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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.04.2021

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

S.A.No.310 of 2021

and

CMP.No.6152 of 2021

Munirathinam (died)

1. Munisamy
2. Rani
3. Murugan
4. Rathinam
5. Lakshmi
6. Jamuna
7. Velu
8. Palani
9. Vijaya
10. Saravanan (died)
11. Murugesan
12. Inbarasan
13. Ellammal
14. Vanitha
15. Ravi
16. Rajeswari
17. Jothi
18. Kavitha
19. Saranraj
20. Lokesh
21. Thenmozhi
22. M. Padmanaban
23. M. Mani
24. S. Santhi
25. S. Vasanthi

(Appellants 22 to 25 are LRs of deceased Munirathinam-Appellant-
1) ... Appellants

Vs.

1. The General Manager,
BSNL, Vellore.
2. The Chief Accounts Officer,
BSNL, Vellore.
3. Sub-Divisional Officer,
BSNL, Polur.
4. V. Bhuvaneswari

... Respondents



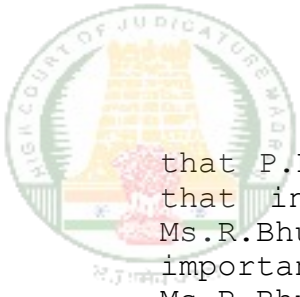
Prayer: Second Appeal has been filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the decree and judgment, dated 19.08.2019 passed in A.S.No.35 of 2016 on the file of Sub Court, Vaniyambadi, Vellore District confirming the decree and judgment dated 10.03.2016 passed in O.S.No.144 of 2012 on the file of Additional District Munsif, Vaniyambadi, Vellore District.

For Appellants : Mr.PA.Sudesh Kumar

J U D G M E N T

Lis that has led to the captioned Second Appeal commenced more than eight years ago, to be precise on 25.09.2012, when a plaint in OS.No.144 of 2012 was presented in the 'Additional District Munsif's Court, Vaniyambadi, Vellore District' ['trial Court'] by as many as 19 individuals, who arrayed themselves as plaintiffs 1 to 19, General Manager, Chief Accounts Officer, Sub Divisional Officer, Polur of 'Bharat Sanchar Nigam Limited' ['BSNL'] have been arrayed as defendants 1 to 3 respectively. One Ms.V.Bhuvaneshwari has been arrayed as defendant no.4.

2.Facts are fairly simple. One P.Raji, son of Ponnusamy was an employee of BSNL at Polur and he was working as a telephone mechanic. P.Raji's father Ponnusamy and mother died way back in 1963 and 1992 respectively. P.Raji took voluntary retirement from BSNL on 04.05.2012 and shortly thereafter, died intestate on 25.05.2012. It is the case of plaintiffs that P.Raji had not married and he had left behind four brothers and two sisters namely (i) Munirathinam, (ii) Muthu, (iii) Seenivasan and (iv) Munisamy and sisters (i) Poongavanam and (ii) Ammaniyammal. It is also the further case of the plaintiffs that plaintiffs 4 to 10 are the children of Muthu, who is no more and plaintiffs 11 to 15 are children of Srinivasan, who is no more and plaintiffs 16 to 19 are children of Poongavanam, who is also no more. On this basis, the suit was laid with a prayer to declare plaintiffs as legal heirs of deceased P.Raji and a prayer for permanent injunction restraining BSNL [Defendants 1 to 3] from disbursing 'Death Cum Retirement Gratuity benefits' [DCGRC] to the fourth defendant was also made. Defendants entered appearance and completed pleadings. BSNL had filed a written statement dated 23.07.2013 and Ms.A.Bhuvaneshwari had filed a written statement dated 17.03.2014. In the written statement of BSNL, the employer of P.Raji resisted the claim of the plaintiffs and submitted that P.Raji, who was serving as telephone mechanic in Polur retired voluntarily and submitted Form-3 on 10.05.2012, which contains details of his family. BSNL pleaded that as per official records submitted by said P.Raji, he had a wife, two sons and one daughter. BSNL pleaded



that P.Raji submitted Form-1 nomination for DCGRC. BSNL pleaded that in the nomination form for DCGRC P.Raji had said that Ms.R.Bhuvaneshwari (Defendant no.4) is his nominee and more importantly, P.Raji nominated fourth defendant- Ms.R.Bhuvaneshwari describing her as his wife. The relevant pleading of BSNL as contained in paragraph 3 of written statement reads as follows:

'3.The plaintiffs are put to strict proof of all the allegations made in para 1 and 2 of the plaint. It is admitted that P.Raji deceased official was working as Telephone Mechanic in Polur. He retired voluntarily from service on 01.05.2012 fore noon and deceased official submitted the Form-3 as to details of his family on 10.05.2012. As per the official records submitted by the said employee submitted Form-1 nomination for retirement benefit and death gratuity. According to the information furnished by the said employee, nominee is R.Bhuvaneshwari, W/o.Raji since deceased (4th Defendant herein). So according to the statement of the deceased employee P.Raji, 4th defendant is his wife and she was nominated by the employee P.Raji as nominee to receive his retirement benefits in case of death. Further the 4th defendant claimed death cum retirement benefits and submitted legal heir ship certificate dated 19.03.2013 issued by Tahsildar, Polur Taluk. So, it is wrong to allege that in spite of objection made by the Plaintiffs this defendant is arranging to disburse the service benefits of P.Raji to the 4th defendant. As per the official records available in the office and produced by the 4th defendant this defendant acted.'

3. Fourth defendant took the plea that she had married P.Raji more than 33 years ago in Ashtalakshmi Temple, Besant Nagar, Chennai. The relevant pleading is in paragraph 6, which reads as follows:

'6. உண்மையில் இந்த பிரதிவாதி வணக்கமுடன் கூறுவது யாதெனில் இறந்துபோன ராஜி த.பெ.பொன்னுசாமி என்பவருக்கும் இந்த 4ம் பிரதிவாதிக்கும் கடந்த 35 வருடங்களுக்கு முன்பு, ஒருவரை ஒருவர் விரும்பி பழகி, பின்பு பழக்கத்தின் பேரில் இன்றிலிருந்து 33 வருடங்களுக்கு முன்பு, சென்னை, பெசண்ட் நகர் அகட்டலக்ஷ்மி கோயிலில் 4ம் பிரதிவாதியை தாலி கட்டி திருமணம் செய்துக்கொண்டார்

4. To be noted, relevant portion of paragraph 6 of the written statement of Ms.R.Bhuvaneshwari alone has been extracted.

5. On the aforementioned rival pleadings, the Trial Court framed three issues and three additional issues, which read as follows:



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'*Issues:

5. Upon the above pleadings submitted by either side, this Court has framed the following issues:

1. Whether the Plaintiffs are entitled for declaration as prayed for?
2. Whether the Plaintiffs are entitled for permanent injunction as prayed for?
3. To what relief?

*Additional issues

1. Whether the 4th defendant is the legally wedded wife of the deceased P.Raji?
2. Whether the 4th defendant and her son Praveen alone are the legal heirs of the deceased P.Raji?
3. Whether the suit is bad for suppression of material facts?

6. Before trial Court, there were three witnesses on the side of plaintiffs (PWs-1 to 3) and two witnesses on the side of defendants. To be noted, the fourth defendant Ms. Bhuvaneshwari examined herself as DW-1. Besides this oral evidence, there were eight exhibits namely Exs. A1 to A8 on the side of the plaintiffs and eight exhibits on the side of the defendants namely Exs. B1 to B8 and some photographs were also marked as Ex. X1.

7. On this rival pleadings, while answering issue no.1 as well as additional issues 1, 2 and 3, trial Court inter alia held as follows:

'32. On the other hand, the concordant plea of the 4th defendant could not be brushed aside. There are no materials to discredit the evidence of the 4th defendant as the DW1 and DW2. This being so, this Court holds that the 4th defendant and the said Praveen are the legal heirs of the said Raji. This being so, this Court answers these issues in favour of the 4th defendant as against the Plaintiffs.

33.....

34. The plaintiffs filed Ex. A6 and A7, the photographs and CD and it would manifestly expose that the Plaintiffs were more keen in predetermining the future problems after the death of the said Raji. It is not in dispute that the funeral ceremony was conducted at the native of the said Raji. We are aware that these kinds of ceremonies are neither photographed nor video-graphed in our Society. Accordingly, this Court answers this issue in affirmative.'

