

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26..02..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Second Appeal No.470 of 2016
and
C.M.P.No.7817 of 2016

D.Kuruvamma ... Appellant / 1st Respondent /
1st Plaintiff

-Versus-

1. The Senior Divisional Personal Officer,
Chennai Division, Southern Railway,
NGO Annexure, Third Floor,
Chennai 600003. ..Respondent / Appellant /Defendant

2. D.Issac

3. D.Ammul

4. D.Ramesh

5. D.Suresh

.. Respondents 2 to 5 /
Respondents 2 to 5 /
Plaintiff 2 to 5.

This second appeal is filed against the judgement and decree dated 01.12.2015 passed in A.S.No.173 of 2015 by the learned VII Additional Judge, City Civil Court, Chennai, modifying the judgement and decree dated 27.06.2013 passed by the learned IV Assistant Judge, City Civil Court, Chennai in O.S.No.1976 of 2011.

For Appellant

सत्यमेव जयते : Mr.M.L.Ramesh

for M/s.N.B.Surekha

For Respondent (S)

: Mr.V.Radhakrishnan,

Senior Counsel for

Mr.M.Vijay Anand for R1

R2 to R5 given up

JUDGMENT

The 1st plaintiff in O.S.N.1976 of 2011 on the file of the learned IV Assistant Judge, City Civil Court, Chennai, is the appellant herein. The 1st respondent is the sole defendant and

the respondents 2 to 5 are the plaintiffs 2 to 5 in the said suit. The said suit has been filed for declaration declaring that the plaintiffs are the legal heirs of one deceased Devasagayam and that the 1st plaintiff is entitled to receive the Pension and Death cum Retirement Benefits payable arising out of the death of Devasagayam on 04.08.2006 while in employment with the defendant / Southern Railways. The learned Trial Judge, by judgement and decree dated 27.06.2013, decreed the suit as prayed. Aggrieved by the judgement and decree of the learned trial Judge, the defendant - Senior Divisional Personal Officer, Southern Railways, Chennai Division, preferred an appeal in A.S.No.173 of 2015 and the learned VII Additional Judge, Chennai, by judgement and decree dated 01.12.2015, allowed the appeal suit in part, modified the judgement and decree of the learned trial Judge thereby declaring that the respondents 2 to 5/plaintiffs 2 to 5 alone as the legal heirs of deceased Devasagayam. So far as Appellant/1st plaintiff is concerned, no relief was granted by the learned appellate Judge. Challenging the judgement and decree of the first appellate court, the 1st plaintiff is before this court with this second appeal.

2. The case of the appellant/1st plaintiff in brief is as follows:- The appellant/1st plaintiff is the wife of the deceased Devasagayam and the plaintiffs 2 and 3 are the children born to the 1st plaintiff through the wedlock with the deceased Devasagayam and the plaintiffs 4 and 5 are the children born through the first wife of the deceased Devasagayam. The deceased Devasagayam was employed in the Mechanical Department of the defendant - Southern Railways, Chennai Division. He died in harness on 04.08.2006. After the death of Devasagayam, the plaintiffs are entitled to death cum retirement benefits and family pension. Earlier the 1st plaintiff had filed the suit a suit in O.S.NO.5942 of 2007 along with the other plaintiffs for a declaration, declaring herself and other plaintiffs as legal heirs of late Devasagayam and for permanent injunction, but, the same was dismissed for non prosecution. Thereafter the present suit was filed along with the legal heirs of deceased Devasagayam born through the first wife.

3. The defendant filed a written statement inter alia contending that the deceased Devasagayam was working as Helper Grade-I in the Basin Bridge Depot of Southern Railways, Chennai Division and died on 04.08.2006, while he was in service. Consequent upon the death of the deceased employee, there arose rival claim between the plaintiffs and one Suguna, the 1st wife of the deceased Devasagayam. The deceased employee did not nominate the 1st plaintiff as his wife in any of the documents submitted to the railways during the course of his employment and the earlier suit filed by the 1st plaintiff also got

dismissed. As per the original pension rules namely, The Railways Service Pension Rule, 1993, person who was nominated by the employee alone entitled to get service benefits and as such the plaintiffs 2 to 5 alone are entitled to get service benefits arising out of the deceased employee.

4. Based upon the above pleadings, the following issues were framed for trial:-

- (1) Whether the plaintiffs are entitled to the relief of declaration as prayed for?
- (2) To what other reliefs the plaintiffs are entitled?

