who was partially successful in resisting plaintiff's suit for declaration of status and for partition of $\frac{1}{2}$ share in suit property, but having lost the partial advantage obtained in the trial Court decree before the first appellate court is the appellant herein.

2. The facts in this appeal are minimal and very straight forward :

- The appellant Kaliyamurthy is a practitioner in Homoeopathic medicine. He was married to Anusuya, who was working as a teacher in a Panchayat School. Later Anusuya was promoted to the post of the Assistant Educational Officer. Plaintiff is their daughter.
- While so, Anusuya died on 01-06-2002. Alleging that the appellant had deserted Anusuya, the plaintiff had laid a suit for declaration that she is the sole heir to receive all the terminal benefits due to her mother, her other investments which included some deposits made in the Bank and investments in the LIC, plus the family pension.

3. The suit was not only resisted by the appellant/father of the plaintiff, but he had also filed his counter claim. He would contend that the marriage between him and Anusuya was not legally dissolved, and that the matrimony between them subsisted, that insofar as the heirship goes, except the family pension, in all other estate of Anusuya, he too is a heir along with the plaintiff. Apropos the claim over family pension goes, he contended that as per the relevant Rules, he is eligible to receive the same. In particular, he would contend that in terms of the Rules, no child who has crossed the age of 25 years would be entitled to receive the family pension.

4.1 The trial Court has held that both the plaintiff and the first defendant are the heirs of Anusuya, and declared that each would be entitled to inherit the estate of Anusuya equally, yet

surprisingly chose to dismiss both the suit and the counter-claim, when moulding the decree in terms of the findings should have been the ideal option.

4.2 Challenging the decree dismissing the suit, the plaintiff had preferred A.S.19/2004 and challenging half share granted to the first defendant under the cross objection, she preferred A.S.20/2004. The first defendant had preferred cross objections in both the appeals disputing the right granted to the plaintiff to receive the remaining half share.

4.3 The first appellate court has held that:(a) The plaintiff would not be entitled to receive family pension, since she had crossed 21 years, which as per the relevant Rules would not entitle her to receive family pension; (b) That the defendant had deserted his wife (Anusuya), and adopted the analogy of Sec.25 of the Hindu Succession Act, 1956, which denies a murderer of a slain Hindu to succeed to the estate of his victim, and held that the first defendant, as a deserter of his spouse would not be entitled to receive the terminal benefits of his wife, as it would be against justice to grant him the said right. In conclusion the first appellate court has passed the following decree: (a) Plaintiff will have the entire terminal benefits except the family pension. (b) The first defendant's claim was dismissed entirely.

5. Aggrieved by the same, the first defendant has approached this Court now. The appeal was admitted on the following substantial questions of law :

a) Whether the nominee to get the entire amount of the deceased person?

b) Whether the husband is entitled to get the death benefit of the deceased wife?

6. The learned counsel for the first defendant/appellant argued: That the evidence on record is inadequate to prove that the first defendant had deserted his wife. The plaintiff has alleged that the first defendant had opted to live with another woman, but that fact had not been proved. While the fact which stood proved was that the first defendant and Ausuya lived as separated spouses, still the cause that kept them separate remains inconclusive. Therefore, the first appellate Court ought not have premised its conclusion that the first defendant had deserted his wife. And, given the fact that the matrimony between the first defendant and his wife Anusuya was not dissolved in the manner known to law, his right to claim family pension should not have been denied to him. The relevant Rule does not stipulate that a spouse who lives separately from the

other spouse is not entitled to claim family pension when the latter dies.

7. The challenge was chiefly to the family pension which the first appellate Court has denied to the plaintiff. This depends entirely on the relevant pensionary Rules, and no Rule was brought to the notice of this Court to the effect that where marriage was not dissolved and the spouses have only lived separate from each other, the surviving spouse is not entitled to family pension on the demise of the other spouse.

8. This court is not in agreement with the reasoning of the first appellate court. The reasons are:

- When a spouse turns irresponsible, and deserts the other spouse for no fault of the latter, a Court might feel morally justified in denying the surviving spouse a right to succeed to the estate of the deceased spouse, or, a right to claim family pension. Courts of law, however, are not there to decide the rights of the parties based on their sense of morality, but on the provisions of law, statutorily or contractually made. True, where there are empty spaces in statutory law, then the Court can summon its sense of justice, equity and good conscience to support its decision, but the pre-condition is that there must be statutory vacant space. If however, rights are decided by statute or contract, then Court should not rush to substitute them with its sense of morality. In the context of the present case, unless pensionary Rules prohibit payment of family pension to a deserter of a deceased spouse, the same cannot be denied.
- Secondly, on facts, the plaintiff has alleged that her father, from about 1984, the first defendant, had opted to live with another woman, who she had named. But the first defendant had produced four hand written letters by Ausuya to him, marked Exts.B-1 to B-4, in 1989. The reading of these letters appears to indicate that relationship between the first defendant and Anusuya had been cordial. In the cross examination of the first defendant (D.W.1), it was only suggested that the Exts.B-1 to B-4 were not in Anusuya's hand. On the effect of Exts.B-1 to B-4, the judgement of the first appellate Court is silent. Therefore, the very premise of the first appellate Court appears to be shaky.

9. As earlier mentioned, the first appellate Court appears to have been provoked by the perceived spousal irresponsibilities of the first defendant/appellant, and has allowed it to be disturbed by the possibility of a defaulter benefiting despite his default. That perhaps, might be the only justification for it to equate a deserter of matrimonial responsibility to a murderer in Sec.25 of the Hindu Succession Act, 1956 (which dis-entitles a murderer from succeeding to the estate of his victim). This line of reasoning of the first appellate, it must be stated, struggles for a space within the positive law that Courts administer. It is necessary that Courts guard themselves against getting tripped by moral prejudices, and should restrain the temptation of engaging in expeditions in interpretational expansiveness, for unless positive law leaves an unoccupied statutory space, neither equity nor morality can have a role. On this plane, this Court finds that Sec.25 of the Hindu succession Act does not accommodate the reasoning of the first appellate court.

10. In conclusion, this Court finds reasons to interfere with the finding of the first appellate court. For the reasons already indicated, the substantial question of law have to be answered in favour of the first defendant/appellant.

11. In the result, this Court allows the appeal and grants the defendant to claim family pension, if is otherwise entitled to in terms of the Rules, and also half the right in the terminal benefits accrued to the estate of his wife. No costs.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To:

1.The I Additional Subordinate Court,
Cuddalore.

2.The Additional District Munsif,
Cuddalore.

WEB COPY

3.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.R.Gururaj, Advocate Sr.59306
+1cc to Mr.N.Suresh, Advocate Sr.59022
+1cc to Mr.R.S.Anandan, Advocate Sr.58408

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