



S.A.No.938 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.938 of 2021

1.Susila
2.Srividhya

... Appellants

Vs.

1.Jamunabai
2.. Sowmya
3.Minor G.Saswath
4.The Senior Manager
Tamilnadu Civil Supplies Corporation
Kavundampalayam, Coimbatore
5.The Tahsildar
Coimbatore North Taluk
Coimbatore



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6. The District Collector
The Collectorate Building
Coimbatore.

. . . Respondents

Prayer:- Appeal is filed under Section 100 of C.P.C against the judgement and decree dated 22.11.2019 passed in A.S.No.16 of 2019 on the file of the III Additional Subordinate Judge, Coimbatore confirming the judgement and decree dated 23.08.2017 made in O.S.No.2073 of 2010 on the file of the IV Additional District Munsif Court, Coimbatore.

For Appellant : Mr.J.Pothiraj

For Respondent : Mr.S.Saravanakumar [R.1 and
R.2]
R.3, minor rep. by R.1.

: Mr.B.Tamil Nidhi, AGP, [R.5 & R.6]



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JUDGEMENT

The unsuccessful plaintiffs have filed the above Second Appeal challenging the concurrent judgement and decree in and by which the plaintiffs' suit O.S.No.2073 of 2010 on the file of the District Munsif, Coimbatore for a declaration that the plaintiffs were the only legal heirs of the deceased R.Ganesan has been dismissed.

2. It is the case of the plaintiffs that the 1st plaintiff is the legally wedded wife of the deceased R.Ganesan who was working as an Office Assistant with the Tamil Nadu Civil Supplies Corporation Limited which has been impleaded as the 4th defendant. He had died on 17.01.2010 at the 1st plaintiff's residence. It is the case of the plaintiffs that after the cremation and the death ceremony, the 1st plaintiff had made an application to the 5th defendant to issue a legal

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heirship certificate in favour of the plaintiffs herein. However, to the shock and surprise of the plaintiffs, the 5th defendant had sent a reply dated 16.03.2010 stating that the said Ganeshan had several wives before his death and therefore, the 5th defendant cannot issue a legal heirship certificate in favour of the plaintiffs.

3. The plaintiffs had also received a legal notice dated 26.03.2010 from defendants 1 to 3 stating that defendants 1 to 3 are the legal heirs of the deceased Ganesan. On receipt of the said notice from defendants 1 to 3, the plaintiffs had sent a legal notice to the 4th defendant calling upon him to furnish the entire details of the service benefits in the name of R. Ganesan. However, it is stated that till the date of filing of the suit, this information has not been made known to the plaintiffs. The plaintiffs would submit that they are only known legal representatives and defendants 1 to 3 are strangers. Therefore,



the suit in question was instituted.

4. The 1st defendant had filed a written statement for herself and on behalf of her minor children, defendants 2 and 3. It is the contention of the defendants that the 1st defendant is the legally wedded wife of late Ganesan and defendants 2 and 3 are their children. The defendants would submit that the suit itself is a misconceived one and hence prayed for the dismissal of the suit.

5. The 4th defendant had filed a written statement inter alia contending that the provisions of Section 80 of CPC had not been complied with and therefore the suit has to be dismissed. The 4th defendant would submit that rival claims have been made and the legal heirship certificate had not been produced by either party.



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Therefore, the retirement benefits cannot be given to anyone. The 4th defendant would submit that they are unnecessary parties to the proceedings and the same may be dismissed against them.

6. The 5th defendant, Tahsildar had also filed a written statement inter alia contending that since the provisions of Section 80 of the Civil Procedure Code had not been complied with the suit has to be dismissed against them. The 5th defendant would submit that during the inquiry they came to know that the 1st defendant was also the wife of Ganesan and defendants 2 and 3 are his daughters out of this union. Further, they are unable to ascertain as to who the wife of the deceased Ganesan was. The real relationship between the parties could not be ascertained therefore, they sought for a dismissal of the suit.



