



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

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**CORAM:
THE HONOURABLE MS.JUSTICE R.N.MANJULA**

SA.No.387 of 2022

Kamala (Died)

Ambika

[1st Appellant died, 2nd appellant is brought on record as LR
of the deceased A1 vide Court Order
dt.12.02.2024 made in CMP.NO.3075/24]

...

Appellant

Vs.

1.Chittammal

2.The Treasury Officer,
Coimbatore.

3.The Assistant Treasury Officer
Sub Treasury Office,
Oddanchatram
Dindigul District.

4.The Accountant General
Account General Office
NO.361, Anna Salai
Teynampet, Chennai.

5.The Manager
State Bank of Hyderabad
Coimbatore.



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6.The District Collector,
Villupuram District,
Villupuram.

...

Respondents

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure praying to set aside the judgement and decree dated 09.03.2022 made in A.S.No.11 of 2020 on the file of the Subordinate Judge, Gingee confirming the Judgment and decree dated 10.11.2020 made in OS.NO.59 of 2014 on the file of the Principal District Munsif, Gingee by allowing this appeal .

For Appellant : Mr.G.Prabaharan

For Respondents : Mr.P.Dinesh Kumar for R1
: Mr.V.Ramesh for RR2 & 3
: Mr.T.S.Selvarani for R4
: Mr.B.Raghuvelu Naidu for R5

JUDGEMENT

The first respondent is the 1st appellant/plaintiff in the suit filed for seeking the relief of declaration that she is the legally wedded wife of late Sriramalu and that she is entitled to get the family pension of Sriramalu subsequent to his death and for consequential permanent injunction restraining the defendants 1 to 5 from disbursing the same to the sixth defendant.



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2. During the pendency of the second appeal, the 1st appellant died and the daughter and legal heir of the deceased 1st appellant has been impleaded as the 2nd appellant.

3. Heard Mr.G.Prabaharan, learned counsel for the appellant and Mr.P.Dinesh Kumar, learned counsel for the 1st respondent and Mr. V.Ramesh, learned counsel for the 2nd and 3rd respondents and Mr. T.S.Selvarani, learned counsel for the 4th respondent and Mr.B.Raghuvelu Naidu, learned counsel for the 5th respondent and perused the materials available on record.

4. The case of the plaintiff is that the marriage between the plaintiff and the deceased Sriramalu had taken place in the year 1966 and they have been living as husband and wife in plaintiff's parent's house at Chettipalayam Village. During that time itself Sriramalu was working as a Teacher in a private school and thereafter he got appointment in a Government Panchayat School. The plaintiff and Sriramalu had one son by name Sivakumar and one daughter. Sriramalu was lastly working as Headmaster at the Panchayat Union School, Vanakkampatti Village. All the Government records and service records of Sriramalu would show the plaintiff as his wife. In the proposal sent by Sriramalu to Government also he had recognized the plaintiff as his wife. The



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marriage between the Sriramalu and the plaintiff was not revoked till his death.

Subsequent to his retirement Sriramalu was getting his pension and during the year 2004 he went out of the house but he did not return. The steps taken by the plaintiff to know the whereabouts of Sriramalu did not evoke any positive results. Then the plaintiff came to know that Sriramalu died and the sixth defendant is receiving the family pension of Sriramalu by claiming herself as his wife. Subsequently, the family pension proposal was forwarded to the first defendant's office and the same was disbursed through fourth defendant's bank. The sixth defendant never married Sriramalu and she is not entitled to receive the family pension of Sriramalu. Hence, the plaintiff had sent a legal notice to defendants 1, 2, 4 and 6 on 30.07.2013 and on receipt of the same, the first defendant had advised the plaintiff to approach the third defendant for getting the remedy.

5. However, the third defendant did not stop disbursing the family pension to the sixth defendant even though she did not have any right. Hence the plaintiff has filed the suit to declare her as the legally wedded wife of Sriramalu and that she alone is entitled to receive the family pension of deceased Sriramalu and consequently to declare the sixth defendant from receiving the family pension.



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6. The sixth defendant had contested the suit by denying that the plaintiff is the legally wedded wife of Sriramalu. The plaintiff has married Sriramalu and lived with him for a short time and she deserted him on 30.05.1967 when a son was born to her. Despite various panchayats were held, the plaintiff was not willing to live with Sriramalu and she was in contact with some other person. Sriramalu and the plaintiff had dissolved their marriage in front of Panchayatars and they also executed a deed of divorce and the plaintiff had obtained a sum of Rs.2,000/- as full quit settlement from Sriramalu. The deceased Sriramalu had appointed one Nagaraj as guardian for his son Sivakumar and executed a settlement deed in his favour.

