



S.A.No.411 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Received on :18.12.2023

Pronounced on : 11.01.2024

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.411 of 2008
and
C.M.P(MD)No.11380 of 2023

Hilda Sarojini Devi (Died)

...2nd Defendant/Appellant/
Appellant

2.Marry Reena Subashini

3.Madhubalu

4.Satishkumar

*(A2 to A4 are brought on record as LRS
of the deceased sole appellant, vide
order dated 24.06.2021)*

Vs.

1.Ambujam Florence Anbu @
Ambujam John Thaskood(Died)

...Plaintiff/Respondent-1/
Respondent-1

2.Esther

3.B.Ravi

4.B.Jones

...Defendants 1,3,4/Respondents
2 to 4/Respondents 2 to 4

5.Vinoth

*(R5 is brought on record as LR of the
deceased 1st respondent vide Court
order dated 03.02.2020)*



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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 22.03.2007 made in A.S.No.75 of 2006 on the file of the Subordinate Court, Nilgiris, Uthagamandalam, confirming the judgment and decree dated 27.12.2005 made in O.S.No.296 of 1995 on the file of the District Munsif Court, Coonoor.

For Appellant : M/s.L.Dhamodaran
For R2 to R5 : M/s.R.Sunilkumar
For R1 : (Died)

J U D G M E N T

This second appeal is filed at the instance of the second defendant (since deceased). The respondents 2 to 4 are the defendants before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

The brief facts which give rise to the instant Second Appeal are as follows:



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3. According to the plaintiff, she is the wife of one late John Thaskood and that their marriage was solemnized as per Christian rites and customs on 22.02.1984 and the marriage was registered at the Office of the Marriage Registrar, Ootacamund. Out of the wedlock, the plaintiff has begotten a child on 16.07.1988 by name Vinoth Thaskood and that the child was baptized on 02.09.2019. While so, John Thaskood died on 21.12.1990 leaving behind the plaintiff and his son Vinoth Thaskood as his legal representatives and heirs to succeed his estate. While so, the second defendant claiming to be the wife of John Thaskood, attempted to interfere with the possession of the suit property. The defendants 1 and 2 gave a petition before the Collector of Nilgiris by falsely claiming that they are the sister and wife of John Thaskood. The Collector, thereupon passed an order asking the plaintiff to establish her rights through Court of law. Hence, the plaintiff has filed the present suit for declaration that she is the legally wedded wife and also consequently, sought the relief of injunction.

4. The said suit was resisted by the first defendant by filing written statement, which was adopted by the defendants 3 and 4. According to the first



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defendant, the suit properties were originally belonged to one Paul Thaskood, who is the father of the first defendant and her brother Johnson @ John Thaskood. After the demise of the said Paul Thaskood, the suit properties devolved upon the first defendant and his brother Johnson @ John Thaskood. According to the first defendant, John Thaskood died on 21.12.1990 leaving behind his wife Hilda Sarojini Devi viz., the second defendant herein and his children. As such, the defendants are the absolute owners of the suit properties. The first defendant further submits that the Adi Thravida Welfare Officer handed over the possession of the suit property to the first defendant after removing encroachment. Thus, the first defendant prays to dismiss the suit.

5. The second defendant in her written statement has contended that, her husband Johnson also be called as John Thaskood and the marriage between John Thaskood and the second defendant was solemnized, on 30.08.1960. According to the second defendant, she is the legally wedded wife of John Thaskood. She would further submit that out of the wedlock, they had two daughters by name, Mary Reena Subashini and Mariya Madhu Bala and one son viz., Satish Kumar. This defendant further submitted that since she had got



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some illness, she was advised to stay at Ooty. Hence, she stayed at Ooty for the last about 10 years. The second defendant further submits that while she was in Ooty, there was a relationship between the plaintiff and the second defendant's husband and taking advantage of such affair outside the wedlock of the second defendant, the plaintiff claimed the status of the wife of Late John Thaskood. The second defendant dispute the birth of child to the plaintiff through John Thaskood. Even if a child was born to John Thaskood, still he has to be construed as an illegitimate child. She further stated that by taking advantage of the relationship between John Thaskood, the plaintiff stealthily obtained the tax receipts. It is the submission of the second defendant that the plaintiff has filed the suit only to grab the property of John Thaskood and to deprive the defendant, who is the legally wedded wife. Even if there was a marriage between the plaintiff and the late John Thaskood, the same cannot be construed as a valid marriage, as the same is subsequent to the marriage of the second defendant. Hence, she prays to dismiss the suit.

Evidence and Documents:

6. Before the Trial Court, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and twelve documents were marked as



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Exs.A1 to A12. On behalf of the defendants, two witnesses were examined as D.W.1 and D.W.2 and twenty six documents were marked as Exs.B1 to B26.

