

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 28.02.2020

Pronounced On : 13.03.2020

C O R A M

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice KRISHNAN RAMASAMY

A.S.No.795 of 2019

and C.M.P.No.24248 of 2019

V.Ramani

...Appellant/1st Defendant

Vs

1.M.Veeramangai

2.The Dean

No.16/1, Mandapam Santhu,
Kilpauk, Chennai-3.

3.The Registrar of Medical Officer,
Rajiv Gandhi Government General Hospital,
Chennai-3.

4.The Tahsildar,
Purasai Perambur Taluk,
Chennai-11.

...Respondents/plaintiff &
Defendants 2 to 4

Prayer: Appeal preferred under Order LXI rule 1 R/w Section 96 C.P.C against the judgment and decree passed in O.S.No.254 of 2012 on 19.08.2019 on the file of the learned V Additional Family Court, Chennai.

For Petitioner : Mr.P.Vijendran

For Respondent : Mr.C.Mariappan
No.1

J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J.)

This appeal has been filed challenging the judgment and decree passed in O.S.No.254 of 2012 dated 19.08.2019 by the V Additional Family Court, Chennai.

2. For the purpose of convenience the parties in this appeal are referred with the same status as referred in the O.S.No.254 of 2012.

3. The plaintiff filed the suit in O.S.No.254 of 2012, before the V Additional Family Court, Chennai, to declare that the plaintiff is a legally wedded wife of her deceased husband namely Narayan @ Devarajan; to declare that the marriage between first defendant, husband of plaintiff which took place at Tirutani Murugan Temple on 08.09.2005 as null and void; to restrain the defendants 2 and 3 not to disburse the terminal and other benefits of deceased of Narayanan @ Devarajan to any one to claim except plaintiff and to issue appropriate direction to the fourth defendant to issue legal heir certificate to the plaintiff.

4. According to the plaintiff, the marriage between plaintiff and one Narayanan @ Devarajan was solemnized on 01.12.1995 as per Hindu rites. Out of the said wedlock a female child was born on 05.10.1996. The deceased Narayanan filed F.C.O.P.No.1437 of 1997 for divorce before the Principal Family Court, Chennai and it was allowed. The plaintiff filed O.P.No.1696 of 2000 for restitution of conjugal rights before the same Court and it was dismissed. Aggrieved by the said order of divorce dated 20.01.2002, the plaintiff in the suit approached this Hon'ble Court in C.M.A.Nos.2968 and 2969 of 2005 and also obtained interim stay to prevent the action of judgment and decree dated 20.01.2005 passed by the Principal Family Judge, Chennai. Though the deceased husband filed the application to vacate the interim stay, this Court dismissed the said petition.

5. The said Civil miscellaneous petition was filed on 18.04.2005 and it got belatedly numbered as C.M.A.Nos.2968 and 2969 of 2005. However, both the C.M.A's were dismissed for default on 06.11.2007. The husband of the plaintiff was passed away on 28.05.2011. Until the demise of the said Narayanan, no appeal was preferred by the plaintiff. Meanwhile, the deceased Narayanan got married with the first defendant on 07.09.2005, when the C.M.A's was pending, Therefore, according to the plaintiff, the marriage between the first defendant and the deceased Narayanan is null and void. Hence, the plaintiff filed the suit to declare that she is the legally wedded wife and for the consequential relief as prayed in the plaint.

6. It was the contention of the first defendant that she got married with the deceased Narayanan, on 07.09.2005, on the assurance given by her husband and her mother-in-law that no appeal has been preferred by the plaintiff against the order of divorce. At the time of her marriage, she was not aware of the

pending of C.M.A's and the existence of the interim order and out of said wedlock a male child was born and named as N.Manikandan.

7. Further, the first defendant's contention is that the C.M.A.Nos.2968 and 2969 of 2005 disposed on 06.11.2007. As the same was dismissed for non-prosecution, no appeal was preferred until the demise of Narayanan on 28.05.2011. The first defendant was taking care of Narayanan during his illness. As the first defendant is the legally wedded wife of deceased Narayanan, signed all the papers when the body of her husband was handedover to her. The legal heir certificate was issued by the fourth defendant to the first defendant including her and her son namely N.Manikandan, her mother in law and N.Surya @ Keerthana as legal heir of the deceased Narayanan. In fact, the plaintiff also made an attempt to obtain legal certificate and the same was rejected. The defendants 2 and 3 after knowing the legal position of the plaintiffs with deceased Narayanan rightly refused to the plaintiff's obligation and rejected the same. Therefore, she contended that there is no merits in the plaint and the suit is liable to be dismissed.

8. After hearing both the parties, the trial court framed the following issues:

"(i) Whether the plaintiff is entitled for the relief to declare that the plaintiff's is the legally wedded wife of deceased Narayanan @ Devarajan and she alone is entitled for the terminal benefits and other benefits of her above husband?

(ii) Whether the plaintiff is entitled for the relief to declare that the marriage between 1st defendant and the husband of plaintiff which took place at Tirutani Murugan Temple on 08.09.2005 as null and void?