7. As Sriramalu was working as a Teacher and he found it difficult to manage his family individually, he married the sixth defendant in the year 1984 at Mariamman Temple, Villupuram, in the presence of his relatives. Subsequent to the marriage, the sixth defendant and Sriramalu were living at various places. They have one daughter born on 19.10.1984. Sriramalu retired from service in the year 1998 and even in his Service Register he had shown the sixth defendant as his wife.



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8. From the year 2002, the sixth defendant along with Sriramalu and their daughter went to the house of her brother and settled there. The plaintiff has not even seen whether Sriramalu was alive. Even when her son's marriage was held, the name of Sriramalu was not printed on the marriage invitation card. The suit has been filed with some ulterior motive and hence it is liable to be dismissed.

9. On hearing the rival contentions, the trial Court has framed the following issues:

“ 1. Whether the marriage held between Sriramalu and plaintiff on 31.04.1966 is in accordance with law ?

2. Whether the plaintiff is the legal wife of Sriramalu ?

3. Whether Sriramalu had legally divorced the plaintiff ?

4. Whether the plaintiff is entitled to receive the pension of Sriramalu ?

5. Whether the relief sought by the plaintiff is available to her ?

6. Whether the injunctive relief sought by the plaintiff is available to her ?

7. To what relief the plaintiff is entitled to ?

10. During the course of trial on the side of the plaintiff two witness have been examined as P.W.1 & P.W.2 and Exs.P1 to P9 were marked. On the side of the sixth defendant, her daughter was examined as D.W.1 and Exs.D1 to D16 were marked.



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11. At the conclusion of the trial, the suit has been decreed in favour of the plaintiff. The first appeal preferred by the sixth defendant came to be dismissed. Aggrieved over the same the sixth defendant has preferred the present Second Appeal and it has been admitted on the following Substantial Questions of Law:

“ 1. Whether the judgment and decree of the first appellate Court are correct in decreeing the suit without any evidence produced by the plaintiff in proof of marriage between the plaintiff and late Sriramalu ?

2. Whether the Courts below are right in holding that the nominee cannot receive the pension unless the nominee is a legal representative of the deceased ?

3. Is not the judgment of the first appellate Court vitiated for non-consideration of all the points raised by the appellant and the judgment was rendered only on one point ?”

12. Upon hearing both side learned counsels, this Court has re framed the following Substantial Questions of Law as under:

“ (i) Whether it is legally correct for the Courts below to hold that the nominees cannot receive pension unless the he/ she is the spouse of the deceased?

(ii) Whether the judgment of the First Appellate Court is vitiated due to the alleged non consideration of vital evidence produced by the



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appellant with regard to the factum the status of marriage between the 1st respondent/plaintiff with the deceased Sriramalu?”

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13. Mr.G.Prabaharan, learned counsel for the appellant submitted that the Courts below did not appreciate Ex.A2 in order to arrive at a conclusion that the marriage between the deceased Sriramalu and the 1st respondent has been dissolved through a customary divorce. He further submitted that the service records of the deceased Sriramalu would show that the 1st appellant has been shown as the person nominated by the deceased to receive the terminal benefits. Even though the government respondents have disbursed the terminal benefits of the deceased Sriramalu in accordance with their registers, the Courts below have found fault with the said action and that is a misconceived one.

14. Mr.P.Dinesh Kumar, learned counsel for the 1st respondent submitted that the 1st appellant did not prove the dissolution of the marriage between the 1st respondent and the deceased Sriramalu and hence the Trial Court and the Ist Appellate Court have rightly held that the 1st respondent /plaintiff is the legally wedded wife of deceased Sriramalu.

15. The whole case rest on a single fact as to whether the 1st



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respondent/plaintiff or the 1st appellant / 6th defendant is the legally wedded wife of the deceased Sriramalu. Even according to the written statement submitted by the 1st appellant / 6th defendant, the 1st respondent had married Sriramalu and later deserted him on 30.05.1967 after a son was born to her. It is a well settled proposition of law that admitted facts need not be proved. So the appellants are not entitled to make out a question of law stating that the judgement and decree of the Ist Appellate Court is not correct, as it has accepted the fact about the marriage between the 1st respondent /plaintiff and the deceased Sriramalu without proof.

16. Only because the 1st appellant had admitted the factum of the marriage between the deceased Sriramalu and the 1st respondent/ plaintiff she has taken up a plea that the marriage between the Sriramalu and the 1st respondent/plaintiff has been dissolved subsequently through a customary divorce. If the 1st appellant does not admit the marriage, then there is no question of raising a plea of customary divorce as well. So the judgement and decree of the 1st Appellate Court cannot be found fault on the ground that the Courts have rendered a finding as to the fact of marriage between the 1st respondent/plaintiff and the deceased Sriramalu.



