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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2021
PRONOUNCED ON : 14.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. No.170 of 2010

G.L.Sakunthala

...Appellant/Plaintiff

versus

1.The Chief Educational Officer,
Vellore, Vellore District.

2.The District Educational Officer,
Tirupathur, Vellore District.

3.The Head Master,
Government Girls
Higher Secondary School,
Alangayam Post,
Vaniyambadi Taluk,
Vellore District.

4.G.Salammal (Died)

...Respondents/Defendants

[R-4 died recorded vide order dated 19.11.2021 made in S.A.No.170 of 2010]

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 02.09.2005 made in A.S.No.30 of 2004 on the file of the learned Subordinate Judge, Thirupathur, confirming the judgment and decree dated 18.06.2004 made in O.S.No.146 of 1999 on the file of the learned District Munsif-cum-Judicial Magistrate, Vaniyambadi.

For Appellant

: Ms.Ancy George

for M/s.S.Arunachalam Associates

For Respondent Nos.1 to 3 : Dr.S.Suriya,

Additional Government Pleader (CS)



J U D G M E N T

This Second Appeal is focussed as against the judgment and decree dated 02.09.2005 passed in A.S.No.30 of 2004 by the learned Subordinate Judge, Thirupathur, in confirming the judgment and decree dated 18.06.2004 passed in O.S.No.146 of 1999 by the learned District Munsif-cum-Judicial Magistrate, Vaniyambadi.

2.The parties, for convenience sake, are referred to hereunder according to their litigative status before the trial Court.

3.The laconic averments made in the plaint, are as follows:

(i) The plaintiff Sakunthala, is the wife of M.G.Lakshmana Doss. He was working as a Assistant Writer in Government Girls Higher Secondary School, Alangayam. On 17.03.1992, the marriage between the plaintiff and M.G.Lakshmana Doss was solemnised, as per the Hindu Rites and Customs. They were not blessed with any children. The said Lakshmana Doss had passed away on 29.04.1999. After the death of the said Lakshmana Doss, the plaintiff alone, completed his final rites.

(ii) Thereafter, the plaintiff submitted an application before the defendants 1 to 3 wherein, she prayed to disburse the terminal benefits of the deceased Lakshmana Doss to her. On 13.06.1999, the first defendant recommends the other defendants to initiate action on the said application. Subsequently, the second defendant directed the plaintiff to produce the legal heir certificate pertains to the deceased Lakshmana Doss. In order to comply with the said direction, the plaintiff submitted an application before the Tahsildar, requesting to issue the legal heirship certificate to the deceased Lakshmana Doss.

(iii) In the meantime, the fourth defendant with the help of other defendants had attempted to receive the terminal benefits of the deceased Lakshmana Doss. The fourth defendant, was not a legal representative of the deceased Lakshmana Doss. Hence, the present suit has been filed for the relief of declaration, declaring that, the plaintiff, is the legally wedded wife of the deceased Lakshmana Doss and for direction, directing the defendants 1 to 3 to pay the terminal benefits of the deceased Lakshmana Doss to the plaintiff.



4. The case of the third defendant, as averred in the written statement, is as follows:

(i) This defendant does not know the alleged marriage had happened between the plaintiff and M.G.Lakshmana Doss, on 17.03.1992. M.G.Lakshmana Doss had joined as an Office Assistant on 25.04.1978 in Government Girls Higher Secondary School, Alangayam. He was promoted as Registered Clerk on 06.08.1979 in the same School.

(ii) During his life time, he had nominated his nominee in the nomination form, as per the Tamil Nadu Pension Rules. In the nomination form, he had nominated his mother Salammal [4th defendant], as his nominee, being the legal heir to get all his benefits under the Tamil nadu Pension Rules. He had also nominated his brother Chandirababu, as his nominee to get the benefits.

(iii) Till his death, the deceased Lakshmana Doss has not changed his nominee in the nomination form and in the service register. Further, he has not disclosed the alleged marriage, and about his wife name in the nomination form, and in the service register. Hence, the fourth defendant Salammal being the nominee of the deceased Lakshmana Doss, is entitled to receive all the terminal benefits. Hence, the suit filed by the plaintiff, is not maintainable.

5. The case of the fourth defendant, as averred in the written statement, is as follows:

(i) It is not correct to say that the deceased M.G.Lakshmana Doss, was an unmarried man and not having any legally wedded wife. It is not correct to say that the said Lakshmana Doss was fell in sick and the plaintiff gave treatment. While at the time, the deceased was taking treatment in the Government Hospital, the fourth defendant and the brothers of Lakshmana Doss alone spent huge amount towards the medical expenses. The final rites of the deceased are concluded in the house of the fourth defendant. In fact, the plaintiff, is the wife of one Nagarajan and she is having 3 children [2 male and 1 female]. There is no cause of action for the suit. Hence, the suit filed by the plaintiff, is liable to be dismissed.

6. Based on the above pleadings, the learned District Munsif-cum-Judicial Magistrate, Vaniyambadi, framed necessary issues and tried the suit. On the side of the plaintiff, 4 witnesses were examined as P.W.1 to P.W.4 and 15 documents are marked, as Ex.A.1 to Ex.A.15. Similarly, on the side of the defendants, 2 witnesses were examined as D.W.1 and



D.W.2 and 14 documents are marked, as Ex.B.1 to Ex.B.14.

7. Having considered the materials placed before him, the learned District Munsif-cum-Judicial Magistrate, Vaniyambadi, vide judgment and decree dated 18.06.2004, held that, the plaintiff, is not a legally wedded wife of M.G.Lakshmana Doss and thereby, dismissed the suit. In the appeal filed by the plaintiff in A.S.No.30 of 2004, the learned Subordinate Judge, Thirupathur, confirmed the findings arrived at by the trial Court.