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7. Before the IV Additional District Munif, Coimbatore, the following issues were framed:-

1. Whether the 1st Plaintiff is the legally wedded wife of deceased Ganesan as alleged in the Complaint?

2. Whether the 2nd Plaintiff is daughter of late Ganesan through 1st Plaintiff as alleged in the complaint?

3. Whether the 1st defendant is the legally wedded wife of the deceased Ganesan as alleged in the Written Statement?

4. Whether the 2nd and 3rd defendant are children of deceased Ganesan through the 1st defendant as alleged in the Written Statements?

5. Whether the suit is bad for misjoinder of



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parties as alleged by the 4th defendant?

6. Whether the Plaintiffs are entitled the relief of declaration that the Plaintiffs are the only legal heirs of the deceased R.Ganesan as claimed in the Plaint?

7. To what other relief the parties to the suit are entitled for and for cost of the suit?

8. The 1st plaintiff had examined herself as P.W.1 and Ex.A.1 to A.6 were marked. On the side of the defendants, the 1st defendant had examined herself as D.W.1 and one R.Jayanthi as D.W.2 and marked Ex.B.1 to B.11.

9. Ultimately, on considering the evidence and pleadings, the learned District Munsif had proceeded to dismiss the suit. Aggrieved by the said judgement and decree the plaintiffs had filed A.S.No.16 of



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2019 on the file of the III Additional Sub Judge, Coimbatore. The learned Appellate Judge had also proceeded to dismiss the appeal. Aggrieved by which the present second appeal has been filed.

10. Mr.J.Pothiraj, the learned counsel for the appellants would submit that even as per Ex.A.3 which is the notice said to have been issued by the defendants 1 to 3 to the 4th defendant and the 1st plaintiff, it has been clearly stated that the 1st plaintiff is the 1st wife of Ganeshan and after they had become estranged the said Ganesan had married the 1st defendant thereby recognizing the fact that the 1st plaintiff is the 1st wife and consequently the 1st defendant was not the wife of deceased Ganesan and the children born to them are illegitimate children. He would submit that the defendants 2 and 3 cannot be considered to be the legitimate children of the said Ganesan since their mother, the 1st defendant, had married the said Ganesan



during the subsistence of the 1st marriage.

11. He would rely upon the judgement of the Hon'ble Supreme Court reported in ***2023 SCC Online SC 1087 - Revanasiddappa and Another Vs. Mallikarjun and Others.***

12. Mr. S.Saravanakumar, learned counsel appearing on behalf of the defendants 1 to 3 would submit that the Lower Appellate Court has clearly observed that the 1st defendant is not considered to be the wife of the said Ganesan by reason of she being married to Ganesan during the subsistence of the earlier marriage. However, the Lower Appellate Court had observed that the defendants 2 and 3 are the legal representatives of the said Ganesan. He would submit that this is the observation of the Hon'ble Supreme Court in the judgment referred to



13. Heard the counsels and perused the records.

14. Admittedly, defendants 2 and 3 are born to late Ganesan and that the 1st defendant had married the said Ganesan during the subsistence of the earlier marriage is evident from a reading of Ex.A.3 which is the notice issued by defendants 1 to 3 to the 4th defendant as well as the 1st plaintiff. In the judgement cited supra by Mr. Pohtiraj, the learned Judges had ultimately formulated the answer to the reference in para. no. 74 therein and a reading of Clauses I to III which is extracted herein below :-

(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy



irrespective of whether (i) such a child is born before or after the commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

(ii) In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child 'begotten or conceived' before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;



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(iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in subsection (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

would clearly state that children born out of a null and void marriage or a voidable marriage would still be legitimate and they would be entitled only to the separate property of the parents and would have no right to the property of any other person. Therefore, the legitimacy of such children and their right to property has been recognized by this judgement.



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15. Therefore, the judgement of both the Courts below in dismissing the suit is correct and in tune with the aforesaid judgement of the Hon'ble Supreme Court and I see no reason to interfere with the same particularly when there is no question of law that has emerged in this Appeal. Accordingly, the Second Appeal stands dismissed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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The Collectorate Building
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3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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