(iii) Whether the plaintiff is entitled for the relief to grant permanent injunction restraining the 2 and 3 defendants not to disburse the terminal and other benefits of deceased Narayanan to any one to claim on this behalf except this plaintiff?

(iv) Whether the plaintiff is entitled for the relief to direct the 4th defendant to issue the legal heir certificate to the plaintiff as she is the legally wedded wife of deceased Narayanan @ Devarajan exclusively and to cancel any legal heir certificate issued to any one on behalf of deceased Narayana?

(v) To what other relief the plaintiff is entitled for?"

9. On behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A5 were marked. On behalf of the defendants D.W.1 was examined and Exs.B1 to B6 were marked.

10. After hearing both the parties and perusing the materials available the Court below held that D.W.1 in her chief examination deposed that she got married with Narayanan on 07.09.2005 and she came to know about the details of C.M.A's, from the proceedings of the present suit in O.S.No.254 of 2012 only. Therefore, the Court below came to the conclusion that when the litigation was pending between the plaintiff and her husband, the first defendant married Narayanan. Hence, the marriage took place between the first defendant and Narayanan is null and void and held that the plaintiff is the legally wedded wife and further the Court declared that Ex.B5/legal heir certificate is null and void and directed the fourth defendant to issue fresh legal heir certificate. Further, the Court below held that only the plaintiff is entitled for the terminal benefits and other benefits of deceased Narayanan. Aggrieved over the said order the appellant/first defendant filed the present appeal.

11. The counsel appearing for the appellant/first defendant would contend that the appellant married deceased Narayanan on 07.09.2005. The said Narayanan and his mother informed her that deceased Narayanan got divorce from the plaintiff and no appeal has been preferred. Believing the said statement she agreed to get marry with the Narayanan. She has also deposed the same in her chief examination. Further, he contended that even assuming that the marriage was solemnised when the case was in force, subsequently, the C.M.A's were dismissed on 06.11.2007. Therefore, the decree and judgment for divorce was made absolute and the same shall take effect from the judgment and decree dated 20.01.2005. Further, on behalf of the plaintiff, no case was made out. Without considering all these facts and without appreciating the settled legal position of law, the Court below wrongly came to the conclusion that the plaintiff was the legal wedded wife and wrongly declared that the marriage between the first defendant and Narayanan as null and void and subsequently issued direction to the fourth defendant to cancel the legal heir certificate /B5 and to issue fresh legal heir certificate in favour of the plaintiff is totally illegal and liable to be set aside.

12. On the other hand, the learned counsel who appeared for the first respondent/plaintiff seeks time when the matter was called on 24.01.2020. On the said date the appellant was present in compliance of the order of this Court dated 05.12.2019. Considering the statement made by the learned

counsel for the first respondent/plaintiff, the matter was directed to be listed on 05.02.2020. When the matter was came up for hearing on 05.02.2020, it was re-posted to 06.02.2020. On 06.02.2020, the learned counsel for the appellant/first defendant was present but there was no representation for the first respondent/plaintiff. Hence, the matter was posted on 10.02.2020 under the caption "for orders". Subsequently, on the other two occasions, the counsel for the first respondent/plaintiff seeks time and the matter was posted on 18.02.2020. When the matter was listed on 18.02.2020, the contesting first respondent/plaintiffs seeks time on the ground that change of vakalat has been given by the counsel but none appeared for the first respondent/plaintiff. Therefore, we recorded in the order dated 18.02.2020 that the first respondent/plaintiff is not interested in conducting the case. In order to give final chance the matter was directed to be listed on 25.02.2020. On 25.02.2020, there was no representation on behalf of the first respondent/plaintiff. Hence, the matter was once again directed to be listed on 27.02.2020. When the matter was taken up on 28.02.2020, unfortunately, no one appeared for the respondent which clearly shows that the first respondent/plaintiff was not interested in pursuing the case.

13. Heard the learned counsel for the appellant/first defendant and perused the materials available on record.

14. It is an admitted fact that the deceased Narayanan filed F.C.O.P.No.1437 of 1997 for divorce and the first respondent/plaintiff filed O.P.No.1696 of 2000 for the restitution of conjugal rights before the Principal Family Court, Chennai. The Court below allowed the petition filed by the deceased Narayanan for divorce and subsequently dismissed the petition filed by the first respondent/plaintiff for restitution of conjugal rights on 20.01.2005. Subsequently, the plaintiff filed C.M.A.Nos.2968 and 2969 of 2005, challenging the order passed by the Principal Family Court, Chennai dated 20.01.2005. The said C.M.A's were dismissed for default on 06.01.2007. Menawhile, the said Narayanan got married with the first defendant/appellant on 07.09.2005. Due to the wedlock a male child was born namely N.Manikandan. Thereafter, the said Narayanan expired on 28.05.2011. After the dismissal of C.M.A until the demise of the Narayanan no steps were taken by the first respondent/plaintiff to restore the appeal.