Finding of both the Courts below

7. The trial Court, after having considered the oral and documentary evidence, has ultimately arrived at a conclusion that the plaintiff is the legally wedded wife of the deceased John Thaskood. Further, the trial Court has also held that the children of the second defendant are the legal heirs of John Thaskood and directed them to work out their remedy by filing a partition suit. Aggrieved by the said findings, the second defendant preferred an appeal in A.S.No.75 of 2006. The first appellate Court, on re-appreciation of evidence, has concurred with the findings rendered by the trial Court and dismissed the second appeal. Being not satisfied with the order of the first appellate Court, the second defendant preferred the instant second appeal.

Substantial questions of law:

8. At the time of admission, this Court has formulated the following substantial questions of law:

“(1)Whether the lower Courts failed to give due credence to the material documents, Ex.B.17, and Ex.B.25 which



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clinch the main issue that the appellant is the legally wedded wife of the deceased John Thaskood?

(2)Whether the failure on the part of the lower Court, to consider Ex.B.25 under Section 32 of the Indian Evidence Act vitiates their findings regarding the status of the appellant and first respondent with the deceased John Thaskood? ”

Submissions on either side:

9. The learned counsel appearing for the appellant/second defendant would vehemently contend that when there was a relationship between the second defendant and John Thaskood and there was a finding that the second defendant begotten three children through late John Thaskood, granting declaration in favour of the plaintiff is erroneous and perverse. The learned counsel would further contend that Ex.B17-Marriage Certificate and the affidavit of the witness to the marriage viz., T.R.Kuppu Rao would demonstrate that even prior to the alleged marriage between the plaintiff and the late John Thaskood, the second defendant married with the said John Thaskood, during 1961. Therefore, contended that the plaintiff cannot be construed as a legally wedded wife, though she had a romantic relationship outside the wedlock of the late John Thaskood and the second defendant. The learned counsel would



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further contend that the second defendant all along agitated their rights in every Tribunal and that the Government has delivered the possession of the suit property with the defendants. It is the further contention of the learned counsel for the second defendant that there was a significant age difference between the late John Thaskood and the plaintiff. Therefore, there could not have been any probability for the plaintiff to marry with the John Thaskood. Therefore, the learned counsel for the second defendant would contend that both the Court below have erred and gave perverse findings. Therefore, he prayed to allow the second appeal.

10. Per contra, the learned counsel appearing for the plaintiff would vehemently submit that both the Courts below have recorded the finding of fact that the marriage between John Thaskood and the second defendant has not been established in the manner known to law, and also found that the marriage between the plaintiff and the said John Thaskood has been proved. It was their contention that since because there is a possibility of different view, at the second appeal stage, the same cannot be interfered. The learned counsel would further contend that when the relationship of the plaintiff with John Thaskood



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was accepted by the second defendant and that the said marriage was proved by producing Marriage Certificate and when the second defendant failed to discharge her onus to prove her marriage, the finding of fact recorded by both the Courts below are in accordance with law and liable to be sustained. Hence, prayed to dismiss the second appeal.

11. I have given my anxious consideration on the submissions made by either side.

12. The entire case revolves around the validity of the marriage of John Thaskood with the plaintiff on the one hand, and the second defendant on the other hand. According to the finding of facts recorded by the Trial Court, though the second defendant has begotten a child for John Thaskood, there is no proof for marriage. Therefore, now, the issue centers around who is the legally wedded wife of the late John Thaskood. Therefore, notwithstanding the relationship by John Thaskood with the plaintiff on the one hand, and with the second defendant on the other hand, it is incumbent for this Court to find out whether the marriage of the plaintiff is legal one or is there any previous



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marriage of John Thaskood with the second defendant.

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13.Both the Courts relied upon Ex.A1-Marriage Certificate of plaintiff with the said John Thaskood. Further, the trial Court has relied upon the evidence of D.W.1 as to the relationship between the plaintiff and the late John Thaskood. It is pertinent to mention here that the second defendant's son-in-law was examined on behalf of the plaintiff, who stated that his father-in-law never be called as John Suresh. Therefore, by relying on the evidence of P.W1, who is the plaintiff and by relying Ex.A1-Marriage Certificate, the trial Court arrived at a conclusion that there was a marriage between the plaintiff and the late John Thaskood.

