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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.673 of 2018

And

C.M.P.No.18573 of 2018

N.Indira .. Appellant/1st Defendant

vs.

V.Sugandha ..1st Respondent/Plaintiff

The General Manager of Metro Transport,
Corporation of Chennai,
Pallavan Salai,
Chennai.

The Divisional General Manager of
Metro Transport Corporation,
Madhavaram Depot,
Chennai-600 060. ..2nd & 3rd Respondent/2nd & 3rd Defendant

First Appeal is filed under Section 19(1) of Family Court Act read with Section 96 read with Order 41, Rule 1 of the Code of Civil Procedure against the judgment and decree dated 13.08.2018 made in O.S. No.208 of 2010 on the file of the learned III Additional Judge, Family Court, Chennai.

For Appellant : Mr.S.Sadasharam

For Respondent No.1 : No Appearance

For Respondents-2&3 : Mr.M.Chidambaram

J U D G M E N T

The appeal suit on hand is preferred against the judgment and decree dated 13.08.2018 passed by the learned III Additional Judge, Family Court, Chennai in O.S.No.208 of 2010.



2. The first defendant is the appellant, the first respondent is the plaintiff and the second and third respondents are the second and third defendants respectively in the appeal suit.

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3. The suit was instituted for a declaration that the first respondent/plaintiff is the legally wedded wife of the deceased Metro Transport Corporation of Chennai employee late Mr.R.Venkatesan.

4. The contentions of the first respondent/plaintiff was that she was the legally wedded wife of Mr.R.Venkatesan, Staff No.12086, who was working as an employee in the Metro Transport Corporation at Madhavaram Depot. The deceased employee Mr.R.Venkatesan married the appellant/first defendant Smt.N.Indira on 15.12.1986 and the same was registered before the Marriage Register of Sub-Registrar Office, Pallavaram under the Hindu Marriage Act. The first respondent/ plaintiff herself admitted the fact that the appellant/first defendant married late Mr.Venkatesan prior to her marriage. A female child was born to late Mr.Venkatesan and Smt.N.Indira.

5. The first respondent/plaintiff had stated that during the year 1988, the appellant/first defendant had an illicit intimacy with one Mr.Ravi and left the matrimonial home without the knowledge of the deceased R.Venkatesan. The appellant/first defendant after four years filed a maintenance case in M.C.No.250 of 1992 and an order was passed to pay a sum of Rs.1,000/- per month to herself and to her daughter. The first respondent/plaintiff's husband late Mr.Venkatesan filed divorce petition before the First Additional Family Court at Chennai in O.S.No.865 of 1990 and the said petition was dismissed for default on account of the non-appearance of the petitioner. The deceased Mr.R.Venkatesan subsequently married the plaintiff/first respondent Smt.Sugandha on 13.11.1991 and was leading a matrimonial home with her till his death. Mr.R.Venkatesan filed a divorce petition in O.P.No.1192 of 2004 before the very same Court on the ground of cruelty and desertion and a decree of divorce was granted on 13.09.2004 in favour of the deceased late Mr.R.Venkatesan. However, the deceased late R.Venkatesan had married the first respondent/plaintiff Smt.Sugandha on 13.11.1991 long before the dissolution of marriage with the first wife. The first respondent/plaintiff had one male child born through late Mr.R.Venkatesan and the said child was also died on 08.07.1999. The first respondent/plaintiff's husband Mr.R.Venkatesan died on 31.01.2006 and the Transport Corporation had not settled the terminal and pensionary benefits due to the deceased employee late Mr.R.Venkatesan. Thus, the first respondent/plaintiff instituted the suit.



6. The appellant/first defendant Smt.N.Indira contested the suit by stating that the marriage between the appellant/first defendant and the deceased husband Mr.R.Venkatesan took place on 15.12.1986 and they were living in the matrimonial home and one female child was also born and the allegation of illicit intimacy was false.

7. In view of the fact that the deceased employee failed to maintain the first wife Smt.N.Indira, a maintenance case was filed and the Court ordered the maintenance amount of Rs.1,000/-. Subsequently, O.P.No.1192 of 2004 was filed by the deceased employee and the decree of divorce was granted on 13.09.2004. It was an ex parte decree and the appellant/first defendant filed an application in I.A.No.1653 of 2005 to set aside the ex parte decree and filed another I.A.No.1652 of 2005 to condone the delay in filing the application to set aside the ex parte decree.

8. When the matter was taken up for hearing, it was brought to the notice of the Court that the husband of the appellant/ first defendant died on 31.01.2006 and accordingly, the petition was dismissed as not pressed on 29.03.2006 and now steps are taken to restore the application to set aside the ex parte decree of divorce.

