

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 20.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 964 of 2006

- 1.Ramathal @ Nagammal (Died)
- 2.Sundarambal
- 3.Ayyammal
- 4.Dhanalakshmi
- 5.Shanmugasundaram (Died)
- 6.Easwari
- 7.Jayalakshmi
- 8.Karthikeyan
- 9.Suresh
- 10.Dinesh
- 11.Mani
- 12.Viswanathan
- 13.Kavitha

(Appellants 11 to 13 brought on record vide order of this Court dated 15.10.2019 in C.M.P.No.21554/2019 in S.A.No.964/2006) ...Appellants/Plaintiff

Vs.

- 1.Nanjammal @ Chinnathai (Died)
- 2.The Manager,
Indian Overseas Bank,
Big Bazar Street,
Coimbatore.
- 3.The Treasury Officer,
Coimbatore District,
Treasury.

...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C. to set aside the judgement and decree passed in A.S.No.150 of 2005 on the file of the Principal Sub Court of Coimbatore, dated 29.12.2005 reversing the judgement and decree passed in O.S.No.1998 of 2000 on the file of the II Additional District Munsif Court, Coimbatore dated 23.03.2005 by allowing this appeal.

For Appellants : Mr.S.Gunalan

For R1 : Died
For R2 & R3 : Notice Served
No appearance.

J U D G M E N T

This second appeal is preferred as against the judgement and decree dated 29.12.2005, passed in A.S.No.150 of 2005 on the file of the Principal Sub-Court, Coimbatore, confirming the judgment and decree dated 23.03.2005 passed in O.S.No.1998 of 2000 on the file of the II Additional District Munsif Court, Coimbatore.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiff in brief is as follows:-

3.1. The suit is filed for declaration and permanent injunction. The first plaintiff is the wife and the plaintiffs 2 to 6 are children of late Nanjappan, who was working as Office Assistant in Library, Coimbatore. The plaintiffs 7 to 10 are the wife and children of one Ganesan of the predeceased son of said Nanjappan. The said Nanjappan died interstate on 16.12.1997 leaving behind the plaintiffs as his legal representatives. The plaintiffs are only the persons entitled to claim the entire death benefits including pension on account of his death. While being so, the first defendant falsely claimed herself as the wife of the said late Nanjappan as made arrangements to get amount from the third defendant to receive the terminal benefits and pension of the deceased Nanjappan. In fact, the first defendant also opened an account with the second defendant by falsely claiming her name as Rangammal, with false address. Therefore, the plaintiff issued telegrams to the second defendant to conduct an enquiry and disburse any amount. On receipt of the same, the second defendant stopped disbursement of the amount temporarily. Hence the suit.

4. The first defendant resisted the plaintiffs case and filed written statements stating that the first defendant got married with late Nanjappan and lead the married life for more than 25 years and there are no issues out of their wedlock. He was allotted a house at Anna Nagar, Velandipalayam, Coimbatore. Since there was no issues, he used to stay in the said house and once in a week he used to go to the first defendants house at remote village. Further, stated that the first plaintiff appeared to have illegal intimacy with the deceased Nanjappan and after came to the knowledge of the first defendant about their illegal intimacy, the first plaintiff used to stay with late Nanjappan as father to her children. After the death of the Nanjappan, the plaintiffs had taken all steps to get statutory benefits namely the pension by suppressing the

existence of the first defendant. If at all, they got married, the first plaintiff would have given the date of birth certificate and they would have mentioned the age. In fact, after the death of the said Nanjappan, the first defendant was called upon by the Pensioners Controlling Authority and after production of pass book, issued by the second defendant, the pensioners pass book was issued in favour of the first defendant. Therefore, the plaintiff is not entitled to file the suit for declaration to declare them as legal heirs. Already, the third defendant conducted enquiry and declared the entitlement of pension to the first defendant and as such, the plaintiffs are not entitled for any relief as prayed by them. Further stated that the plaint itself is bad for non-compliance of Section 80 of Civil Procedural Code Notice and as such, it is liable to be dismissed.

5. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and twenty one documents were marked as Ex.A.1 to Ex.A.21. On the side of the defendants, they examined DW.1 to DW.2 and were marked as Ex.B.1 to Ex.B.4. Based on the materials placed on record, both the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by the same, the first defendant alone filed an Appeal Suit in A.S.No.150 of 2005 and the same was also allowed and the suit filed by the plaintiffs is dismissed. Aggrieved by the same, the plaintiffs preferred this appeal.

6. At the time of admission of this second appeal, the following substantial questions of law were formulated for consideration:

- a) Whether the Lower Appellate Court is right in rejecting the oral and documentary evidence, Pws. 1 & 2 and Exs.A1 to A21 without assigning any reason.
- b) Whether the court below is right in drawing adverse inference for non-examination of the 1st defendant, when the plaintiffs have proved the factum of the marriage by examining Pws.1 & 2 and marking Exs.A1 to A.21.
- c) Whether the Lower Appellate Court is right in dismissing in the suit without considering the public documents in Ex.A.19 to A.21.

7. The learned Counsel appearing for the plaintiffs are present and reiterated the averments set out in the plaint

as well as the written statement.

Heard Mr.S.Gunalan, learned counsel appearing for the plaintiffs.

8. The suit is filed for declaration and permanent injunction, declaring that the plaintiffs are legal heirs of the deceased Nanjappan. The first plaintiff is claimed to be a legally wedded wife to the said Nanjappan and the others are their legal heirs. According to the first defendant, she got married with deceased Nanjappan. Since they had no issues, the first plaintiff claimed to be a wife and others are born through the said Nanjappan. Though the Trial Court decreed the suit, the first appellate Court reversing findings of the trial Court, dismissed the suit. Now the first defendant died without any issues. It is also made clear that she categorically averred in her written statement that there are no issues out of the wedlock between the first defendant and deceased late Nanjappan. Further, the learned counsel for the appellant submitted that only few 1000's are lying in the account as terminal benefits of deceased Nanjappan. Insofar as the family pension is concerned now both the persons namely the first plaintiff as well as the first defendant died and as such, no one is entitled for family pension of the deceased Nanjappan. The terminal benefits are only available and lying in the account with the second defendant. Except this amount, no other property is there to divide between the first plaintiff and the first defendant.

9. Though notice served on third defendant, no one appeared on behalf of him. The first defendant died, since she had no issues and as such, no steps were taken to implead the legal heirs of the deceased first defendant.

10. Considering the above facts and circumstances, without going into the substantial questions of law formulated by this Court, this second appeal is disposed of with the following directions:

(i) The plaintiffs are entitled for terminal benefits lying in the account with the second defendant and all are entitled for equal share.

(ii) The second defendant is directed to disburse the terminal benefit amount of late Nanjappan, lying in the account forthwith of first plaintiff as well as the first defendant to the plaintiffs.

11. With the above directions, this Second Appeal is disposed of. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

pns

To:-

1. The Principal Subordinate Court,
Coimbatore
2. The II Additional District Munsif Court,
Coimbatore
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1 cc to Mr.Gunalan Advocate sr3468

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