14.However, the second defendant though admits the relationship between the plaintiff and John Thaskood, would urge before the Court that her marriage with John Thaskood was on 30.08.1961. Therefore, though there is a Marriage Certificate-Ex.A1, she cannot be declared as a legally wedded wife as the second defendant married with John Thaskood was prior in point of time. In this regard, the learned counsel for the plaintiff would invite the attention of



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this Court in respect of the Certificate of Marriage-Ex.A1. Wherein, against the name of P.John, his condition is referred as a Bachelor. Therefore, it is the contention of the plaintiff that as on the date of marriage, Mr.John was Bachelor. Therefore, the burden is heavily upon the second defendant to prove that John Thaskood has married her during 1961.

15.In order to substantiate her contention, she relied upon Ex.B17-Marriage Certificate, wherein the parties name referred as John and Hilda Sarojini Devi. However, the trial Court has considered Ex.B22 viz., the Marriage Invitation of the second defendant with Ex.B17-Marriage Certificate. In Ex.B22-Marriage Invitation, the bridegroom name was mentioned as John Suresh. Through the evidence of D.W1, the trial Court found that Johnson and John Suresh are two different persons. However, the learned counsel for the second defendant would urge before this Court that one Kuppu Rao was the attester to Ex.B17-Marriage Certificate and that he has given an affidavit in Ex.B25 and such affidavit is a relevant piece of evidence under Section 32 of the Indian Evidence Act, 1872.



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16. In this regard, the trial Court has rightly recorded that there is no evidence to the effect that the said Kuppu Rao, referred to in the Marriage Certificate-Ex.B17, is as that of Kuppu Rao signed the affidavit in Ex.B25. It was also found by the trial Court as well as the first Appellate Court that as on the date of trial there are no evidence as to such Kuppu Rao is alive or not. Therefore, the trial Court held that Ex.B17 could not be relied as a conclusive proof about the marriage between John Thaskood and the second defendant. However, the learned counsel for the second defendant would contend that when there is a finding of fact that the second defendant begotten a child for John Thaskood, such findings assume much importance and would exemplify that the second defendant is a wife.

17. At this juncture, this Court would like to refer to the judgment of the Hon'ble supreme Court in *Hero Vinoth(Minor)-Vs-Seshammal*, reported in *(2006)5 Supreme Court Cases 545*. From the narration of the trial Court as well as the first appellate Court, this Court could not find any perversity in the findings. However, as rightly contended by the learned counsel for the second defendant, there is a possibility for different view. But as held by the Hon'ble



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Supreme Court in the *Hero Vinoth case (cited supra)*, since because there exist of different view apart from the view expressed by the trial Court as well as the first appellate Court, cannot be a reason to interfere with the order of the trial Court as well as the first appellate Court. Therefore, this Court is of the view that the doubt expressed by both the Courts below in respect of Ex.B17-Certificate of Marriage of the second defendant, based upon Ex.B22-Marriage Invitation of the second defendant cannot be held to be perverse.

18.Thus, the finding of fact recorded by the trial Court as well as the first appellate Court, that Ex.B25 could not be relied on in the absence of proof to the effect that Kuppu Rao referred to Ex.B17-Certificate of Marriage, is that the person referred to in Ex.B.25 affidavit, and also in the absence of proof that whether such Kuppu Rao is alive or not on the date of examination of the witnesses, cannot be found faulted.

19.At this juncture, it is relevant to deal about the application filed by the appellant under Order 41 Rule 27 of C.P.C., to receive Certain Documents viz., Legal Heirship Certificate of one John Thaskood and Driving License of



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John Thaskood's daughter and the Certificate given by the Tahsildar to the effect that John and John Thaskood are one and the same person. The learned counsel for the appellant urges this Court to allow the petition in C.M.P.No.11380 of 2023.

20.These are all the documents subsequent to the filing of the suit. Furthermore, when the issue in respect of the status of the appellant is under challenge, the document which they have obtained subsequent to the filing of the suit may not have relevance. It is pertinent to mention here that the relief under Order 41 Rule 27 of C.P.C., is exceptional relief and the same cannot be used to fill up the lacunas. Here when an issue before the civil Court in respect of the status of the appellant is pending, the certificate issued by the Revenue Authorities subsequent to the filing of the suit will in no way advance the substantial justice. Hence, this Court do not find any merit in the said application. Hence, this Civil Miscellaneous petition is liable to be dismissed.

21.Thus, this Court is of the firm view that there is no perversity in the finding recorded by both Courts below and that no materials were projected



to deviate from the said findings. In view of the above discussion, the substantial questions of law are answered in favour of the respondents.

22.In the result, this Second Appeal as well as the Civil Miscellaneous Petition stand dismissed. No costs.

11.01.2024

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

1.The Subordinate Court,
Nilgiris,
Uthagamandalam.

2.The District Munsif Court,
Coonoor.

3.The Section Officer,
Vernacular Records,
Madras High Court,
Madras.



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C.KUMARAPPAN.,J
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