9. It is contended by the appellant/first defendant that the marriage solemnised between the first respondent/plaintiff and her deceased husband on 13.11.1991 was not a legal marriage and the first respondent/plaintiff had suppressed the material particulars about her personal life and she was found to have clandestinely lived with the deceased husband of the appellant/first defendant and the marriage dated 13.11.1991 was not a valid marriage. It is contended that the first respondent/plaintiff was not the legal heir of the deceased late R.Venkatesan and the appellant/first defendant, being the widow of the deceased R.Venkatesan and the daughter of the first wife were entitled for the benefits due to the deceased employee.

10. The Trial Court framed the following issues for consideration:-

"(1) Whether the plaintiff is entitled for declaration as prayed for ?

(2) Whether the first defendant and her daughter V.Revathi are entitled to succeed the estate of the deceased Venkatesan or not ?

(3) Whether the plaintiff is entitled for mandatory injunction as prayed for ?



(4) To what other relief the plaintiff is entitled ?”

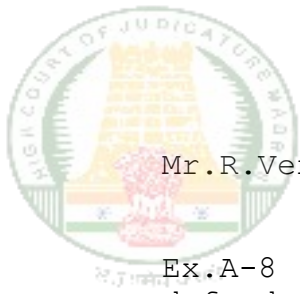
11. With reference to issue Nos.1 and 2, on the side of the first respondent/plaintiff, the first respondent/plaintiff was examined herself as PW-1 and her witnesses were examined as PWs 2 and 3 and Exs.A-1 to A-15 were marked as documents. On the side of the defendants, the appellant/first defendant herself was examined as DW-1 and Exs.B-1 to B-3 were marked as documents.

12. The first respondent/plaintiff deposed in her cross-examination by the appellant/first defendant and had stated that the marriage between the first respondent/plaintiff and the deceased employee Mr.R.Venkatesan was solemnised on 13.11.1991 and the decree of divorce against the appellant/first defendant was passed on 13.09.2004. The decree of divorce was an ex parte decree and further the first respondent/plaintiff, in her cross-examination, admitted that the appellant/first defendant had filed maintenance case in M.C.No.250 of 1992.

13. Till his death, the deceased employee paid maintenance to his first wife, appellant/first defendant. The said fact was informed to her by late Mr.R.Venkatesan. The marriage between the first respondent/plaintiff and the deceased employee Venkatesan was solemnised on 13.11.1991 in Viyasarpadi Amman Koil. The first respondent/plaintiff examined an additional witness Thiru Rathna Raja of Madhavaram, a friend of the deceased Mr.R.Venkatesan, who was examined as PW-2.

14. PW-2, in his cross examination, deposed that the deceased employee R.Venkatesan was known to him and he was a driver in Pallavan Transport Corporation and he knows the deceased employee Mr.R.Venkatesan. Whatever be the case about the deceased Mr.R.Venkatesan was only hear say and he was not personally seen any such thing or he had no personal knowledge about these facts. All of them he heard from somebody, who came to know about these facts.

15. Another additional witness was examined by the first respondent/plaintiff Mrs.F.Mary, Chennai-58 as PW-3. It was admitted that during the year 1981, the first respondent/plaintiff married one Mr.Selvarathinam and she was not living with Mr.Selvarathinam. The marriage between the first respondent/plaintiff and Mr.Selvarathinam was solemnised as per the Christian Customs and there was no dissolution of marriage between Mr.Selvarathinam and the first respondent/plaintiff. It is further deposed by PW-3 that the marriage between her sister, the first respondent/plaintiff and Mr.R.Venkatesan was solemnised in the year 1991 and the first wife was divorced by



Mr.R.Venkatesan during the year 2004.

16. The documents were examined by the Trial Court. Ex.A-8 was the death certificate and the appellant/first defendant as well as the deceased employee loved each other and the marriage was registered on 15.12.1986 before the Sub-Registrar Office, Pallavaram under the Hindu Marriage Act. The marriage between the appellant/ first defendant and the deceased employee was admitted by the parties.

17. The Court perused the documents filed by the first respondent/plaintiff and the cross-examination of the appellant/first defendant also reveals that the marriage between the appellant/first defendant and the deceased employee was solemnised on 15.12.1986 and out of their wedlock, a girl child was born to them and all other facts regarding filing of maintenance case and the ex parte decree of divorce passed on 13.09.2004 were admitted.