8. Feeling aggrieved over the said findings of the Court below, the plaintiff, is before this Court with the present Second Appeal. The Second Appeal was admitted on file, after formulating the following substantial questions of law;

"1. Whether the Court below are right in rejecting the plea of the appellant that she was a legally wedded wife of the deceased Lakshmanadoss ignoring Ex.A.2, Marriage Agreement between the Lakshmanadoss and the appellant and other documents marked on the side of the appellant and on the evidence adduced by P.Ws.1 to 4 ?

2. When the factum is proved that the appellant has obtained a job as widow of the deceased on the statement made by late Lakshmanadoss can the courts below take the contrary view based on the incorrect details printed in the voters list ? "

9. Heard Ms.Ancy George, learned counsel for M/s.S.Arunachalam Associates appearing for the appellant and Dr.S.Suriya, learned Additional Government Pleader (CS) appearing for the respondents 1 to 3 and also perused the materials available on record.

10. Here, it is a case, while at the time, this Second Appeal was posted for both sides arguments, on 02.03.2021, the learned counsel for the fourth respondent filed a memo stating that, the fourth respondent had passed away. After recording the said memo, this Court directed the appellant / plaintiff to take steps for impleading the legal representatives of the deceased fourth respondent.

11. While so, on 06.09.2021, when the appeal is taken up for hearing, the learned counsel for the appellant seeks further time to implead the legal representatives of the



deceased fourth respondent. On considering the said request, this Court has further directed the Registry to list the matter on 29.10.2021. On that day also, the learned counsel for the appellant seeks further accommodation for impleading the legal representatives of the deceased fourth respondent.

12. In the said sequences, till 19.11.2021, the learned counsel for the appellant has not filed any application to implead the legal representatives of the deceased fourth respondent. Hence, on 19.11.2021, this Court dismissed this Second Appeal, as against the fourth respondent, as abated. Subsequent to that, till date, the appellant has not filed any application to set aside the dismissal order.

13. On the other hand, being the reason that, the Courts below came to the concurrent findings that, the plaintiff is not a legally wedded wife of the deceased Lakshmana Doss, without hearing the fourth defendant, this Court, is not in a position to dispose the Second Appeal filed by the plaintiff on merits.

14. More than that, before the trial Court, in order to prove the factum of marriage, while at the time of giving evidence as P.W.1, the plaintiff has produced, totally 15 documents, among which, Ex.A.1. Ex.A.2, Ex.A.6, Ex.A.13 and Ex.A.14, are the documents in respect of the solemnisation of the marriage between the plaintiff and the deceased Lakshmana Doss.

15. Ex.A.1 is the marriage invitation, Ex.A.2 is the marriage agreement dated 17.03.1992. Though in the said document, the signature of the deceased Lakshmana Doss is found, since the defendants denied the said document, it is for the plaintiff to prove the same, as the signature found in Ex.A.2 belongs to the deceased Lakshmana Doss. Therefore, in the absence of any material evidence in respect to the said signature, we cannot hold that, the said document proved the relationship between the plaintiff and the deceased Lakshmana Doss.

16. Ex.A.13 is the receipt dated 01.04.1999 issued by Mrs.S.R.Bhatewada, who is the pawn broker. On going through the said document, it seems that, the plaintiff alone, signed as a pawner. In the said document, though it was stated that Lakshmana Doss, W/o.Shakuntala, on close reading of the said document, it appears that, the word "Lakshmana Doss, C/o.Shakuntala", was altered as "Lakshmana Doss, W/o.Shakuntala". Ex.A.6 is the letter dated 15.08.1999 issued by the President, Alangayam Municipality, through which, he has certified that the



plaintiff, is the wife of the deceased Lakshmana Doss.

17. On the other hand, while at the time of giving evidence as P.W.2, one P.G.Chinnasamy gave evidence as, he does not know the details of the marriage alleged to have happened between the plaintiff and Lakshmana Doss. Ex.A.14, is the receipt issued by the Temple authorities. The said document was marked through one V.P.Vinayagam (P.W.3). Though the said Vinayagam gave evidence in his chief-examination as, the marriage between the plaintiff and the deceased Lakshmana Doss was solemnised at Arulmigu Theerthagiri Eswarar Bala Murugar Temple, in his cross-examination, he gave evidence as, he does not know the person, who paid the amount in respect to the alleged marriage. Further, he has stated that, he does not know the details of the marriage, which was solemnised on 17.03.1992. Therefore, the said document, is also not having any strength to prove the relationship between the plaintiff and the Lakshmana Doss.

18. The Courts below, are also came to the conclusion that, the factum of marriage has not been proved by the plaintiff and accordingly, concluded that, the plaintiff, is not entitled the relief as prayed for in the suit. Therefore, in all the way, due to the non-filing of the application to set aside the dismissal order passed in respect to the fourth respondent and also due to the reason that the plaintiff has not proved the alleged marriage had happened between the deceased Lakshmana Doss and the plaintiff, she is not entitled to the said relief. Accordingly, there is no substantial questions of law raised in this appeal.

19. In fine, this Second Appeal is dismissed and the judgment and decree dated 02.09.2005 passed in A.S.No.30 of 2004 by the learned Subordinate Judge, Thirupathur, is hereby confirmed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

sri



1.The Subordinate Judge,
Thirupathur.

2.The District Munsif-cum-Judicial Magistrate,
Vaniyambadi.

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

+1cc to the Government Pleader, SR.No.67622

S.A. No.170 of 2010

NK (CO)
CB(17/02/2022)