



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.579 of 2018

and

C.M.P.No.5101 of 2018

Saraswathi

..Plaintiff/1st Respondent/Appellant

Vs.

1.Devaki

..Defendent/Appellant/Respondent

2.The Divisional Railway Manager,
Southern Railway,
Trichirapalli.

..Defendent/2nd Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of the Code of Civil Procedure, against the order of remand in the judgment and decree in A.S.No.120 of 2008 dated 24.2.2018 on the file of the learned 1st Additional Subordinate Judge, Villupuram, setting aside the judgment and decree dated 27.04.2005 in O.S.No.139 of 2004 on the file of the learned Additional District Munsif, Villupuram.

For Appellant : Mr.N.Suresh

For Respondent : R1 - M/s.R.Meenal
R2 - Mr.M.Vijay Anand

J U D G M E N T

The appellant instituted a suit in O.S.No.139 of 2004 with a prayer to

a) To Declare that the petitioner/plaintiff is an indigent person;

b) To Declare that the petitioner/plaintiff is entitled to receive the family pension of the deceased Natarajan who worked as C & W Fitter at Villupuram under TM 282-CWS/VM;

c) To Direct the 2nd respondent / defendant to pay the family pension of the deceased Natarajan to the plaintiff from the date of the death of the said Natarajan;

d) To Direct the 1st respondent / defendant to pay a sum of Rs.54,000/- to the plaintiff.

e) To Direct the respondents/defendants to pay the costs of the suit; and

f) To Grant such other relief as the Hon'ble Court may deem fit in the circumstances of the case.



2. The learned counsel for the appellant contended that even in a Maintenance case filed by the appellant against her late husband, it was decided that the appellant is the legally wedded wife of the deceased Railway employee Natarajan. That is the reason why, the relief of declaration to declare the marriage as valid has not been sought for in the plaint filed in O.S.No.139 of 2004. The learned counsel for the appellant has stated that no such declaration is necessary, in view of the maintenance petition already filed. However, the fact remains that declaration to declare the marriage between the appellant and the deceased Natarajan as valid has not been sought for. The entire relief sought for in O.S.No.139 of 2004 relates to grant of family pension under the Railway Pension Rules.

3. As far as the Railway Pension Rules is concerned, there is an express bar under Section 9 of the Code of Civil Procedure to entertain a Civil Suit. The Administrative Tribunals Act categorically enumerates that Service Matters including pension disputes are to be resolved through Central Administrative Tribunal as far as the Indian Railways are concerned. Thus, there is an express bar for the Civil Courts to entertain a suit with reference to the grievances under the Railway Pension Rules. Instead of filing an application before the Central Administrative Tribunal, the appellant has chosen to file a Civil Suit in O.S.No.139 of 2004. However, the suit was entertained by the trial Court and an exparte decree was passed. Challenging the said judgment and decree, the 1st respondent, who also claims as the legally wedded wife of the Railway employee deceased Natarajan, filed Appeal Suit in A.S.No.120 of 2008 and the First Appellate Court remanded the matter back for re-adjudication as no trial had been conducted by the trial Court in respect of the disputed issues.

4. The learned counsel appearing on behalf of the appellant with reference to the jurisdiction point, cited the judgment of the Hon'ble Supreme Court of India in the case of Union of India and others Vs. Kartar Kaur, reported in (2012) 12 SCC 505, wherein the Hon'ble Supreme Court of India held as follows:

"12. It is not in dispute that till the filing of the second appeal, the petitioners had not questioned the jurisdiction of the civil court to entertain the suit filed by the respondent on the ground that the same was barred by Section 28 of the Act. We have no doubt that if such an objection had been raised at the threshold, the respondent may have been advised to withdraw the suit and file an application under Section 19 of the Act for grant of financial benefits in lieu of the service of her husband and also make an application under Section 21(3) for condonation of delay by showing sufficient



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cause for not filing the application within the period prescribed under Section 21(2). However, as no such objection was taken in the written statement, the respondent was precluded from availing the remedy by filing an application before the Central Administrative Tribunal. Therefore, the learned Single Judge of the High Court was fully justified in refusing to entertain the new plea taken by the petitioners and we do not find any valid ground to deprive the respondent, who is said to have reached the age of 90 years, of the monetary benefits payable in terms of the decree passed by the lower appellate court."