8. In the result, trial Court dismissed the suit with costs.



9. The unsuccessful plaintiffs [the number had swelled from 22 to 19 now owing to demise of plaintiff no.12-Saravanan], carried the matter in appeal i.e., a regular First Appeal under Section 96 of 'The Code of Civil Procedure, 1908' ['CPC' for clarity] to the 'Court of Subordinate Judge, Vaniyambadi, Vellore District' [hereinafter 'First Appellate Court' for clarity]. First Appellate Court framed four points for determination and they are as follows:

'10. The point for consideration in the appeal are:

1. Whether the 4th defendant is legally wedded wife?
2. Whether the plaintiffs are entitled for the declaration?
3. Whether the judgment and decree of trial court requires any interference?
4. To What other relief?

10. First Appellate Court dismissed the appeal confirming the judgment and decree of trial Court. First Appellate Court, being the Court of fact, has examined the plea of fourth defendant that she had married P.Raji at Chennai and therefore, he was not a bachelor. This aspect of the matter is captured in paragraph 16 of the judgment of the First Appellate Court, which reads as follows:

'16. On perusing the entire case records and the arguments put forth by both side this court holds that to decide this appeal the court has to decide whether the 4th defendant is a legally wedded wife of late Raji or not. As per the plaint the late.Raji s/o.Ponnusamy was an employee of BSNL Limited and voluntarily retired from service on 04.05.2012 and died intestate by leaving the plaintiffs as his legal heirs to succeed his estate Under Hindu Succession Act on 25.05.2012, since he died as a bachelor without any marriage. Therefore a death ceremonies has been conducted to the effect. The defendants 1 to 3 have filed their written statement by stating that the above said late.Raji has submitted form No.3 by stating that the 4th defendant is his wife. The 4th defendant also filed written statement by stating that she is the legally wedded wife of the above said late.Raji they got married at Chennai and lived together as husband and wife at Chennai as well as at Polur, therefore the late.Raji was not a bachelor. To prove the case of the plaintiffs the 1st plaintiff examined as PW1 further to deny the marriage between the late.Raji and 4th defendant Ex.A8 has been marked to show that the 4th defendant had married one Vijayan and through him a male child was born to them at Tirupattur. The learned advocate appearing for the appellants would submit that the 4th defendant has



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married one Vijayan of Jolerpet and through him 3 children were born. But the 4th defendant has stated that she is having only a son through late.Raji to disprove the above said version of the 4th defendant the defendants 1 to 3 have filed their written statement by stating that as per the form 3 the late.Raji has filed the details of family members by stating that he had wife two sons and one daughter. Therefore, the case of the 4th defendant and the statement of defendants 1 to 3 are contrary to each other. The deceased has admitted about the two sons and one daughter of the 4th defendant. But the 4th defendant stated that she is having one son therefore the 4th defendant is suppressed the fact of two sons and one daughter. Therefore the above said children are not born to the late.Raji with the 4th defendant. But the for the 4th defendant would submit that though the plaintiffs have disputed the marriage of 4th defendant with late.Raji in their plaint and as well as the PW1 to PW3, but the PW1 has admitted in his cross-examination that late.Raji and the 4th defendant have fall in love with each other and got married about 35 years ago by admitting that கமார் 35 வருடங்களுக்கு முன்பு, மேற்படி ராஜி காதல் திருமணம் செய்து கொண்டார். அவர் காதல் திருமணம் புரிந்த பின்னர் வாணியம்பாடிக்கு வரவில்லை என்றால் சரிதான். பின்னர் நாங்கள் தான் போய் இருந்தோம் என்றால் சரிதான். As admitted by PW1 the marriage between the above said Raji and the 4th defendant has bene admitted by the PW1. The plaintiffs have focused their case only on the basis of the Ex.A8 which has been issued by the commissioner Tirupattur Municipality to show that a male child was born by name V.Praveen on 01.08.1981 at GH Railway station road Tirupattur his father name is Vijayan and mother name is Buvaneshwari the date of registration was 05.08.1981. The above said Ex.A8 was produced through PW1 on 28.10.2015.'

11. From a perusal of the case file placed before me, it comes to light that there appears to be a secretarial/typographical error in the decree of the First Appellate Court. However, what is before me is only a photocopy, forming part of typed set of papers (page 47), as captioned second appeal is in the admission board. Be that as it may, the decree of the First Appellate Court says that the appeal is allowed and judgment and decree of the trial Court is confirmed. This Court, having noticed this error, which is obviously a secretarial/typographical error, deems it appropriate to record this in this judgment. It is open to the parties to seek correction in the Courts concerned and if the



parties choose to do so, this judgment will not impede the same and it will not come in the way.