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17. Even though there is no proof to show that the marriage between the 1st respondent/plaintiff and the deceased Sriramalu has been dissolved, the fact remains that Sriramalu did not consider it appropriate to give the name of the 1st respondent/plaintiff as nominee in his service records to receive his terminal benefits or family pension.

18. As the deceased Sriramalu had shown the name of the 1st appellant, the government respondents has proceeded to disburse the family pension to the 1st appellant. There cannot be any quarrel as to the receipt of the terminal benefits because Sriramalu himself has received the terminal benefits subsequent to his retirement and he was getting pension till the year 2004. Only after 2004, he went out of the house and he did not return and later the parties came to know that he died.

19. So far as the legality of making payment by the government respondents to the nominees is concerned, Rule 48 of the Tamil Nadu Pension Rules-1978 would state that the nomination can be made in favour of any person who is a member of the family. If the government servant does not have any family members, then the nomination can be made in favour of any other person or body of individuals. In the event of any one of the nominees



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predeceased the government servant or dies after the death of the government servant before receiving the payment of terminal benefits, the rights conferred on the nominees shall pass on to the persons who have been specified in the nomination.

20. According to Rule 48 of the Tamil Nadu Pension Rules in the matter of nomination, preference has to be given to the family members irrespective of the fact that the nomination has been made in the name of one person or several persons. Only in the absence of family members the nomination can be made in the names of other persons. Hence, the nominee may or may not be the legal heir of the deceased employee. Even if the nominee happens to be a legal heir of the deceased, it cannot be presumed that the nominees shown by the deceased alone is/are the only legal heir/heirs of the deceased. The nomination is an arrangement made by the government servant during his life time in order to enable the government to disburse his terminal benefits in the event of his death without any delay or uncertainty.

21. The nominees cannot be considered as the legal heirs or the only legal heir of the deceased and hence the entitlement of the legal heirs of receiving the terminal benefits of the deceased is not lost and the nominee who



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receives the terminal benefits from the government is answerable to the other legal heirs in accordance with their share of entitlement. It is claimed by the 1st respondent/ plaintiff that the 1st appellant had married Sriramalu during his lifetime and hence, her marriage is illegal. He further contended that the 1st appellant cannot come under the class of family members and hence, the nomination made by the deceased in favour of the 1st appellant is void.

22. The deceased Sriramalu considered the 1st appellant /6th respondent as his wife and he had chosen to give her that status by showing her name in his nomination forms. Even in that case the entitlement for family pension can be claimed only if the nominated person happens to be wife of the deceased. Even though the 1st respondent/ plaintiff claims herself to be a legally wedded wife of the deceased Sriramalu and whose marriage has not been proved to have dissolved till the death of Sriramalu, she was not in the life of the deceased till his death. She had filed the litigation only at a later stage when she came to know that the family pension was received by the deceased 1st appellant.

23. Even the 1st appellant could have believed that the marriage between the 6th respondent /plaintiff and the deceased Sriramalu has been dissolved.

This is in view of the fact that the 1st respondent/plaintiff did not appear in their



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life time till this litigation was filed. So, the government respondents cannot be found fault for disbursing the family pension to the 1st appellant/6th respondent who had been accepted and shown to the department by the Sriramalu himself as his wife. Hence, the findings of the Courts below in this regard has to be seen in the context of facts of this case, though in generality, the mere nomination will not entitle the nominee to get the family pension unless he /she happens to be the spouse of the deceased. **Hence, the substantial question of law No. 1 is thus answered.**

24. As on today even the 1st appellant /6th respondent is not alive. Her daughter who has been impleaded as 2nd appellant has also got married and she is not a dependant on the deceased 1st appellant. Since the 1st respondent /plaintiff is proved to be the wife of the deceased and her marriage was in subsistence till the death of Sriramalu, it is right for the trial Court to decree the suit and grant the relief of declaration with regard to the status of the 1st respondent /plaintiff as the legally wedded wife of the deceased Sriramalu and consequential mandatory injunction directing the government respondents to disburse the family pension to her. **Thus the substantial question of law No. 2 is answered.**



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25. In the result, the Second Appeal is dismissed and the judgement and decree dated 09.03.2022 made in A.S.No.11 of 2020 on the file of the Subordinate Judge, Gingee is confirmed. The learned government respondents are directed to disburse the family pension to the 1st respondent /plaintiff by passing appropriate orders within a period of four weeks from the date of receipt of copy of this order. No Costs.

10.09.2024

jrs

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No



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R.N.MANJULA, J.

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