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SA.No.491 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.491 of 2007

and

MP.No.1 of 2007

Lakshmi

... Appellant

- Vs -

1. Kanakammal (Died)
2. Theivanai
3. Government of Tamil Nadu
rep. by District Collector,
Coimbatore.
4. Tahsildar,
Udumalaipettai.
5. Distillary Officer,
Amaravathi Co-Operative Sugar Mills,
Krishnapuram,
Udumalaipettai Taluk.
6. Ishwarya
7. Ashokan
(R6 & R7 brought on record as LR's of the deceased R1
vide Court order dated 11.08.2021 made in
CMP.No.10890, 10897 & 10900/2021)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code
against the judgment and decree dated 14.06.2006 in A.S.No.1 of 2005 on



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the file of Subordinate Judge, Udumalaipettai reversing the judgment and decree dated 26.06.2003 in O.S.No.169 of 2000 on the file of the District Munsif, Udumalaipettai.

For Appellant : Mr.A.S.Vijayaraghavan

For Respondents : Mr.S.Saravanakumar
for Mr.I.Abrar Md. Abdullah
for R6 & R7
R1-Died
Dr.S.Suriya
Additional Govt. Pleader for R3 & R4
R2 & R5 – Ex-parte

J U D G M E N T

The 2nd defendant is the appellant herein. The plaintiff was arrayed as the first respondent. After her demise, her legal heirs were arrayed as respondents 6 and 7 herein. The 2nd respondent was the first defendant before the Trial Court. The respondents 3 to 5 are the defendants 3 to 5 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.



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3. The brief facts which give rise to the instant Second Appeal is that, one deceased Murugan, Son of Chinna Gounder was an employee in Amaravathi Cooperative Sugar Mills and that he died on 01.02.2000. It is the further contention of the plaintiff that she being the legally wedded wife, she is the only legal heir to the deceased Murugan. It is also pleaded by the plaintiff that the 2nd defendant is the sister of the deceased Murugan, and the first defendant one Theivanai, who proclaims as wife of Murugan has also been arrayed as a party to the suit. The plaintiff submits that, after the demise of Murugan, when she applied for the legal heirship certificate, the same was denied by the official respondent on the ground that there were other claim made by some other persons, thereby, refused to grant legal heirship certificate. Hence, the plaintiff has come forward with a suit for declaration declaring that the plaintiff is the legally wedded wife of the deceased Murugan.

4. The said suit was resisted by the 2nd defendant by contending that the deceased Murugan did not marry any woman, and he led a wavered life and he had relationship with so many women. Further, it was pleaded that the plaintiff has not stated as to when her marriage took place. It is also the



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contention of the 2nd defendant that the plaintiff did not even attend the funeral of the deceased Murugan. Therefore, it is the contention of the 2nd defendant that the plaintiff cannot have any decree for declaration.

5. The other defendant-employer has also filed the written statement stating that the deceased Murugan had relationship with many women and that he has not legally married anyone of them. Therefore, would contend that the plaintiff is not legally wedded wife. Hence, prayed to dismiss the suit.

6. Before the Trial Court, the plaintiff herself was examined as PW1 and one Mr.Palaniappan was examined as PW2 and marked as many as 6 documents as Ex.A1 to A6. On behalf of the defendants, 6 witnesses were examined as DW1 to DW6 and 5 documents have been marked as Exs.B1 to B6. As a official document, Ex.X1 was also marked.

7. The Trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that the plaintiff has not proved her claim and ultimately dismissed the suit. Aggrieved with the same, when the



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plaintiff has preferred an appeal, the First Appellate Court reversed the finding and granted the relief of declaration in favour of the plaintiff declaring that she is the wife of the deceased Murugan. Aggrieved with the said finding of the First Appellate Court, the 2nd defendant, who is the sister of the deceased Murugan has filed the present Second Appeal.

8. At the time of admission on 12.08.2008, this Court has formulated the following substantial question of law:-

“(1) Whether the first appellate Court is legally right in allowing the appeal thereby setting aside the decree and judgment of the trial Court?”