During trial, on the side of the plaintiffs, 1st plaintiff examined herself as P.W.1 and Ex.A1 to A9 were marked. On the side of the defendant, no one was examined and no document was adduced. Having accepted the oral and documentary evidences adduced on the side of the plaintiffs, the learned trial Judge had decreed the suit. However, when the defendant took up the matter on appeal, the learned appellate Judge, modified the judgement and decree of the trial court thereby declaring the plaintiffs 2 to 5 as the legal heirs of late Devasagayam and defendants 2 to 5 alone are entitled to receive the pension and death cum retirement benefits arising out of the death of the deceased employee. Aggrieved by the above said judgement and decree, the 1st plaintiff is before this court with the instant second appeal.

5. In the ground of appeal, the appellant has raised the following substantial questions of law:-

"(1) Whether the learned Appellate Judge is right in holding that though the Railway Pension Service Rules, 1993 for payment of pension and other benefits to the widow or widows, namely the 2nd wife, she is not entitled for the same, since the marriage is not valid under Section 60 of the Indian Christian Marriage Act?

(2) Is not the Appellate Judge wrong in holding that the appellant not being a legally wedded wife is not entitled for a pension, when the Pension Service Rules, 1993 does not provide for the legal status of the marriage?

6. Earlier, when the second appeal came up for admission, this court had directed notice to the respondents regarding admission. The respondents have accordingly entered appearance through their respective counsel. Today I have heard the

learned counsel for the appellant and the learned counsel for the 1st respondent and also perused the records carefully.

7. The learned counsel for the appellant placing reliance heavily upon the Railway Services (Pension) Rules, 1993, more particularly, Rules 71, 73, 74 and 75 of the Rules contended that the Railway Services (Pension) Rules, provides family pension to the second wife also. The learned counsel in support of his contention, relied on a judgement of a Division Bench of High Court of Bombay at Nagpur Bench reported in CDJ 2015 BHC 492 (Union of India v. Jaywantabai) wherein it has been held that even under Rule 75, the second wife of the deceased employee is entitled for family pension along with the first wife.

8. In yet another judgement relied upon by the learned counsel for the petitioner reported in CDJ 2016 Cal HC 475 (Union of India v. Sushila Devi), a Division Bench of the Hon'ble High Court of Judicature at Calcutta has held that the second wife of the deceased employee was also entitled for family pension.

9. The learned senior counsel for the 1st respondent/defendant submitted that already the appellant filed a suit against the first wife of the deceased employee to declare her as legal heir of the deceased, but, the said suit was dismissed for non prosecution. However, the appellant was permitted to file a fresh suit. That is how, the suit under appeal came to be instituted by the 1st plaintiff. That apart, the first wife is no more and she died leaving behind his legal heirs namely, the defendants 4 and 5 and as per the Pension Rules, they are alone entitled to receive the family pension. Since the plaintiffs 1 to 3 fall under the prohibitory clause, the 1st respondent is not paying the pension to any body. The appellant being the second wife of the deceased employee, she cannot claim family pension under the rules.

10. The learned counsel further submitted that under proviso to Rule 75 of the Railway Services (Pension) Rules, the second wife is not entitled for family pension. Having considered the same only, the learned appellate Judge rejected the claim of the appellant and as such there is no error in the judgement of the first appellate court.

11. I have considered the rival submissions carefully.

12. The only substantial question of law that arises for consideration in this appeal is

Whether the appellant, the second wife of the deceased employee is entitled for Family Pension and other retirement benefits?

13. Sub-rule (i) of Rule 75 of the Railway Services (Pension) Rules, 1983 reads as follows:-

75. Family Pension Scheme for Railway Servants, 1964:-

The Provisions of this rule shall apply:-

... ..
(7) (i) (a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension, shall become payable to her eligible child?

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal share, or if there is only one such other widow, in full, to her.

... .."

14. A bare reading of the above rules would make it clear that family pension is payable to more than one widow in equal share. Even under the proviso to the said Rule, if the widow is not survived by any child, her share of the family pension shall not lapse, but, the same shall be payable to the other widows in equal share or if there is only one such other widow, in full, to her. Even though the first wife died, her legal heirs are entitled entitled for family pension. Thus, as per proviso to the Rule 1st plaintiff is entitled for family pension. In a similar circumstance, in Union of India v. Jaywantabai, the Division Bench of High Court of Bombay has considered the scope of Section 11 of the Hindu Marriage Act and has held that rule 75 is independent of Section 11 of the Hindu Marriage Act and, therefore, under the rule, the second wife is also entitled for family pension. In para 9, the High Court of Bombay has held as follows:-

"9. What we find is that Rule 75 provides for grant of pension even to the second wife/widow of a deceased railway servant along with first wife. In our opinion, this provision of Rule 75 made by the Indian Railways cannot be held to be in conflict or interdiction with Section 11 of the Hindu Marriage Act. On the contrary, in our opinion, for achieving the constitutional goal, as aforesaid, even for the unfortunate second wife/widow, Rule 75 provides for grant of pension to her for her survival in life. At any rate, it must be seen that by virtue of Rule 75, the payment of pension to the two widows is required to be made in equal share, which clearly shows that there is no burden on the treasury or the Indian Railways by inserting the said noble idea. There is no reason for us to hold that Rule 75 violates Section 11 of the Hindu Marriage Act, or that it is contrary to the Hindu Marriage Act, since it does not even remotely provides for any contradiction or interdiction therewith. We, therefore, hold that Rule 75 has been brought in the Rule book by the Indian Railways fully in consonance with the aforesaid constitutional provision."

