



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2022

Pronounced on : 14.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 254 of 2017

1. Smt. M.Durai Ammal
... Plaintiff/Appellant/Appellant
2. Smt. Rajeswari
... Plaintiff/Appellant/Appellant
3. Smt. Latha
... Plaintiff/Appellant/Appellant

Vs.

1. The Secretary to Government
(Transport TBC) Department
Fort St. George,
Secretariat
Chennai – 600 009.
... Defendant/Respondent/Respondent
2. The Financial Adviser &
Chief Accounts Officer
Metropolitan Transport
Corporation (Chennai) Ltd.,
Pallavan Salai
Chennai – 600 002 ... Defendant/Respondent/Respondent



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3. The Accountant General
(Accounts-Entitlement)
Tamil Nadu,
261, Anna Salai,
Chennai – 600 018.

... Defendant / Respondent/Respondent

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree passed by the learned II Additional Judge City Civil Court, Chennai in A.S.No. 443 of 2012 dated 18.09.2014 confirming the Judgment and Decree of the VI Assistant Judge City Civil Court, Chennai, in O.S.No. 2796 of 2010 dated 18.08.2011 as illegal and to set aside the same.

For Appellants	: Mr. V.S.Jagadeesan
For 1 st Respondent	: Mr. M.R.Gokul Krishnan
For 2 nd Respondent	: Mr. C.Gauthamaraj
For 3 rd Respondent	: M/s. T.S.Selvarani Accountant General

JUDGMENT

The plaintiffs in O.S.No. 2796 of 2010 on the file of VI Assistant City Civil Court, Chennai are the appellants herein. They had filed the suit seeking a declaration that the order passed in Letter No.



2. The said C.Muniyandi had joined State Transport Department and was later transferred to State Transport Corporation. He died on 31.07.1990. He was receiving his family pension vide PPO No. 723. He died on 02.09.2004. The first plaintiff applied for family pension in Form -14 through the second defendant. It was returned, stating that she was not entitled for family pension as she was his second

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4. The first plaintiff claimed that she had married C.Muniyandi on 14.06.1969. At that time, the first wife was alive and her marriage with C.Munniyandi was subsisting.

5. It is therefore seen that the first plaintiff had married C.Muniyandi even though the marriage with his first wife was subsisting.

6. During evidence, this fact had been admitted by the first plaintiff. She also admitted that C.Muniyandi married her even without a lawful divorce having been obtained from the first wife.

7. The trial Court had dismissed the suit by Judgment dated 18.08.2011 holding that the marriage of the first plaintiff with C.Muniyandi was null and void and that therefore she was not entitled for family pension as she had no legal status to receive family pension from the Government.

8. The appellants herein then filed A.S.No. 443 of 2012 before the II Additional District Court, City Civil Court, Chennai. Once again



the same averments were made. It was again noted that the first wife had died only on 19.06.1989 and at the time of the marriage of the first appellant herein on 14.09.1969, the marriage with the first wife was subsisting. The admissions of the plaintiff in that regard were again extracted and again holding that the marriage was null and void, the Appeal Suit was also dismissed.

9. The plaintiffs have then filed the present Second Appeal. The Second Appeal has been meandering around for the past 5 years without being admitted. Notice had also been directed to the respondents and counsel had also entered appearance.

10. Mr. V.S.Jagadeesan, learned counsel made a fervent plea for the admission of the Second Appeal. The learned counsel stated that the Tamilnadu Pension Rules 1978 provides for payment of pension to more than one widows and found fault with the Judgment of both the Courts below and stated that they had not properly interpreted the relevant provision. The provision claimed to be relevant by the learned counsel is Rule 49(7)(a)(i), which is held as follows:-



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“(7)(a)(i) Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares.”

11. It is therefore contended by the learned counsel that if family pension is payable to more than two widows then it should be paid in equal shares to both the widows.

12. Unfortunately, the argument of the learned counsel is based on a wrong presumption. The words in the provision are “payable to more than one widow”. If it is payable to a widow then the marriage should be lawful. If the marriage is unlawful and not recognised in law, the concept of a widow would never arise on the death of a Government Servant. The word “payable” has to be distinguished from the word “sanctioned”. The rule does not say that the pension can be sanctioned to a lady, who claims to have married the Government Servant as his second wife.