“(2) Whether the 1st respondent/plaintiff married the deceased Murugan and if so, when did the marriage take place and did she live with him as wife during his life, perform funeral rites, and inform the factum of death of her so called husband to the authorities to register the date of death?”

9. The learned counsel for the appellant would vehemently contend that when the plaintiff herself was not aware as to when she has got married with the deceased Murugan, and what are all the ceremonies conducted during the marriage, must find in favour of the defendant by denying the



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relief to the plaintiff. It is also contended by the learned counsel for the appellant that the document relied by the plaintiff to prove the marriage are inherently inconsistent. Therefore, contended that through such document, no presumption could be arrived so as to conclude that, the plaintiff has got married with the deceased Murugan. The 2nd defendant admittedly being the sister of the deceased Murugan, she alone is a legal heir of the deceased Murugan. Therefore, would contend that the decree granted by the First Appellate Court is perverse and liable to be interfered with. Hence, prayed to allow the Second Appeal.

10. Per contra, the learned counsel for the respondents would vehemently contend that in the ration card, the plaintiff has been arrayed as wife of the deceased Murugan and that the voter list would exemplify that both the plaintiff and the deceased Murugan lived in the same place. Therefore, these are all the documents sufficient to prove long cohabitation between the deceased Murugan and the plaintiff. Therefore, by applying the principles enunciated in the judgment of the Hon'ble Supreme Court in ***Badri Prasad Vs. Dy. Director of Consolidation and others*** reported in ***AIR 1978 SC 1557***, the Court must presume that they were lived like husband and



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wife. Therefore, the decree granted by the First Appellate Court is well merited and does not require any interference.

11. I have given my anxious consideration to either side submissions.

12. The short point to be decided is, whether the document relied by the plaintiff so as to prove her relationship with the deceased Murugan is sufficient enough to sustain her case. In this regard, the plaintiff has relied upon the ration card, which has been marked as Ex.A2. Wherein Murugan's photo is find a place. When it was confronted with the plaintiff, the plaintiff has categorically admitted that there were no issues between the plaintiff and Murugan. However, one Ishwarya's name found place in the ration card who is the brother's daughter of the plaintiff. For that, she explained in the evidence that only upon the wish of the deceased Murugan, her name has been shown in the ration card. The learned counsel for the plaintiff has also relied upon Ex.A3, which is the voter slip and Ex.A3 is voters list of the year 1995, wherein both the deceased Murugan as well as Kanakammal viz., the plaintiff's name find a place.



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13. However, these documents were strongly objected by the learned counsel for the appellants by contending that in the ration card, which has been issued in the year 1998, the age of the plaintiff is shown as 44, whereas, in the voters list issued in the year 1994, the age of the plaintiff has been shown as 51. Therefore, these documents could not be relied. Except this defence, the authenticity of the document and issuance of the document by the respective department has not at all been challenged.

14. Apart from that, while perusing the defence put forth by the defendants, it is not their case that the deceased Murugan had not lived with the plaintiff. But it is the specific case of the 2nd defendant that the deceased Murugan has not married with the plaintiff and that Murugan had relationship with many woman and this plaintiff is one among them. Even the above argument is accepted on its face value, in view of the ration card and voters list, this Court can safely arrive at a conclusion that as to the long cohabitation between the deceased Murugan and the plaintiff. As held in the judgment in **Badri Prasad's** case (cited supra), when a man and a woman, who live as husband and wife in the society for a considerable time, cannot be expected to prove the same after a long lapse of time by examining the



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witness those who have participated in the marriage. Therefore, this Court is of the firm view that the above proposition is squarely applicable to this case. Here, there are sufficient material produced for the long cohabitation between the plaintiff and the deceased Murugan. Therefore, the findings recorded by the First Appellate Court is well merited. Hence, in view of the above detailed discussion, the substantial questions of law are answered in favour of the respondents.

15. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

12.04.2024

kmi

Index : yes

Speaking Order

Neutral Citation Case: Yes

To

1. The District Munsif,
Udumalaipettai.

2. The Subordinate Judge,
Udumalaipettai.



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C.KUMARAPPAN, J

kmi

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