12. Mr.Pa.Sudesh Kumar, learned counsel for appellants in the captioned Second Appeal submitted that the certificates produced need not be marked by examining the officials concerned in terms of Sections 78 and 79 of The Indian Evidence Act, 1872 and that the presumption under Section 80 is also available. Learned counsel drew the attention of this Court to question no.3, which has been styled as substantial question of law though as many as seven question of laws as Memorandum of Grounds of Appeal. That question no.3 reads as follows:

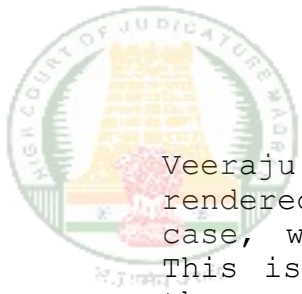
'iii. Whether both the courts below are right in holding that the certified copies of the documents issued under Section 77 of Evidence Act, required to be proved by examining the officials against the presumption of genuineness available under Sec.80 of Evidence Act?'

13. A perusal of the judgments of trial Court and First Appellate Court bring to light that they are not pivoted or predicated solely on the legal heirship certificate or certificates. On the contrary, the service particulars of P.Raji have been marked as Ex.B8 and as already alluded to supra, fourth defendant had examined herself as DW1.

14. Learned counsel emphasised that fourth defendant has not even given her date of marriage in the deposition. This hardly matters as in the considered view of this Court, in a legal drill under Section 100 of CPC, no substantial question of law arises from this. There are ever so many buttressing material, more particularly, service records of Mr.P.Raji, where he himself has nominated the fourth defendant for DCGRC benefits, on the basis that the fourth defendant is his wife.

15. Obviously, there can be no disputation that plaintiffs are class-II legal heirs and the question of plaintiffs claiming the DCRGC benefits will arise only in the absence class-I legal heirs. Therefore, the moment marriage of fourth defendant with Mr.P.Raji has been proved and he himself has described her as his nominee, the others stand excluded.

16. Owing to the narrative thus far, the proposed question which is propounded as substantial question of law by the protagonist in the captioned Second Appeal, neither qualifies as substantial question of law nor arises in the instant case. The principles for what is substantial question of law has been laid down by Hon'ble Supreme Court in Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co. Ltd., reported in AIR 1962 SC 1314 which continues to hold the field. To be noted, Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony



Veeraju And Others reported in AIR 1959 Madras 969] which was rendered by a Full Bench of this Court even before Chunilal's case, was approved by Hon'ble Supreme Court in Chunilal case. This is articulated in Paragraph No.6 of Chunilal case law and the same reads as follows:

'6. We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.'

17. The above is neatly captured by Hon'ble Supreme Court in Santosh Hazari case [Santosh Hazari Vs. Purushottam Tiwari (deceased) by Lrs., reported in (2001) 3 SCC 179], relevant paragraph is paragraph 12 and the same reads as follows:

'12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means – of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Ram Ditta [AIR 1928 PC 172 : 55 IA 235] , the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial



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question of general importance but a substantial question of law which was involved in the case as between the parties. In *Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.* [AIR 1962 SC 1314 : 1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju* [ILR 1952 Mad 264 : AIR 1951 Mad 969] :

"[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law."

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

18. Question proposed is clearly not *res integra*, debatable or contrary to settled principles.

19. In *Kanailal* case being *Kanailal and others Vs. Ram Chandra Singh and others* reported in (2018) 13 SCC 715, Hon'ble Supreme Court has held that principles of Order XLI Rule 31 of CPC stands telescoped in a second appeal. On a conjoint reading of *Kanailal* principle and *Kirpa Ram* principle being the principle laid down by Hon'ble Supreme Court in *Kirpa Ram Vs.*



Surendra Deo Gaur and others reported in 2020 SCC OnLine SC 935, this Court holds that the sole point for determination that arises in captioned second appeal is whether any substantial question of law arises in the light of the facts, findings, trajectory matters have taken in two courts and arguments. The decision thereon, i.e., decision on this point for determination is an answer in the negative which is set out infra and reasons for this decision have been articulated supra.

20. In the result, Second Appeal is dismissed in the admission stage. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-

Deputy Registrar(Lok Adalat)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Sub Judge,
Vaniyambadi,
Vellore District.

2. The Additional District Munsif,
Vaniyambadi,
Vellore District.

+lcc to Mr.PA.Sudesh Kumar, Advocate, S.R.No.22167

S.A.No.310 of 2021

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BS (CO)

CB(28/10/2021)