15. In *Union of India v. Sushila Devi*, cited supra, the High Court of Calcutta has considered Rule 75 of the Rules and has held that the second wife is also entitled for family pension. But, the first appellate Judge has erroneously come to the conclusion that under Section 16 of the Hindu Marriage Act, the second marriage is void and hence, the first appellant is not entitled for family pension as held by the Division Bench of the High Court of Bombay, Rule 75 is independent of the Hindu Marriage Act and as Railway Services (Pension) Rules, itself provides for family pension for more than one widow, the first appellate Judge ought not to have rejected the claim of the appellant on the ground that the second marriage is a valid marriage. In the said circumstances, this court is of the view that the judgement and decree of the learned first appellate Judge is liable to be set aside and the 1st respondent should be directed to pay family pension to the appellant herein also.

16. For the foregoing discussions, the second appeal succeeds and appellant/1st plaintiff is entitled for family pension in equal share along with the other legal heirs and the substantial question of law is answered in favour of the appellant.

17. In the result, the second appeal is allowed and the judgement and decree of first appellate court is set aside and the judgment and decree of the trial court is restored. The appellant/plaintiff is entitled for family pension. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The VII Additional Judge, City Civil Court, Chennai.

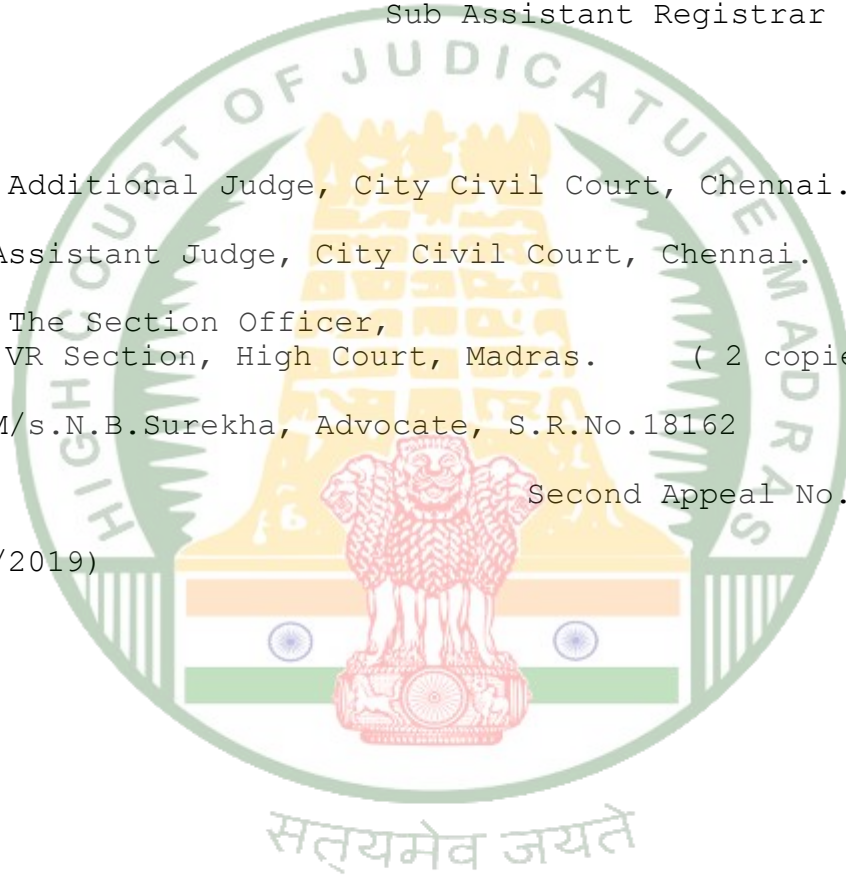
2.The IV Assistant Judge, City Civil Court, Chennai.

copy to: The Section Officer,
VR Section, High Court, Madras. (2 copies)

+1 cc to M/s.N.B.Surekha, Advocate, S.R.No.18162

Second Appeal No.470 of 2016

BR(CO)
SSM(01/07/2019)



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