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CMSA No.20 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2023

PRONOUNCED ON : 20.04.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CMSA No.20 of 2023

and CMP No.4263 of 2023

A.Philomena

.... Appellant/Petitioner

Vs.

1. The Tamilnadu Electricity Board,
(TANGEDCO),
Rep. By its Executive Engineer (Gen),
Nilgiris,
Nilgiris Electricity Distribution Circle,
Uthagamandalam.

2. The Executive Engineer (Gen.),
Nilgiris Electricity Distribution Circle,
Formerly TNEB and now TANGEDCO,
Nilgiris, Udhagamandalam – 643 001.

3. Vasanthi

4. Presila

.... Respondents

Prayer: This Civil Miscellaneous Second Appeal is filed under Section 100 of Code of Civil Procedure r/w Order 4B Rule 1 r/w Section 151 of Code of Civil Procedure, against the judgment and decree of the learned District Judge of the

<https://www.mhc.tn.gov.in/judis>



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Nilgiris, Udthagamandalam dated 13.10.2022 passed in CMA No.02 of 2021, confirming the judgment and decree of the learned Subordinate Judge, Coonoor, dated 23.12.2020 passed in S.O.P.No.62 of 2018.

For Petitioner: : Mr.Subhang P.Nair.

For Respondents : Mrs.J.Hemalatha Gajapathy (For R1 & R2)
Standing counsel for TNEB
Notice to R3 & R4 is dispensed with.

ORDER

The unsuccessful petitioner in S.O.P.No.62 of 2018 is the appellant herein.

2. At the time of the admission, the learned Standing Counsel for TNEB/respondents 1 and 2, had taken notice. In view of the order proposed to be passed, notice is dispensed with for respondents 3 and 4.

3. The appellant/petitioner filed Succession Original Petition before the learned Subordinate Judge, Coonoor in SOP No.62 of 2018 and the same was dismissed on 23.12.2020 and the further CMA under Order 43 Rule 1 in CMA No.2 of 2021 was dismissed on 13.10.2022 with costs of Rs.25,000/-.



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4. The short facts that are necessary for determination of the appeal are as under.

(i) The petitioner married one B.Charles on 03.01.1977 at Sagayamatha Church (Lady of Perpetual Help Church), Mount Pleasant, Coonoor, as per Christian rites. The said marriage was registered in the said Church record. The said Charles worked in Tamil Nadu Electricity Board and died on 23.04.1990, leaving behind the petitioner as his legal representative to claim his service dues.

(ii) As per the official respondent's letter dated 21.11.1990, as on date of death of Charles i.e. 23.04.1990, his service due was Rs.61,715/-. The 3rd respondent claiming that she is the legal wife of Charles and that the 4th respondent Presila, is their daughter, have filed succession petition in O.P.No.20 of 1991 before the District Court, Udthagamandalam. The petitioner was impleaded in that case as respondent.

(iii) The OP No.20 of 1991 filed by the respondents 3 and 4 was allowed. However, on appeal in CMA No.690 of 1996, the High Court allowed the appeal and remitted back the matter for reconsideration. Subsequently, SOP



No. 20 of 1991 was dismissed on 20.06.2004 on the ground that marriage of the 3rd respondent with Charles, was not proved.

(iv) The appellant/petitioner claimed that she is the legal representative of the deceased Charles, who worked in TNEB and sought service benefits after his death. Even after several reminders, no amount was released, hence she filed WP No.5204 of 2013. The same was dismissed on 14.02.2014, with an observation to seek appropriate remedy before the civil forum. Thereafter, the appellant/petitioner, has filed the SOP No.62 of 2018, which was dismissed, against which, CMA No.2 of 2021 was filed. The said appeal was also dismissed on 13.10.2022 and hence, the present CMSA.

5. At the outset, as this Court found that there is no substantial question of law for admitting the CMSA, has permitted the learned counsel for the appellant/petitioner and the respondents 1 and 2, to make their submissions on the merits of the case and the matter is disposed of finally.

6. (a) It is born out from the records that the 1st respondent-TNEB has disbursed the terminal death benefits of deceased Charles i.e. Rs.87,893/- to the 3rd respondent. As per the counter filed by the 3rd respondent before the trial



Court, it could be seen that the alleged marriage of the appellant/ petitioner and Charles dated 03.01.1977, is denied. The deceased Charles died on 23.04.1990. The petitioner obtained legal heir certificate dated 15.03.1991, by misrepresentation to the Tahsildar, Coonoor. The Tahsildar, Coonoor has already issued a legal heir certificate on 09.05.1990 to the respondents 3 and 4 as legal heirs of deceased B.Charles. Subsequently, the fact came known to the Tahsildar, Coonoor that the petitioner by misrepresenting, obtained legal heir certificate on 15.03.1991. After conducting enquiry, the legal heir certificate issued to the petitioner was cancelled on 23.09.1991. Even the petitioner knew about the cancellation of the legal heir certificate. She concealed the same and appears to have filed the present petition.