18. The Trial Court examined the witnesses and arrived a finding that the appellant/first defendant, who was the first wife of Mr.R.Venkatesan was a divorcee and she did not take any steps to number the set aside petition after the death of Mr.R.Venkatesan and therefore, the Trial Court came to a conclusion that the appellant/first defendant, being a divorcee, has no right in the retirement benefits of late Mr.R.Venkatesan and accordingly, declared that the first respondent/plaintiff is the legally wedded wife of late R.Venkatesan and she is the legal heir of the deceased R.Venkatesan. Accordingly, the Trial Court arrived a conclusion that the first respondent/plaintiff and the daughter of the first wife Revathi are entitled to receive the death cum service and family pension and provident fund and the arrears of pension and monthly pension and other monetary benefits of the deceased employee Mr.R.Venkatesan.

19. The first respondent/plaintiff is entitled to get arrears of pension and family pension and other benefits of late Mr.R.Venkatesan. The Trial Court further directed the second and third defendants to settle the retirement and pensionary benefits to the first respondent/plaintiff with the consent of the daughter of the first wife Ms.Revathi equally and to pay the family pension to the first respondent/plaintiff. Accordingly, answered issue Nos.1 and 2. Issue No.3 was also decided in faovur of the first respondent/plaintiff and finally, the suit was decreed that by declaring that the first respondent/plaintiff was the legally wedded wife of late Mr.R.Venkatesan, Driver of Metro Transport Corporation, Chennai and a mandatory injunction was granted, directing the defendants 2 and 3 to pay the death cum service and family pension and provident fund and the arrears of pension and monthly pension



and other monetary benefits of the deceased Metro Transport Corporation of Chennai employee late Mr.R.Venkatesan, to the first respondent/plaintiff with the consent of the daughter of the first wife Ms.Revathi, equally and to pay the family pension to the first respondent/plaintiff.

20. The correctness of the decree is to be decided with reference to the principles of law.

21. The admitted facts are that the appellant/first defendant Smt.N.Indira married the deceased employee Mr.R.Venkatesan in the year 1986 and the first respondent/plaintiff Smt.V.Sugandha married the deceased employee Mr.R.Venkatesan in the year 1991.

22. The first respondent/plaintiff herself admitted the fact that she married deceased employee Mr.R.Venkatesan in the year 1991 when the marriage between the appellant/first defendant Smt.N.Indira and late Mr.R.Venkatesan was in existence. In other words, during the lifetime of the first wife, the first respondent/ plaintiff married the deceased employee Mr.R.Venkatesan in the year 1991 as his second wife.

23. The deceased employee Mr.R.Venkatesan was an employee of the Metro Transport Corporation, which is a State owned undertaking. The Service Rules and Regulations as well as the Conduct Rules enumerates that entering into a contract for second marriage during the lifetime of the first wife itself is a misconduct.

24. This apart, the second marriage during the lifetime of the first wife is a bigamy and the second marriage itself is invalid in the eye of law. Any marriage solemnised during the existence of the first marriage and the spouse is living, then the second marriage is null and void and therefore, the same cannot be construed as a valid marriage.

25. In respect of the present case on hand, the marriage between the appellant/first defendant and the deceased late Mr.R.Venkatesan was solemnised in the year 1986 and the second marriage between the first respondent/plaintiff Smt.V.Sugandha and the deceased late Mr.R.Venkatesan was solemnised in the year 1991. Therefore, the very marriage between the deceased late Mr.R.Venkatesan and the first respondent/plaintiff Smt.V.Sugandha is null and void and cannot be considered as a valid marriage.

26. This apart, the Trial Court arrived a conclusion that the appellant/first defendant was the divorcee and she did not take any steps to number the set aside petition after the



death of late Mr.R.Venkatesan and accordingly, the Trial Court concluded that the appellant/first defendant, being a divorcee, had no right in the retirement and pensionary benefits of the deceased Mr.R.Venkatesan.

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27. As far as the above findings are concerned, undoubtedly, the appellant/first defendant was a divorcee at the time of the institution of the suit in O.S.No.208 of 2010. However, an ex parte decree of divorce was passed in the year 2004, well after the marriage between the deceased employee and the first respondent/plaintiff in the year 1991. Undoubtedly, the appellant/first defendant is not entitled for the pensionary benefits of late Mr.R.Venkatesan, as the marriage between the appellant/first defendant as well as the employee was dissolved by way of a decree of divorce in the year 2004.

