

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1384 OF 2018

BANU REKHA

... Appellant/Plaintiff

Vs

1 PREETI

2 CHIEF OF AIR STAFF
AIR HEAD QUATERS VAYU BHAWAN RAFI MARG
NEW DELHI-110 106.

3 PRL CONTROLLER OF ACCOUNTS
(PENSION) DRAUPATI CHAT
ALLAGABAD(UP)211 014 ...Respondents/Defendants

PRAYER: Civil Miscellaneous Appeal filed against the judgment and decree in OS.No.212 of 2015 on the file of the Principal Family Court Madras dated 31/01/2017.

For appellant : Mr.V.Lakshminarayanan

For respondents : Mr.S.Makesh

2 & 3

R1 : Not Ready Notice

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The plaint filed by the appellant for a decree of declaration that she is the legally wedded wife of Thiru.S.Ravi and directing the respondents 2 and 3 to disburse the pensionary benefits to her on the strength of the succession certificate issued by the High Court in O.P.No.562 of 2014 was rejected by the Trial Court by invoking Order VII Rule 1 of CPC.

2. The appellant filed a suit in O.S.No.212 of 2015 before the Principal Family Court, Chennai, with a contention that Thiru.S.Ravi, who was married to the first respondent deserted him and thereafter, her whereabouts were not known. Thiru.Ravi filed a petition before the Additional Principal Judge, Family Court, Chennai, invoking Section 9 of the Hindu Marriage Act. The suit was decreed by judgment and decree dated 28 April 1994. Even thereafter, nothing was heard from the first respondent

herein, who is the legally wedded wife of Thiru.Ravi. Thereafter, the appellant was married to the said Thiru.Ravi on 3 November 2014. The appellant continued her marital relationship till the death of Thiru.Ravi on 9 November 2012. The appellant filed O.P.No.562 of 2014 before the High Court to issue a Succession Certificate in her favour. In the said original proceeding, Tmt.Seetha Rajan, mother of the deceased was shown as a party. The mother-in-law of the appellant submitted to the decree. The original petition was allowed and a succession certificate was given to the appellant.

3. According to the appellant, the deceased was employed in the Indian Air Force. She was directed to obtain legal heir certificate from the Court and the same resulted in filing the original suit in O.S.No.212 of 2015.

4. Before the Family Court, the Commanding Officer, Avadi, filed a written statement contending that the appellant failed to produce the decree of divorce or at least some document to show the relationship between the parties.

5. The Principal Family Court, Chennai, without their being any application from the respondents, suo motu invoked Order VII Rule 1 CPC and axed the plaint. The Decree is under challenge at the instance of the plaintiff in O.S.No.212 of 2015.

6. We have heard the learned counsel for the appellant. We have also heard the learned counsel appearing for the respondents 2 and 3.

7. The appellant instituted the suit in O.S.No.212 of 2015 with a claim that she was married to Thiru.Ravi on 3 November 2004 and lived as man and wife for years together till his death on 9 November 2012. The appellant obtained Succession Certificate from the High Court as per proceedings in O.P.No.562 of 2014. Her mother-in-law was also a party to the proceeding. The appellant made a claim that she is the legally wedded wife of Thiru.Ravi and as such, she is entitled to a Decree of Declaration. The appellant would be given a decree only in case there are materials to show that she is the legally wedded wife of Thiru.Ravi and that the earlier marriage is no longer subsisting.

8. The learned trial Judge observed that the suit was filed against a former wife of the deceased knowing very well that her whereabouts are not known. The appellant has taken publication in a national daily having circulation in Pune, where the parties lived together lastly. There was no suppression about the position of the first respondent in the plaint.

9. The suit of this nature cannot be axed at the threshold without permitting the parties to adduce evidence. The appellant being the plaintiff, is obliged to produce acceptable materials before the Court for granting her a decree of Declaration. Even before adducing evidence in support of the claim, the Trial Court axed the plaint giving certain reasons which are factually and legally unsustainable. We are therefore of the view that the appellant is entitled to succeed.

10. The decree dated 31 January 2017 is set aside. The suit in O.S.No.212 of 2015 is restored to the file of the Principal Family Court, Chennai.

11. We direct the trial Court to issue notice to the first respondent in the last known address. In case notice is not served, the appellant should be permitted to take substituted service by publication in "Sakal", which is a Marati Daily, having circulation at Pune. Thereafter, the matter should be taken up for hearing on merits. The Trial Court is directed to consider the entire materials produced by the appellant and the respondents and decide the issue on merits and as per law.

12. The intra court appeal is allowed. No costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

tar
To

1 CHIEF OF AIR STAFF
AIR HEAD quarters
VAYU BHAWAN RAFI MARG
NEW DELHI-110 106.

2 PRL CONTROLLER OF ACCOUNTS
(PENSION) DRAUPATI CHAT
ALLAGABAD (UP)

3. THE PRINCIPAL JUDGE
FAMILY COURT, CHENNAI.

+1 Cc to Mr.S.Makesh, Advocate sr 78619.

C.M.A.No.1384 OF 2018

NMI (CO)
SP(16/12/2019)