(b) As per the averment in the counter filed before the trial Court, it is seen that under Ex.R5 and R6, the petitioner has sent lawyer notice on 18.06.1977 to one Mr.A.Bernard, father of the said B.Charles, through her Advocate Mr.S.Yesian, Coonoor. In the said notice, the petitioner pleaded that Charles already got married with the 3rd respondent in November 1976 and she is living with him in his house. She had further alleged that knowing that Charles was already married, the father of Charles arranged the marriage with the petitioner. Therefore, the petitioner intended to initiate legal action against



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the father of Charles. The said notice proves that the petitioner married Charles as 2nd marriage.

(c) It is a specific case of the TNEB that, since deceased Charles has nominated respondents 3 and 4 to succeed the terminal benefits of him, after the disposal of WP No.5204 of 2013, on 14.02.2014, the terminal benefits amount was disbursed to respondents 3 and 4.

7. From the counter of respondents 3 and 4, I find that there is a specific allegation against the appellant/petitioner that she had suppressed the real facts in the petition that she is the wife of one Mathew Thomas and through him, she delivered three children. She had undergone family planning on 27.06.1986 and had given her husband name as Mathew Thomas. Her three children's Baptism were given in Sagayamatha Church, Coonoor. In the Baptism Certificate, the father name was shown as Mathew Thomas.

8. Heard the learned counsel for the appellant and the learned standing counsel for the respondents 1 and 2/TNEB. As stated supra, notice to the respondents 3 and 4, is dispensed with.



9. During the enquiry, the petitioner herself examined as PW1 and through her Ex.P1 and Ex.P11 were marked. On the side of respondents, the 3rd respondent was examined as RW1. Through her, Ex.R1 to Ex.R21 were marked. After considering the facts of the case, evidence and hearing both sides, finally the trial Court dismissed the petition.

10. From the documents filed before the trial Court, the following facts are emerged.

(a) The 3rd respondent married deceased Charles in November, 1976. the 3rd respondent is a Hindu and the deceased was a Christian. The case of the 3rd respondent is as that Charles converted from Christianity into Hindu and thereafter, the 3rd respondent married the said Charles on 02.11.1976 at Sree Badhrakaliyaman Temple, Mettupalayam. The factum of the 3rd respondent marriage with B.Charles was not accepted by this Court in O.P.No.20 of 1991, order dated 26.10.2014. The said order copy is marked as Ex.P6. Since the marriage between the 3rd respondent and said Charles is not proved, therefore, the claim of the respondent in O.P.No.20 of 1991, was negated by this Court.

(b) The petitioner married the said Charles on 03.01.1977 as per Christian rituals. There is no issue or child between Charles and the petitioner.



Between Charles and 3rd respondent, the 4th respondent Presila was born on 29.01.1976.

(c) Admittedly, the legal heir certificate issued by the competent Revenue Tasildhar to the petitioner has been subsequently, cancelled after due enquiry and the same is given to the respondents 3 and 4, assumes significance.

(d). Both the Courts below have given a concurrent finding that initially the deceased Charles converted into Hinduism and married 3rd respondents and begotten the 4th respondent. Thereafter, the marriage between Charles and the appellant/petitioner, appears to have been solemnized. Having come to know about the above said fact, the very same appellant/petitioner appears to have issued notice to the father of the deceased Charles in Ex.R5 and notice to Charles in Ex.R6. Ex.R7, is the proceedings related to legal heir certificate issued between the petitioner and the 3rd respondent.

(e). On perusal of the same, both the Courts below have rightly come to the conclusion that the alleged marriage between the deceased Charles and the 3rd respondent was at an earlier point of time, even as per the admission of the appellant/petitioner, in her legal notice under Ex.R5 and Ex.R6. Further,



taking into consideration, Ex.R5 and Ex.R6, the Revenue Tahsildar has issued the Ex.R8, legal heir certificate to the respondents 3 and 4.

11. At this juncture, my attention was drawn to the admitted legal notices Ex.R5 and Ex.R6. It reveals that both the notices viz., Ex.R5 and R6, are dated 18.06.1977 and the said lawyer notices were issued on behalf of the petitioner by her lawyer Mr.Yesian, Advocate, Coonoor to the father of the Charles, namely, Bernard and Charles, respectively. Further, it discloses that Charles already got married in November, 1976 with the 3rd respondent and subsequently, she came to know about it and therefore, the petitioner through her lawyer, sent notice stating that the act of Charles amounts to bigamy u/s.494 of IPC and act of the father of Charles is an offence under IPC. The petitioner intended to take legal steps against them, and thereafter, the petitioner was never lived with Charles. The petitioner admitted that notices were sent under Ex.R5 and Ex.R6, wherein she claims that Charles is her husband. After that the petitioner left matrimonial home of Charles within one month and married one Mathew Thomas.