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13. In the instant case, the first wife had pre-deceased C.Muniyandi. The issue of a widow surviving C.Muniyandi does not arise at all. The first appellant can never by any stretch of imagination step into the shoes of the first wife on her death because her marriage with C.Muniyandi was at a time when the first marriage was subsisting. The Hindu Marriage Act is very clear on this aspect.

14. The learned counsel however relied on a string of Judgments. It is therefore obligatory on my part to examine them.

15. The learned counsel relied on the following Judgments:-

(i) ***2003-3-L.W.132 [K.Saroja Vs. Secretary to Government of Tamil Nadu, Public (Political Pension II) Department and others].*** The point which arose for consideration was whether on the death of one of the two widows, the surviving widow will be entitled for payment of full family pension that was paid to both the widows as dependents of the deceased petitioner. The fact in that case was that Krishnasamy Padayachi was recognised as a Freedom Fighter and on his death, the



widows being destitute were granted special family pension. Such family pension is admissible on account of the status of the widow or plurality of the widows *if they are legally married*.

The last three words assumes signifies. There can be recognition of plurality of widows only if the marriage with both is lawful and legally permissible. The Judgment is therefore distinguishable as in this case, the marriage of the first appellant with C.Muniyandi is null and void as the first marriage was subsisting.

(ii) **2004 (4) Mh.L.J [Laxmibai Vs. Chief Executive Officer and others]**. There, the issue related to payment of pension to two widows which was paid in equal shares and whether the surviving widow, on the death of one of the widows would be entitled for continuation of family pension. The pension paid was reduced on account of death of one of the widows leading to institution of a litigation claiming the full pension. The petitioner therein was the first wife of Shripat Zita Kumare, who was working as Primary Teacher in a Primary School run by Zilla Parishad, Nagpur. The petitioner therein was recognised as legally married wife



and she questioned the reduction in the family pension and not sanction of family pension. Here the first appellant cannot be recognised as a legally wedded wife of C.Muniyandi. Thus again, the facts are distinguishable.

(iii) *2004 SCC Online All 794 [Smt. Rohini Srivastava Vs. Director, Pension, directorate U.P., and another].* In that case, the family pension which was granted to the petitioner was stopped on the ground that the first wife was alive and that during the lifetime of the first wife, the second wife was not entitled for family pension. A learned Single Judge of the Allahabad High Court, examined the new Family Pension Scheme 1965 and stated that it was a beneficial scheme and also held that the Government should not go against the provisions of the Constitution or any other law. It was also observed that under Article 309 of the Constitution, the State can pass an act in relation to the conditions of service of a public Servant. Thereafter, the status of the eldest surviving widow was examined. The order was set aside and it was held that the petitioner was entitled to be given family pension. The Judgment is certainly distinguishable on facts.



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In this State, the Pension Rules are governed by the Tamil Nadu Pension Rules 1978. Pension is payable to a lawful married widow on the death of public servant. After the introduction of the Hindu Marriage Act, 1955, if a person contracts second marriage while the first marriage is subsisting, then the second marriage becomes null and void.

To over come a situation when prior to 1955, the Hindu Law was not codified, Rule 49(7)(a)(i) had been kept in place to enable sharing of pension by two more widow. It does not signify sanctioning of pension to a lady, whose marriage is not recognised in law. This Judgment cannot be applied to the facts of this case.

(iv) **(2008) 2 SCC 238 [Vidhyadhari and Others Vs. Sukhrana Bai and others]**. This Judgment related to Section 372 of the Indian Succession Act 1925 for grant of succession certificate. In that particular case, the deceased had made a nomination in favour of the second wife to receive the terminal benefits. It was specifically observed that she was not the wedded wife but her children were legitimate for the purpose of sharing the employment dues of their fathers. Thereafter, the Hon'ble



Supreme Court, in exercise of its power to balance equities, had worked out a formula that the first wife would get equity of 1/5th share of the terminal benefits through the second wife. The law however was held that the second wife was not a legally married wife and cannot claim such status. Even in this case, the first appellant was not a legally wedded wife and cannot claim such status.

