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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.1315 of 2007

&

CMP.No.3340 of 2007

K.Annammal

...Appellant

Vs

1. Pushpa

2. The Welfare Officer,
O/o. The General Manager,
Personal Branch,
ICF, Indian Railway,
Chennai - 600 038.

3. The General Manager,
Union of India,
ICF, Indian Railway,
Chennai - 600 038

...Respondents

PRAYER: Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 25.02.2005 passed by the District and Sessions Court / Fast Track Court No.1, Chennai - 1 in A.S.No.183 of 2004 preferred by the 1st respondent against the decree and Judgment dated 19.03.2003 in O.S.No.1849 of 1998 on the file of the XVI Assistant City Civil Court, Chennai.

For Appellant : Mr.V.Chandrakanthan

For Respondent 1 : No appearance

For Respondents 2 &3: Mr.C.V.Ramachandramoorthy

JUDGMENT

This second appeal has been filed challenging the reversal findings of the lower appellate court under its judgement and decree dated 25.02.2005 passed in A.S.No.183 of 2004 by which, the suit filed by the Appellant/plaintiff in O.S.No.1849 of 1998 came to be dismissed.

2. The Appellant is the plaintiff in the suit O.S.No.1849 of 1998 on the file of the XVI Assistant City Civil Court, Chennai.



She filed a suit against the respondents 1 & 2/defendants 1 & 2 seeking for the following reliefs:

- (a) for mandatory injunction declaring that she is the legally wedded wife of late P.Kasi;
- (b) for mandatory injunction directing the first respondent/first defendant to return back the original compromise agreement dated 19.02.1998 executed by the Appellant/plaintiff out of force and compulsion;
- (c) for permanent injunction restraining the first respondent/first defendant for obtaining terminal and death benefit of P.Kasi from the second defendant.

3. It is the case of the Appellant/plaintiff as seen from the plaint that she is the legally wedded wife of late P.Kasi who was employed with the Indian Railways till his death on 11.04.1997. According to her, she was nominated as a nominee by her husband late P.Kasi in the Railway records and after his death, she submitted her representation on 15.05.1997 seeking for settlement of terminal and death benefits of her late husband P.Kasi in her favour.

4. A counter claim has been made by the first respondent/first defendant before the Indian Railways claiming that she is the legally wedded wife and she is alone entitled for the terminal benefits of late P.Kasi. Since the Appellant/plaintiff was unable to get the terminal and death benefit of P.Kasi from the respondents 2 and 3 who are his employers, the Appellant/plaintiff has filed the suit in O.S.No.1849 of 1998.

5. A written statement was also filed by the first respondent/first defendant in the said suit denying the allegations of the Appellant/plaintiff and stating that she is the legally wedded wife of the deceased P.Kasi and not the Appellant/plaintiff. According to her, she alone is entitled to get the terminal and death benefits of late P.Kasi from the respondents 2 and 3.

6. Issues were framed by the trial court and the trial court after trial by judgment and decree dated 19.03.2003 passed in O.S.No.1849 of 1998 decreed the suit in favour of the Appellant/plaintiff by declaring that the Appellant/plaintiff is the legally wedded wife of the deceased P.Kasi and has also granted consequential relief sought for in the suit. Aggrieved by the said judgment and decree dated 19.03.2003 passed in O.S.No.1849 of 1998, the first respondent/first defendant preferred an appeal before the lower appellate court namely the District and Sessions Court, (Fast Track Court-1), Chennai in A.S.No.183 of 2004.



7. By Judgment and Decree dated 25.02.2005 passed in A.S.No.183 of 2004, the lower appellate court reversed the findings of the trial court by dismissing the suit O.S.No.1849 of 1998 filed by the Appellant/plaintiff. The lower appellate court has allowed the appeal filed by the first respondent/first defendant based upon the evidence of DW3 and DW4 who are the daughters of the Appellant/plaintiff. The lower appellate court in its judgment and decree dated 25.02.2005 passed in A.S.No.183 of 2004 though holding that DW3 and DW4 were borne to the Appellant/plaintiff has reversed the findings of the trial court by holding that the daughters namely DW3 and DW4 are alone entitled to receive the retirement benefits of late P.Kasi excluding the Appellant/plaintiff. The lower appellate court has however, accepted the findings of the trial court that the first respondent/first defendant is not the legally wedded wife of the deceased P.Kasi.

8. The lower appellate court reversed the findings of the trial court only based on Ex.P10 dated 18.02.1998 which is a no objection letter given by the daughters of the Appellant/plaintiff namely DW3 and DW4 authorising the first respondent/first defendant to receive the benefits from the second and third respondents/second and third defendants. The lower appellate court has also given a finding as seen from the impugned judgement that it is no doubt true that the Appellant/plaintiff is the legally wedded wife of the deceased Kasi and she has been living separately.

9. Aggrieved by the findings of the lower appellate court and aggrieved by the Judgment and decree passed by the lower appellate court in A.S.No.183 of 2004, this second appeal has been filed by the Appellant/plaintiff.

