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A.S.No.20 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.20 of 2022

1.T.Soundarapandian

.. Appellant

Vs.

1.S.Sureshkumar

2.S.Vanitha

3.R.Mahalakshmi

4.The Accountant General(A&E),
Office of the Accountant General (A&E),
Anna Salai, Chennai-600 018.

.. Respondents

Prayer: Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgement and decree dated 20.01.2020 made in O.S.No.217 of 2018 passed by the Hon'ble Vth Additional Family Court, Chennai.

For Appellant : Mr.R.N.Chandrasekaran

For Respondents :
(for R1 & R2) : Not ready in Notice
(for R3) : No Appearance
(for R4) : M/s.T.S.Selva Rani



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J U D G M E N T

The appeal suit was instituted against the judgment and decree dated 20.01.2020 in O.S.No.217 of 2018. The appellant is the plaintiff.

2.The plaintiff has stated that he worked in the Police Department and retired from service in the year 2001. Thereafter, he is receiving pension from the Government of Tamil Nadu. The 4th defendant/Accountant General is the authority for controlling the pension disbursement. The plaintiff has stated that he married one Mrs.Bharatha Jothi @ Parvathy in the year 1968 and 2 children were born from and out of their wedlock, who are herein as defendants 1 and 2. Subsequently, the said Mrs.Bharatha Jothi @ Parvathy died on 17.02.2014 leaving behind the plaintiff and the defendants 1 and 2. The Tahsildar, Aminjikarai issued a legal heir certificate on 12.10.2007, mentioning that the plaintiff and the defendants 1 and 2 are the legal heirs of the deceased Bharatha Jothi @ Parvathy (first wife). After the death of the first wife, the plaintiff married the 3rd defendant Smt.R.Mahalakshmi on 18.04.2010 at Sri Nagakanniamman Thirukoil, Thiruverkadu, Chennai-77. The plaintiff made a representation to the 4th respondent to mute the name of the 3rd defendant, namely



Smt.R.Mahalakshmi instead of Late.Bharatha Jothi in pension records on 23.01.2018. The 4th defendant has not initiated any action. Since the office of the 4th respondent had not considered the application submitted by the plaintiff, the suit was instituted.

3.The 4th defendant/Accountant General filed a written statement denying the plaint averments, in brief are as follows:

The plaintiff namely T.Soundarapandian retired on 31.05.2001 while serving as Inspector of Police under the administrative control of Superintendent of Police, Sivagangai. Proposals for authorization of pensionary benefits were received from the department in March 2004 and pensionary benefits were authorized to him by this defendant in May 2004 under Joint Pension Payment Order No.C69532/POL. In the details of family enclosed with proposal he had identified Smt. Bharatha Jothi h@ Parvathy as his wife. Hence, Joint Pension Payment order was issued incorporating the name of Smt. Bharatha Jothi @ Parvathy as beneficiary for family pension payable after the life time of Sri. T. Soundarapandian, the plaintiff. The plaintiff has stated in his representation dated 23.01.2018 that he had married Smt.Mahalakshmi while he was in service and is continuing marital/family life since 1980 and two children -ie- daughter (34 years) and Son (31 years) had born through



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Smt.Mahalakshmi, the 3rd defendant. Also he had stated that he had not registered their marriage and had not furnished any documentary evidence in support of their marriage as ascertained from his representation dated 23.01.2018, Smt. Mahalakshmi, the 3rd defendant had married Sri. T. Sondarapandian in the year 1980 during the subsistence of his marriage with first wife Smt. Bharatha Jothy @ Parvathy. He had also begot two children through Smt.Mahalakshmi, the 3rd defendant even before the death of his first wife. As such the second wife cannot claim the status of a legal wife in the eye of law and is not entitled for family pension. Family pension is a welfare measure met out on the public funds and the same cannot be allowed to a person who claims to have legitimised an illegal action and did not even provide the proof by way of Marriage Registration Certificate. Hence, this suit is liable to be dismissed.

4.Based on the pleadings, the Trial Court framed the following issues:-

- i) Whether Smt. Mahalakshmi, the 3rd defendant, the second wife can claim the status of a legal wife in the eye of law and whether she is entitled for family pension,*
- ii) Whether Rule 49 of Tamilnadu Pension Rules, 1978 prohibits 3rd defendant to get pensionary benefits as prayed by the plaintiff,*



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iii) *Whether the plaintiff is entitled for declaration as prayed for,*

iv) *Whether the plaintiff is entitled for mandatory injunction as prayed for, and*

v) *To what other relief the plaintiff is entitled for.*

5. With reference to Issue No.1, whether the 3rd defendant, who is the second wife of the plaintiff can claim legal status as wife in the eye of law, the Trial Court made a finding that the specific contention of the plaintiff is that since he married 3rd defendant after the death of his first wife, the marriage of the plaintiff with the 3rd respondent is valid. In this context, Ex.B1 application dated 23.01.2018 was relied on. In the said application, plaintiff has stated that he married the 3rd defendant (second wife) while he was in service and that his two families (1st wife's family and 2nd wife's family) were under his supervision. Admitted facts are that the plaintiff retired from service in the year 2001 itself. His first wife namely Bharatha Jothi @ Parvathy died on 17.02.2014 ie., after 13 years from his date of retirement. The plaintiff had stated in his application dated 23.01.2018, Ex.B1, that he married the 3rd defendant (Second wife) while he was in service, ie., he married the 3rd defendant (second wife) before his retirement in 2001. Based on the above contradiction, the Trial Court arrived at a



conclusion that the plaintiff has made an incorrect statement in the plaint regarding his second marriage with the 3rd defendant Smt.R.Mahalakshmi.

Thus, it was established that the plaintiff married the 3rd defendant when his first wife namely Bharatha Jothi @ Parvathy was alive and the marriage between the plaintiff and the first wife was subsisting. Even in the family ration card and in the Adhar Card, which was issued prior to the year of 2014, the name of the 3rd defendant Smt.R.Mahalakshmi was included as the wife of the plaintiff. Therefore, the statement of the plaintiff that he married the 3rd defendant after the death of his first wife was found to be false and incorrect when the documents would reveal that even before the death of the first wife of the plaintiff, on 17.02.2014, the name of the 3rd defendant was included as the wife of the plaintiff in various records, the Trial Court has rightly arrived at a conclusion that the marriage between the plaintiff and the 3rd defendant is illegal and invalid and the second wife is not entitled to claim a family pension under the Tamil Nadu Pension Rules 1978.

6.Under Rule 49 of the Tamil Nadu Pension Rules 1978, legally wedded spouse alone is entitled to get family pension and in the present



case, the 3rd defendant was established as the second wife of the plaintiff.

That being the factum, this Court does not find any infirmity or perversity in respect of the findings made by the Trial Court regarding the issues from Nos.ii) to v), and the validity of the marriage between the plaintiff and the 3rd defendant.

7.For all these reasons, the judgment and decree dated 20.01.2020 passed in O.S.No.217 of 2018 stands confirmed. Consequently, A.S.No.20 of 2022 stands **dismissed**. No costs.

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Index : Yes

Speaking order

Neutral Citation : Yes

To

1.Vth Additional Family Court, Chennai.

2.The Accountant General(A&E),
Office of the Accountant General (A&E),
Anna Salai, Chennai-600 018.



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S.M.SUBRAMANIAM, J.

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