(v) **2010 SCC OnLine Mad 4098 [Tamilselvi Vs. the Accountant General and others]**. The learned Single Judge in a Writ Petition examined Rule 49(7)(a) of the Tamil Nadu Pension Rules which related to payment of family pension to minor children of a pre-deceased wife of a deceased Government employee. The dispute was between the minor children of the first wife and the petitioner, who claimed to be the second wife. Thereafter, the single Judge also examined Rule 49(7)(c) and observed that the minor children were receiving pension and since they had reached the age of 25 years under Rule 49(7)(c) of the Tamil Nadu Pension Rules observed that the petitioner was entitled to receive family pension. Again, the facts of the case are distinguishable.



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(vi) **2014-2 L.W. 1009 [P.Visalakshiamma Vs. The Director of Schools Higher Education and others]**. The issue in that case was with respect to nomination of the second wife of the Government servant and it was held that a nominee is a person, who is to immediately be put in charge of the benefits and is bound to distribute the same between the legal heirs. It was very specifically stated that since the marriage was not valid in the eye of law, she cannot be termed as a widow as per Rule 49(7) of the Tamil Nadu Pension Rules 1978. A compromise had been entered into and that was recorded. However, it was very specifically held that under Section 5 of the Hindu Marriage Act 1955, a Hindu male or a female cannot marry again during the subsistence of the first marriage. Such marriage will be void abinitio. The observation in this Judgment actually works against the appellants herein.

(vii) **CDJ 2014 MHC 3594 [S.Kamatchi Vs. The Accountant General and Others]**. In that case, the name of the petitioner as the second wife had been incorporated in the service records as a nominee along with other children. It was under those circumstances that the petition was allowed. The Judgment is certainly distinguishable since



the validity of the marriage was not examined. In the instant case, the validity of the marriage is questionable and the concept of a widow will never arise since the marriage is void abinitio.

(viii) **2014 SCC OnLine Mad 6319 / S.Pushpavalli Vs. The Senior Accounts Officer and others]**. It was observed that since there was a child with the first wife, the proviso, namely, Rule 49(7)(a)(i) would not apply to the petitioner to claim payment of full pension. It was held that since the marriage was prior to the date of amendment, the petitioner was entitled for family pension. Section 5 of the Hindu Marriage Act, 1955 had not been brought to the notice of the Court which provision stipulated that a marriage contracted for the second time when the first marriage is subsisting is null and void. The said Judgment will not be of any assistance to the appellants herein.

(ix) **2015 (2) Mh.L.J 328 / Union of India and another Vs. Jaywantabai]**. The Bombay High Court examined Section 11 of the Hindu Marriage Act, 1955 but not Section 5 of the Hindu Marriage Act, 1955 which specifically provides that a second marriage during the



subsistence of the first marriage is illegal and void abinitio. It was also observed that model employers like the State and Central Government should adopt the same course of action to provide relief to a woman married with a Government servant. The said observations do not lay down the law and actually would only encourage violation of a code enforced under the Hindu Marriage Act, 1955. The ratio is not applicable to the facts of this case.

(x) **2015 (3) Mh.L.J. 883 / Kantabai Vs. Hausabai Dhulaji Shriram and others].** It was observed in that case that the two widows are heading towards old age and therefore, taking the ground of amicable approach, the Bombay High Court had granted pension for the two widows of a deceased Government servant. The Judgment does not examine the provision under Section 5 of the Hindu Marriage Act and is therefore distinguishable.

In this case, the first appellant cannot be termed as a widow as she was in the first place not a legally married wife of the deceased C.Munniyandi.



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(xi) **2015 SCC OnLine Tri 693 [Smti. Piali Sutradhar and Others Vs. The State of Tripura and Others]**. In that case, the first wife had been divorced and thereafter the Government Servant had married again and it was held that the said lady is entitled for family pension. The marriage between the first wife and the Government Servant was dissolved by a decree of divorce. Naturally the Government servant can marry again and the lady whom he so marries is entitled for family pension. The facts are therefore distinguishable.