10. This Court admits the second appeal on the following substantial questions of law:

"1.Whether the daughters or the sons can be held as they are entitle to succeed the estate or the service benefits superceeding the right of mother while she alive?

2.Whether it is proper to hold that the daughters or the sons are entitle to succeed the estate or the service benefits even though concern court came to the conclusion that no divorce took place between husband and wife?

3. Having observed that the plaintiff not get divorced with her husband and the defendant not legally wedded wife but failed to give relief of declaration as per findings whether it is proper to omit to grant declaration?"



11. Heard Mr.V.Chandrakanthan, learned counsel for the Appellant and Mr.C.V.Ramachandramoorthy, learned standing counsel for the second and third respondents. Despite service of notice on the first respondent and her name having been printed in the cause list today, there is no representation on her side.

12. Learned counsel for the Appellant would submit that though the Appellant/plaintiff has been recognised as a legal wedded wife of the deceased P.Kasi, the lower appellate court has erred in giving a finding that she is not entitled for the retirement benefits of late P.Kasi and that, only her daughters who have been examined as DW3 and DW4 before the trial court are alone entitled for retirement benefits based on the no objection letter dated 18.02.1998 which was marked as Ex.B10 before the trial court. He would submit that as a legally wedded wife which remains undisputed before the courts below, the lower appellate court ought not to have excluded her from claiming right over the retirement benefits of Kasi, her late husband who was employed with the second and third respondents.

13. The learned counsel for the Appellant drew the attention of this Court to the Division Bench Judgement of Andhra Pradesh High Court dated 13.11.2017 passed in the case of Union of India rep. by its Secretary, Ministry of Consumer Affairs, Food & Public Distribution, New Delhi vs. Lakshmi Suri reported in CDJ 2018 APHC 007 and would submit that in identical circumstances, the Division Bench of Andhra Pradesh High Court held that the second wife of the deceased Government Servant is not entitled to family pension.

14. Mr.C.V.Ramachandramoorthy, learned standing counsel for the second and third respondents would submit that the respondents 2 and 3 will abide by any direction given by this Court as the dispute purely revolves upon the Appellant/plaintiff and the first respondent/first defendant.

15. Admittedly, the Appellant/plaintiff is the wife of the deceased Kasi who was an employee of the second and third respondents and died on 11.04.1997. Eventhough, in the written statement filed by the first respondent/first defendant before the Trial court, she has stated that only after the divorce between the Appellant/plaintiff and late P.Kasi, she married him. No documentary evidence has been produced by the first respondent/first defendant before the trial court to prove that the said P.Kasi had legally divorced the Appellant/plaintiff.

16. The daughters of the appellant/plaintiff who were examined as DW3 and DW4 who are living with the first respondent/first defendant have themselves admitted that their mother is only the Appellant/plaintiff. The trial court as well



as the lower appellate court has concurrently given a correct finding that the Appellant/plaintiff is the legally wedded wife of P.Kasi. However, only based on Ex.B10 dated 18.02.1998 given by the daughters namely DW3 and DW4 authorising the first respondent/first defendant to receive benefits of late Kasi held that that first respondent/first defendant is entitled to receive the retirement benefits of late P.Kasi from the respondents 2 and 3.

17. As rightly contented by the learned counsel for the Appellant, the said finding is an erroneous finding and it has been given in violation to the settled law that a legally wedded wife is alone entitled for retirement benefits and not a person who claims to be a wife though she may have been living with the deceased at the time of his death along with his children born out of the wedlock with the legally wedded wife i.e., Appellant/plaintiff. The decision relied upon by the learned counsel for the Appellant/plaintiff is squarely applicable to the facts of the instant case as it also involves identical set of facts. By total non application of mind to the settled law that a legally wedded wife is alone entitled along with her children to the retirement benefits of the deceased employee, the lower appellate court though observing that the Appellant/claimant is the legally wedded wife has given an erroneous findings based on Ex.B10 no objection letter issued by the daughters of the deceased namely DW3 and DW4.

18. For the foregoing reasons, the substantial questions of law formulated by this Court supra are answered in favour of the Appellant/plaintiff by holding that the Appellant/plaintiff along with her children namely Thilagavathi and Umadevi are entitled for the retirement benefits of late P.Kasi from the second and third respondents.

19. With the aforesaid observation, this second appeal is allowed by setting aside the Judgment and Decree dated 25.02.2005 passed by the lower appellate court namely District and Sessions Court/Fast Track Court No.1, Chennai in A.S.No.183 of 2004. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Court / Fast Track Court No.1,
Chennai
2. The XVI Assistant City Civil Court,
Chennai.

Copy To

The Section Officer,
V R Section, High Court,
Madras - 104.

+1cc to M/s.V.Chandrakanthan, Advocate, S.R.No.33788

S.A. No.1315 of 2007

VSN-II (CO)
RGA (19/11/2021) (29/11/2021)