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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.10.2021
Pronounced on	29/10/2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.1288 of 2009
and M.P.No.1 of 2009

1.Pounambal
2.Boopathy
3.Banumathi
4.Muthu
5.Anbarasan

.... Appellants/Defendants 7 to 11

Vs.

1.Kannammal

2.Valli

.... Respondents/Plaintiffs

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the decree and Judgement and Decree dated 24.08.2009 in A.S.No.3 of 2009 on the file of the Principal Subordinate Judge, Salem reversing the Judgement and Decree dated 21.02.2008 in O.S.No.201/2007 on the file of the Principal District Munsif Court, Salem.

For Appellants : Mr.P.Jagadeesan

For Respondents : Mr.D.Shivakumar

JUDGEMENT

(Heard through Video Conferencing)

This Second Appeal has been preferred against the judgement and decree dated 24.08.2009 passed in A.S.No.3 of 2009 by the learned Principal Subordinate Judge, Salem.

2. The Appellants are the defendants 7 to 11. For the sake of convenience, during this discussion the Appellants and the respondents are referred in the same order in which they



4.1. The written statement of the 7th defendant is adopted by the defendants 8 to 11. The 1st plaintiff is not the first wife of the deceased Palani. He worked in the Southern Railway Department as a Gangman and the 7th defendant is the first wife of the deceased Palani and she got married to him before 36 years in the presence of the elders of the village at Uthampatti and 4 children were born to them; however, Palani had illegal relationship with the 1st plaintiff and a female child was born to her through Palani; Only because the 7th defendant is the 1st wife of the deceased Palani, the names of 7th defendant and her children have been shown as the family members of Palani in his Service Register; hence, there is no cause of action and the suit has to be dismissed.

5. The brief facts of the written statement of the 12th defendant:

The 12th defendant has not received any application for issuance of the legal heirship certificate either from the plaintiffs or from the 7th defendant. Hence, the 12th defendant has not issued any legal heirship certificate to either of the parties.

6. After perusing the pleadings of the respective parties, the learned trial Judge has framed the following issues in the suit:

1. Whether the first plaintiff is legally wedded wife of deceased Palani?

2. Whether the plaintiffs are the legal heirs of said Palani?

3. Whether the plaintiffs are entitled for injunction relief as prayed for?

4. What other relief, if any?

7. During the course of the trial, on the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and 15 documents were marked as Exs.A1 to A15. On the side of the defendants, four witnesses were examined as D.W.1 to D.W.4 and 14 documents were marked as Exs.B1 to B14.

8. At the conclusion of the trial, the learned trial Judge has decreed the suit and declared that the plaintiffs are the legal heirs of the deceased Palani and granted the reliefs of permanent injunction for restraining the defendants 1 to 6, not to disburse any benefits to the defendants 7 to 11 and permanent injunction for restraining the 12th defendant from issuing legal heirship certificate to the defendants 7 to 11 without including the name of the plaintiffs. Aggrieved over



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that, the defendants 7 to 11 have preferred the First Appeal before the Principal Subordinate Court, Salem in A.S.No.3 of 2009. After hearing the First Appeal, the learned First Appellate Judge has partly allowed the appeal and modified the judgment and decree of the trial Court to the extent of declaring that the defendants 8 to 11 are also legally entitled to get the service benefits of the deceased Palani along with the plaintiffs and setting aside the permanent injunction. Aggrieved over the said judgment, the defendants 7 to 11 have preferred this Second Appeal and the Second Appeal has been admitted on the following substantial questions of Law:-

1. Whether the plaintiffs discharged their burden of proof that the first plaintiff was the first wife of the deceased Palani?

2. Whether the judgment of the First Appellate Court is vitiated by non-application of the correct principles of law and failure to advert to the materials on record?

9. Heard the arguments advanced by Mr.P.Jagadeesan, learned counsel for the appellants/defendants and Mr.D.Shivakumar, learned counsel for the respondents/plaintiffs and perused the materials available on record.

10. The learned counsel for the appellants/defendants 7 to 11 submitted that the lower Appellate Court has not appreciated the evidence in a correct perspective and omitted to hold that the 7th defendant is the legally wedded wife of the deceased Palani; despite the plaintiffs failed to prove that the first plaintiff is the legally wedded wife of Palani, the First Appellate Judge has held that the 7th defendant is the first wife of the deceased Palani; the service records and other documentary evidence relied by the appellants and marked as Exs.B1 to B14 would prove that the 7th defendant alone is the legally wedded wife of the deceased; the judgment of the lower Court is based on mere presumption and assumption and not based on any valid evidence; the plaintiffs had not discharged their burden in order to get a decree in their favour; the 1st plaintiff has not stated when and where her marriage was solemnized with the deceased Palani.