28. However, the ineligibility of the first wife, who was a divorcee, would not automatically provide a right to the first respondent/plaintiff whose marriage was also null and void in the eye of law. Therefore, the ineligibility of the first wife on account of decree of divorce would not provide an entitlement to the second wife whose marriage was not a valid one in the eye of law. Thus, for the purpose of family pension and pensionary benefits, any spouse has to establish that she is the legally wedded wife of the deceased employee and the marriage was a valid one. Only in the event of a valid marriage, the terminal and pensionary benefits of the deceased employee can be settled in favour of the wife.

29. When the parties had admitted that the marriage between the first respondent/ plaintiff and the deceased employee Mr.R.Venkatesan was solemnised on 13.11.1991 and during that point of time, the marriage between the appellant/first defendant Smt.N.Indira and the deceased Mr.R.Venkatesan was in existence, then the second marriage itself is null and void. The ex parte decree of divorce was granted only on 13.09.2004, after a lapse of about 13 years from the date of second marriage between the deceased Mr.R.Venkatesan and the first respondent/plaintiff Smt.V.Sugandha. Thus, the marriage itself is null and void.

30. As per the Pension Rules/Scheme, only a legally wedded spouse is entitled for the terminal and pensionary benefits of the deceased employee. Once the first respondent/plaintiff has not established that she is the legally wedded spouse of the deceased employee, then she is incapable of getting any relief from the hands of the Trial Court.

31. The appellant/first defendant, who was a divorcee, may not be entitled for the family pension. However,



ineligibility of the first wife would not entail the second wife for receiving the family pension, as in the present case, the second marriage solemnised between the deceased employee and the first respondent/plaintiff was null and void. Dis-entitlement of the first wife would not be an automatic entitlement to the second wife, whose marriage was not valid in the eye of law. The very relief sought for in the suit itself is for a declaration that the first respondent/plaintiff is the legally wedded wife of the deceased employee. Thus, the Trial Court committed an error in granting the relief in favour of the first respondent/plaintiff.

32. The first respondent/plaintiff, in the event of establishing the legality of the marriage between the deceased employee, may be entitled for the pension benefit and not otherwise. When the solemnisation of the second marriage during the year 1991 was not disputed by the parties, more specifically during the subsistence of the first marriage with the appellant/first defendant, then there is no reason for the Trial Court to arrive a conclusion that the first respondent/plaintiff is entitled for the family pension and pensionary benefits. Undoubtedly, the daughter, born through the first wife to late Mr.R.Venkatesan, is the legal heir and she would be entitled for the terminal and pensionary benefits and as far as the family pension is concerned, the spouse alone is entitled for the family pension. The other benefits shall be settled in favour of the daughter, who is the legal heir of the deceased employee Mr.R.Venkatesan.

33. As far as the family pension is concerned, the spouse alone is entitled for the family pension. As regards the Death Cum Retirement Gratuity (DCRG) and other terminal benefits are concerned, the legal heirs of the deceased employee are entitled. In the present case on hand, the first respondent/plaintiff cannot be considered as a legal heir since the marriage between the deceased employee Mr.R.Venkatesan and the first respondent/plaintiff is null and void and therefore, the daughter of late Mr.R.Venkatesan Ms.Revathi is the legal heir as of now and she would be entitled to get all the terminal benefits, including the DCRG, provident fund and arrears of salary or leave salary etc.

34. However, the daughter is not entitled to receive the family pension in the absence of a specific clause in the Pension Scheme. Therefore, the terminal and pensionary benefits are to be settled in favour of the daughter of the deceased late Mr.R.Venkatesan. However, the family pension cannot be granted either to the first respondent/plaintiff or the appellant/first defendant as the appellant/first defendant was a divorcee and the first respondent/plaintiff is not a legally wedded wife of



the deceased employee late Mr.R.Venkatesan.

35. This being the principles to be followed, the respondents 2 and 3/defendants 2 and 3 are bound to settle the terminal benefits in favour of the daughter of the deceased employee late Mr.R.Venkatesan and as far as the family pension is concerned, neither the first respondent/plaintiff nor the appellant/first defendant is entitled for the same.

36. Thus, the Trial Court has committed the perversity and the findings on the issues are also infirm. Accordingly, the judgment and decree dated 13.08.2018 passed by the learned III Additional Judge, Family Court, Chennai in O.S.No.208 of 2010 stands set aside and consequently, the appeal suit stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

Svn

To

The III Additional Judge,
Family Court, Chennai.

Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.S.Sadasharam, Advocate SR.No.104251

+1cc to Mr.M.Chidambaram, Advocate SR.No.103898

A.S.No.673 of 2018

GJ(CO)
GMY(13/01/2020)