12. Based on the documentary evidence of Ex.R14 to R19 and R20,

both the Courts below have rightly come to the conclusion that out of the



petitioner's second wedlock with Mathew Thomas the petitioner delivered 3 children and got baptised at Sagayamatha Church, Coonoor which is evident from Ex.R14 to Ex.R19, Ex.R20 is family planning certificate to the petitioner which discloses her husband name as Mathew Thomas. Even as per evidence of one Mr.Paul (Church Father) in O.P.No.20 of 1991, on the file of the District Court, Udthagamandalam, a certified copy of the evidence reveals that the petitioner and Mathew Thomas had 3 children and the children's Baptism was done in Sagayamatha Church and registered it. Those records are in Ex.R14 to Ex.R19 produced by him and both the Courts below have rightly come to the conclusion that the evidence adduced before the Court clearly demonstrates that the petitioner lived with Charles for only one month and after she came to know that Charles already married to the 3rd respondent, the petitioner left the matrimonial home and remarried the said Mathew Thomas.

13. In the above background, the lower Appellate Court has rendered a factual finding that the petitioner knew that Charles already married the 3rd respondent and without any divorce between the petitioner and Charles, the petitioner married Mathew Thomas by abandoning her earlier marriage with Charles.



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14. Therefore, the lower Appellate Court has rightly held the cancellation of Ex.R7, the legal heir certificate, initially issued to the petitioner by the Revenue Tahsildar, is just and proper and also held that Ex.R5, would demonstrate that respondents 3 and 4 are the only legal heirs of the deceased Charles. Further, based upon Ex.P9, Ex.P10 and ExP11, both the Courts below have rightly come to the conclusion that the 4th respondent was born to Charles and 3rd respondent herein.

15. The learned standing counsel for the TNEB/respondents 1 and 2 drew my attention to the finding rendered by the lower Appellate Court at paragraph No.20, which is extracted as under:

“20. Even assuming that the marriage of the 3rd respondent with Charles is not proved, whether the petitioner marriage with Charles is proved is to be tested. After the marriage between Charles and 3rd respondent, the petitioner married Charles on 03.01.1977. Within one month, the petitioner came to know that Charles already married with 3rd respondent, the petitioner issued Ex.R5 and Ex.R6, notices to Charles and his father and left the matrimonial home. Thereafter, without obtaining any divorce or declaration of the marriage of the petitioner with Charles as null and void, the petitioner married Mathew Thomas. Out of the wedlock with Mathew Thomas, the petitioner delivered 3 children



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and got Baptism at the Sagayamatha Church, Coonoor. The father of the Sagayamatha Church, Coonoor, has also given evidence in O.P.No.20 of 1991 that the petitioner married one Mathew Thomas and out of their wedlock, she delivered three children.

16. Hence, on perusal of PW1's evidence, I find that the petitioner has admitted that she issued Ex.R5 and Ex.R6 notices that Charles already married with 3rd respondent and she left the matrimonial home. Further evidence reveals that she does not know whereabouts of her three children with Mathew Thomas, namely, (1) Arul James Anandan, (2) Antony D Cruz and (3) Anthonyamal. Thus, perusal of PW1 evidence reveals that her version is bereft of true facts and she is suppressing the same before this Court, wherein Ex.R13 to Ex.R20 reveals that she married Mathew Thomas and delivered 3 children. Therefore, the evidence of PW1 is held to be untrustworthy and unreliable.

17. Therefore, both the Courts below have rightly come to the conclusion that Ex.R5, Ex.R6 and Ex.R8, totally demolishes the case of the petitioner and the alleged relationship of legally wedded wife of the deceased Charles and also rightly negated the grant of terminal benefits.



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18. The trial Court has properly appreciated the oral and documentary evidence of RW1 and PW1 in the cross examination and based upon the above referred documentary evidence viz., Ex.R5, Ex.R6, Ex.R7 and Ex.R8, coupled with Ex.R13 to R20, goes to show that the petitioner has married one Mathew Thomas and begotten three children and thereafter, she underwent family planning and hence, I find that the appellant/petitioner has not come to the Court with clean hands.

19. On the above factual analysis of oral evidence of PW1 and RW1 and admission of RW1 regarding Ex.R1, Ex.R5, Ex.R6, Ex.R7 and Ex.R8 and also the specific evidence of Church Father in O.P. No.20 of 1991, coupled with Ex.R13 to Ex.R20, would go to show that the appellant/petitioner is the wife of one Mathew Thomas and not Charles and hence, I find that no Substantial Question of law arises in the CMSA and accordingly, I find no merit in CMSA for admission.

20. The trial Court has awarded costs of Rs.25,000/-. Since the appellant being a woman, this Court is inclined to reduce the cost to Rs.5,000/-.

To the limited extent, the CMSA is partly allowed. On the other aspects, the



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CMSA stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed.

20.04.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
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To

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RMT.TEEKAA RAMAN,J

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Pre-delivery Judgment in
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