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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.583 of 2020  
and  
C.M.P.No.12275 of 2020

S.Saraswathy

.. Appellant

Vs.

1. The Tahsildar,  
Kancheepuram
2. The Accountant General Officer  
(A&E) Tamilnadu, Mount Road,  
Chennai.
3. The State of Tamilnadu,  
Represented by the District Collector,  
Kancheepuram District,  
Kancheepuram.
4. Sendhamaraiselvei
5. Appu @ Subbu
6. Anitha Bharathy

.. Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 12.02.2020 in A.S.No.46 of 2015 on the file of the Additional Subordinate Judge, Kancheepuram, confirming the judgment and decree dated 04.07.2014 in O.S.No.268 of 2006 on the file of the Additional District Munsif, Kancheepuram.

For Appellant : Mr.K.V.Babu

For Respondents : Mr.N.Manikandan Spl.G.P (CS)  
for R1 to R3

#### J U D G M E N T

(The case has been heard through video conference)

This second appeal is filed against the concurrent findings of the Courts below regarding the status of the appellant herein to seek the retirement benefit of the deceased V.Subburaman.

2. Heard the learned counsel for the appellant and the learned Special Government Pleader for the respondents 1 to 3.



3. The short point involved in this case is that the appellant herein along with her daughter and son had filed a suit for declaration that they are the legal heirs of the deceased Subburaman who retired as Village Administrative Officer and died on 30.04.2004.

4. The suit was contested by the 4<sup>th</sup> respondent herein on the ground that she is the legally wedded wife of late V.Subburaman and a female child by name Ajitha was born to them in the year 1996. Late V.Subburaman was selected and appointed as a VAO in the year 1986 and deserted her and developed illegal intimacy with the 1<sup>st</sup> appellant herein. Therefore, maintenance suit was filed by her against the Subburaman in O.S.No.291 of 1999 before the District Munsif Court, Aruppukottai. The said suit was dismissed but on appeal in A.S.No.14 of 2006, it was allowed. Thus the marital status of the 4<sup>th</sup> respondent has been held in favour of the 4<sup>th</sup> respondent by a competent Court that she being the legally wedded wife, she alone is entitled for the retirement cum death benefits of late V.Subburaman.

5. The trial Court on considering the evidence has partly allowed the suit holding that the appellant is not the legally wedded wife. Her alleged marriage with Subburaman during the earlier marriage was in subsistence. Therefore, she is not entitled for any benefits, but the other two plaintiffs who were born to Subburaman through Saraswathy are entitled for their shares. In the appeal, the lower appellate Court considering the facts and the admission of Subburaman during the cross examination in the intra party suit has confirmed the trial Court judgment and decree.

6. In this Second Appeal, the learned counsel for the appellant contends that the Courts below ought to have taken the entry of the pension paper submitted by late V.Subburaman, wherein he has appointed the appellant as the nominee. Further the statement of Subburaman made in O.S.No.218 of 2003, cannot be the deciding factors to the rival claims in the present suit. Since the 4<sup>th</sup> respondent Senthamarai selvi had not disclosed the date of marriage, it is improper on the part of the Courts below to hold that her marriage is prior to the marriage of the appellant with the Subburaman which he has proved through evidence that the marriage took place on 13<sup>th</sup> day of Tamil month Avani 1997.

7. From the perusal of the pleadings and other records, it is amply clear that the 4<sup>th</sup> respondent herein had married V.Subburaman and the female child was born to her. However Subburaman has deserted her and living with the appellant which has prompted the 4<sup>th</sup> respondent in filing the suit for maintenance in the year 1999 which culminated in a decree and judgment favouring her.



8. In the said proceedings, Subburaman has specifically admitted their marriage and also conceded the right of the 4<sup>th</sup> respondent to get his retirement benefits and other pensionary benefits. In the said circumstances, this Court finds that the evidence is not in favour of the appellant and on facts, both the Courts have held against the appellant that there is no substantial question of law is involved in this matter for entertaining the second appeal.

9. Accordingly, the Second Appeal is devoid of merits and hence dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpl

To

1. The Additional Subordinate Judge,  
Kancheepuram.
2. The Additional District Munsif,  
Kancheepuram.

Copy to :

1. The Tahsildar,  
Kancheepuram.
2. The Accountant General Officer  
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3. The District Collector,  
Kancheepuram District,  
Kancheepuram.

+1cc to the Government Pleader, S.R.No.36211

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SPD(CO)  
HS(05/08/2021)