(xii) **2016 SCC OnLine Mad 15221 [Tmt. J.Rajakumari Vs. The Superintendent of Police]**. In the entire Judgment, the learned counsels, who argued had not brought to the notice of the Court Section 5 of the Hindu Marriage Act 1955 which very specifically prohibits second marriage during the subsistence of the first marriage. The Rules under the Tamil Nadu Pension Rules can never override substantial law as stated under the Hindu Marriage Act, 1955 relating to validity and legality of a second marriage. The said Judgment is not applicable to the facts of this case.



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(xiii) **2020 Scc OnLine Mad 28025 [C.Sarojini Devi Vs. Director of Local Fund Audits and Others]**. A learned Single Judge had relied on the presumption in favour of marriage since there has been cohabitation for a long time. It was held that the Court has to necessarily lean towards the premise of marriage.

Here, it had been admitted by the first appellant that she had married the deceased C.Muniyandi even during his marriage with the first wife was subsisting. Her marriage is therefore illegal. In the said circumstances, she can never be termed to be a widow of C.Munniyandi. The Judgment relied on is certainly distinguishable and not applicable to the facts of this case.

(xiv) **CDJ 2020 SC 314 [Tulsa Devi Nirola and Others Vs. Radha Nirola and Others]**. The Hon'ble Supreme Court was concerned with grant of Succession Certificate under Section 372 of the Indian Succession Act 1925. The deceased had contracted a second marriage on 09.05.1987. It was observed by the Hon'ble Supreme Court that the Hindu Marriage Act, 1955 had not been brought into force by that date in the State of Sikkim.



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Here, the Hindu Marriage Act, 1955 had been brought into effect in this State on the date of when it was promulgated. The marriage of the first appellant with the deceased was therefore void abinitio.

16. My attention had been drawn to a Judgment of a learned Single Judge of this Court *dated 15.07.2022 in W.P.No. 32556 of 2014 [Santhi Vs. The Secretary to Government, Government of Tamil Nadu, finance and Pension Department and two others]*. The learned Single Judge in that case had rejected the relief sought for grant of family pension to the second wife. It was observed that the second wife gets a status as legally wife only when the second marriage was solemnised as per Customary Law among the community before the coming into force of the Hindu Marriage Act, 1955 or was solemnised as per legal requirements, in the case of persons governed by Mohammedan Law where bigamy is permissible. In the instant case, the marriage to the petitioner with C.Munniyandi was void abinitio.

17. It must also be pointed out that a Division Bench of this Court in *R.Rajathi Vs. the Superintendent Engineer, TANGEDCO,*



Nagapatinam District (W.A.No. 977 of 2017, dated 05.06.2018) had

held as follows:-

“43. We are, therefore, constrained to conclude that the judgments which conclude that a second wife would be entitled to family pension, irrespective of her marriage being void, under the provisions of their relevant Personal Law’s applicable to the parties do not reflect the correct position of law and therefore will stand overruled. The applicability of Sub Rule 7(a)(i) is confined only to cases where the second marriage is valid under the Personal Law applicable to the parties, only in such cases, widows of such marriages would be entitled to family pension.”

18. In 2015 (14) SCC 511 [Raj Kumari and another Vs. Krishna and Others], the Hon’ble Supreme Court had held that family pension is sanctioned to a legal wedded wife of the deceased Government employee. In the said case, the deceased Government employee had married the plaintiff therein while the first wife alive. The Hon’ble Supreme Court held that the plaintiff can, by any stretch of



imagination be described as a legally wedded wife of the deceased Government employee. That ratio squarely applies to the case of this case. The petitioner never claim the status of a legally wedded wife. Therefore, she cannot claim to be a widow. She cannot claim pension.

19. I hold that both the Courts have correctly applied the law and had dismissed the suit and the first Appeal. No point of law arises for admitting the Second Appeal.

20. The Second Appeal stands dismissed. No order as to costs.

14.12.2022

Index :Yes/No
Internet:Yes/No
vsg

To

1. II Additional Judge City Civil Court,
Chennai.
2. VI Assistant Judge City Civil Court, Chennai.



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C.V.KARTHIKEYAN, J.

vsg

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(Transport TBC) Department
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**Pre-Delivery Judgment made in
S.A.No. 254 of 2017**

14.12.2022