5. Relying on the judgment cited supra, the learned counsel for the appellant reiterates that the facts are also similar and in the present case, the appellant is aged about 75 years and she is all along fighting the litigation for more than 25 years and in the event of driving her back to the Central Administrative Tribunal, would cause greater hardship and she may not be in a position to redress her grievances in the manner known to law. Thus, the learned counsel for the appellant submitted that at this stage, this Court need not dismiss the claim of the appellant and contrarily, it is to be decided on merits.

6. The learned counsel appearing on behalf of the 2nd respondent/Railways made a submission that the suit is not maintainable, in view of the express bar under the Administrative Tribunals Act. However, this Court considered the said point and in view of the fact that the parties are litigating the issues for more than 25 years, it is not preferable to send them back to the Central Administrative Tribunal, which may further prolong the issue and in the interest of justice, the judgment passed in A.S.No.120/2008 alone is to be considered for the purpose of deciding the issues.

7. The learned counsel appearing on behalf of the 1st respondent, who is also claiming that she is the legally wedded wife of the deceased Natarajan that the Original Suit filed in O.S.No.139 of 2004 filed in O.S.No.139 of 2004 was filed before the Principal Sub Court, Villupuram and subsequently, it was transferred to Principal District Munsif Court, Villupuram. After transferring the suit, the 1st respondent has not received any notice or summons and therefore, she could not able to contest the suit and only after the exparte decree and when the family pension was stopped, she came to understand and thereafter, she filed an Appeal Suit in A.S.No.120 of 2008. The learned counsel for the 1st respondent reiterated that her name was nominated in the Service Records of the deceased employee Natarajan and as per the Nomination in the Service Records, the



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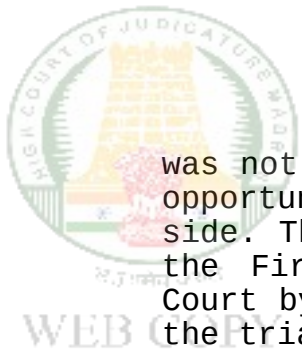
Railway authorities sanctioned pension in her favour and she was continuously receiving the family pension as per the Railway Pension Rules. Only after passing the exparte decree, the family pension granted to the 1st respondent was stopped and thereafter, she came to know about the exparte order and filed an appeal in A.S.No.120 of 2008.

8. The learned counsel for the appellant further contended that the findings of the First Appellate Court is improper, in view of the fact that the suit ought not to have been remanded back to the trial Court. Instead, the First Appellate Court ought to have taken evidence, if necessary and decide the matter on merits and in accordance with law. It is contended that remand will further cause longevity and the interest of the parties would be prejudiced. Thus, the First Appellate Court would have conducted the trial by examining the evidences and by framing the issues and therefore, the order of the First Appellate Court is liable to be set aside.

9. The learned counsel appearing on behalf of the 1st respondent disputed the said contention by stating that the 1st respondent could not able to get an opportunity to defend the case before the trial Court. She was not even examined. She had no opportunity to cross examine the plaintiff. She could not able to produce other witnesses to establish her marriage with the deceased employee Natarajan. Elaborate exercise of conducting a trial cannot be done before the First Appellate Court and therefore, the judgment passed in A.S.No.128/2008 is in accordance with the provisions of law and there is no infirmity as such.

10. This Court is of the considered opinion that relief sought for in the Original Suit is undoubtedly relatable to the Railway Pension Rules. Thus, strictly speaking, the suit is not maintainable. However, the trial Court entertained the suit and passed an exparte decree and a First Appeal was filed and the First Appellate Court also has not decided the point on jurisdiction and passed a judgment. Now, the matter is before the High Court by way of a Second Appeal. Under these circumstances, if the appellant, who is now aged about 75 years is driven back to the Central Administrative Tribunal, certainly the same would cause hardship to all the parties and therefore, this Court is not inclined to dismiss the suit on the ground of jurisdiction, more specifically, based on the express bar under the Administrative Tribunals Act.