15. Therefore, once the C.M.A's were dismissed, the judgment and decree of divorce made on 20.01.2005 become absolute. These aspect was not considered by the Court below. Further, first defendant was examined as D.W.1 and she also deposed that when her husband and mother-in-law met her for marriage proposal,

they have informed that Narayanan got divorce from the plaintiff and no appeal was preferred against the order of divorce. Believing the said statement she agreed for marriage and the marriage was solemnised on 07.09.2005 at Tirutani. Therefore, we do not find any fault on the part of the appellant/first defendant for the marriage solemnised on 07.09.2005 at Tirutani. Further, we are also of the view that the appellant/first defendant cannot be held liable for anything which was not within her knowledge at the time of marriage.

16. The judgment and decree dated 20.01.2005 of the lower court granting the divorce will become made absolute immediately upon the dismissal of C.M.A's. Therefore, the prayer in the suit to declare that the plaintiff is legally wedded wife and consequently entitled for terminal benefits does not arises. The finding of the Court below that the plaintiff is legally wedded wife is also barred by the law of res-judicata. The status of the plaintiff and deceased Narayanan was already decided in F.C.O.P.No.1437 of 1997 vide judgment dated 20.01.2005. Therefore, once again declaring the plaintiff as legally wedded wife in O.S.No.254 of 2012 does not arise. When such of the view, the finding of the court below that the marriage between the first defendant and Narayanan that took place on 07.09.2005 is null and void is not sustainable and the same is suffered with infirmities. Therefore, the consequential order of direction to the defendants 2 and 3 not to disburse the terminal and other benefits of deceased Narayanan to any one to claim except plaintiff is also liable to be set aside. Further, the order passed by the trial court canceling the legal heir certificate and directing the fourth defendant to issue fresh legal heir certificate is unsustainable in law. Accordingly, the plaintiff is not entitled for any of the prayer sought in the plaint.

17. Therefore, we are of the view that the judgment and decree passed by the court below dated 19.08.2019 is suffered with infirmities without assigning any reason and against the settled proposition of law. Therefore the same is liable to be set aside. Accordingly, the judgment and decree made in O.S.No.254 of 2012 dated 19.08.2019 on the file of the V Additional Family Court, Chennai is set aside.

18. In the result, the appeal is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

/true copy/

Sub Asst. Registrar

rst

To

1.The V Additional Family Judge,
Chennai.

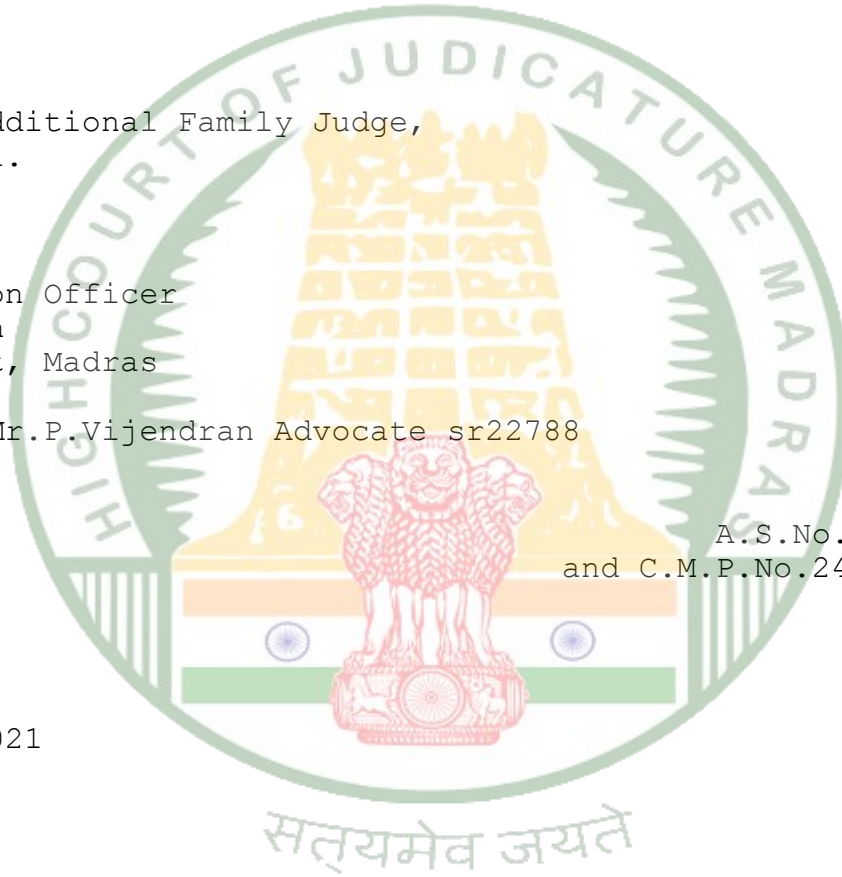
Copy to

The Section Officer
VR section
High Court, Madras

+1 cc to Mr.P.Vijendran Advocate sr22788

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