11. The learned counsel for the respondents/plaintiffs submitted that the First Appellate Judge has taken into consideration of the events that had taken place in the lives of the plaintiffs, the defendants 7 to 11 and the deceased Palani and arrived at a conclusion that the first plaintiff was the first wife of the deceased Palani; since the first plaintiff was the first wife of the deceased Palani, the alleged marriage between the 7th defendant and Palani is an unauthorized one in



12. On perusal of the materials available, it is seen that though the first plaintiff claimed that she is the legally wedded first wife of the deceased Palani, she has not stated anything about the date of her marriage. The first appellant/7th defendant has also claimed that she is the first wife of the deceased and the first plaintiff was his mistress and with whom Palani lived together. Thus the status of first wife of Palani is claimed by both the first plaintiff and 7th defendant and that is the core issue of this case.

14. However, the learned first Appellate Judge relied on Ex.A7 - legal notice sent by the first plaintiff. Ex.A7 was dated 12.12.2005 and it was sent for claiming maintenance from Palani. In the said notice it is alleged that the first plaintiff had married Palani before 29 years. Subsequent to the notice, a maintenance case was also filed on 25.12.2006. The learned First Appellate Judge believed the contents of the legal notice to arrive at the conclusion that the marriage between the first plaintiff and the deceased Palani had taken place before 29 years from the date of notice. The learned First Appellate Judge got himself convinced to accept the contents of the notice as true because Palani did not send a reply to it.

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knowledge about its allegations nor had any occasion to deny it. Hence, it cannot be taken as proof of marriage as against the 7th defendant.

16. The first plaintiff who has filed the suit against the defendants, has got the duty to prove the date of marriage by producing either public documents or any other document for which the defendants are also parties or they had knowledge.

17. The learned First Appellate Judge observed that in the department records of the third defendant, the date of birth of 7th defendant is shown as 12.12.1961. Relying on the said date, the learned First Appellate Judge has concluded that at the time of filing the suit, the age of the 7th defendant must be 45 years. Being the father and guardian, it is quite possible that the deceased had given the details like when defendants 9 to 11 were born. But so far as the 7th defendant is concerned, she is a major and her date of birth as furnished by the deceased Palani cannot be taken as self-declaration of the 7th defendant, in order to conclude that her date of birth is as above.

18. The 8th defendant is the first child born to the deceased and the 7th defendant. The First Appellate Court presumed the date of her birth by making its own calculations based upon certain presumptions. The learned counsel for the Appellants has relied on the judgement of this Court passed in S.A.No.357 of 1997. In the said judgement, it is observed that holding the date of marriage basing on mere presumptions and calculations is wrong. It is further observed that in the absence of any positive evidence, it is wrong for the trial Court to fix date of marriage based on some presumptive calculations.

19. The deceased Palani has mentioned the names of the 7th defendant and defendants 9 to 11 as his family members. But he did not mention the name of the 8th defendant, who is also his daughter. This is probably because the 8th defendant might have got married and settled at some relevant point of time. The names of the 7th defendant and defendants 9 to 11 have been entered in the service records of the deceased Palani as his wife and children. Apart from the service records, it is seen from Ex.B7 - Voter ID of the deceased Palani and 7th defendant, Ex.B6 - nomination made to Railway Employees Cooperative Credit Society, Ex.B8 - Southern Railway Hospital slip and Ex.B9 - declaration given by Palani etc., that the 7th defendant has been consistently shown by Palani as his wife.



20. Any person in Government service will not dare to bring the name of a person whom he had married during the subsistence of his earlier marriage and that too when his first wife is alive. Had the 7th defendant was the second wife of Palani, he would not have dared to bring her name publicly and that too thorough Service records. Because being a Government servant, he would have known that giving official sanction for his illegal marriage would trouble his career and he would be made to face disciplinary action for misconduct etc.

21. This fundamental fact was omitted to be appreciated by the learned First Appellate Judge. Since the deceased Palani himself has brought the names of the 7th defendant as his lawful wife and defendants 8 to 11 as nominees to receive his service benefits, it can be a valid evidence to prove that the 7th defendant is the legally wedded first wife of the deceased Palani.

22. A wife of a deceased person cannot produce any other best evidence than these kind of public documents to prove her status as the legally wedded wife of the deceased. The entries in the service related documents of the deceased Palani and all other public documents produced by the 7th defendant would tilt the preponderance of probabilities in favour of the 7th defendant. The learned First Appellate Judge had not appreciated the evidence on record in a right perspective and arrived at a wrong conclusion that the first plaintiff is the first wife of the deceased Palani and hence, it is liable to be set aside. Thus, the substantial questions of law 1 and 2 are answered in favour of the appellants.

In the result, this Second Appeal is allowed and the judgement and decree dated 24.08.2009 passed by the Principal Subordinate Judge, Salem in A.S.No.3 of 2009 is set aside and the judgement and decree dated 21.02.2008 passed by the Principal District Munsif Court, Salem in O.S.No.201 of 2007 is upheld. The entitlement of the first plaintiff to any of the service benefits of the deceased Palani in her capacity as the second wife would be only in accordance with the rules of the Department. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar



Sri
To

1.The Principal Subordinate Judge,
Salem.

2.The Principal District Munsif Judge,
Salem.

Copy To

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

+1cc to Mr.P.Jagadeesan, Advocate SR.No.56090
+1cc to Mr.D.Shivakumaran, Advocate SR.No.56592

S.A.No.1288 of 2009

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