11. As far as the judgment dated 24.02.2018 in A.S.No.120 of 2008 is concerned, the First Appellate Court remanded the matter back mainly on the ground that the trial Court passed an exparte decree. The first respondent, who also claims that she is the legally wedded wife of the deceased employee Natarajan



was not examined or cross examined, she could not able to get an opportunity to file her documents and produced witnesses on her side. The entire exercise in this regard cannot be undertaken by the First Appellate Court and therefore, the First Appellate Court by invoking Order 41 Rule 23, remanded the matter back to the trial Court.

12. This Court is of the considered opinion that under Section 107 of the Code of Civil Procedure, the First Appellate Court itself has got powers to decide the matter finally. The First Appellate Court can receive additional documents or examine witnesses, if necessary to decide the matter finally and on merits. However, the fact regarding the manner, in which, the suit was decided must also to be considered by the Courts while remanding the matter. If the suit is decided on certain preliminary issues or if the suit was decided *ex parte*, then it is preferable that the matter is remanded back to the trial Court for conducting a full fledged trial. If the suit was decide on merits by examining the witnesses and by considering the documents for re-appreciation of the evidence or to examine left out any witness, the First Appellate Court itself can do the exercise. In other words, non-appreciation or certain omissions or commissions, if any found by the First Appellate Court in an appeal, then such an exercise can very well be done by the First Appellate Court, instead of remanding the matter back to the trial Court. It is needless to state that remanding the matter would cause greater prejudice to the interest of the parties. Litigation is prolonged and the parties would suffer by adjudicating the issues second time before the same Court. However, if no trial was conducted by following the procedures as contemplated under the Code of Civil Procedure, then in such cases, remand alone could be an option, then the First Appellate Court cannot undertake to conduct a full fledged trial by examining all the witnesses at the first instance. This being the factual distinctions to be considered by the Appellate Courts while remanding the matter back to the trial Court.

13. Remand is an exception. The Appellate Courts are expected to decide the matters on merits and in accordance with law. This being the rule only on exceptional circumstances. When the suits are decided by the Trial Court on the basis of the preliminary issues or an *ex parte* decree was passed or large number of examination of witnesses and filing of documents are required, then alone, remand can be made and not otherwise. Thus, each case is to be considered with reference to the facts and circumstances. In the present case, admittedly, the trial Court passed an *ex parte* decree. The first respondent, who claims that she is the legally wedded wife of the deceased employee Natarajan, was not participated in the suit and therefore, she could not able to examine herself or cross examine the other witnesses and filed documents on her side. This being the



exercise to be done, the same cannot be done by the First Appellate Court and it is preferable to be done by the trial Court as the parties would get the right of appeal against an order if any passed on merits and in accordance with law.

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14. This being the factum established, the judgment dated 24.02.2018 passed in A.S.No.120 of 2008 stands confirmed and consequently, the Civil Miscellaneous Appeal in C.M.A.No.579 of 2018 is dismissed.

15. The trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of six (6) months from the date of receipt of a copy of this judgment, in view of the fact that the appellant is aged about 75 years and the 1st respondent is aged about 70 years. Considering the facts and circumstances, the parties to the appeal suit are directed to avail the opportunity, contest the case and co-operate for the early disposal of the suit. The parties to the suit including the Railways are restrained from seeking unnecessary adjournments on flimsy grounds. Even an adjournment is to be granted on genuine grounds. The reasons are to be recorded by the Trial Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1. The I Additional Subordinate Judge,
Villupuram.
2. The learned Additional District Munsif,
Villupuram.

Copy to

The Section Officer, VR Section, High Court, Madras.

+1CC to M/s.N.Suresh, Advocate, SR.No. 10671

+1CC to M/s.R.Meenal, Advocate, SR.No. 9642

+1CC to M/s.M.Vijay Anand, Advocate, SR.No. 9470

C.M.A.No.579 of 2018

AK(CO)

B.VC (15/09/2021)