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SA. No.345 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA. No. 345 of 2017
& CMP No. 8129 of 2017 & 11389 of 2017

1. D.ASHIYA (Died)
- 2 D.APPAN RAJ
- 3 D.SHANTHI

Ist appellant died, 2nd & 3rd appellants are already on record as Lrs. of the deceased 1st appellant vide Court order dated 19.07.2023 made in SA 345/17)

... Appellant

Vs.

- 1 MISS.K.S.THILAGAM
BOTH RESIDING AT OLD NO.33 NEW NO 71 PONNAN
STREET PURASAWALKAM CHENNAI-600 007
- 2 K.S.GUNASUNDARI
...Respondents 1&2/appellants/Lrs of plaintiff
- 3 THE SECRETARY TO GOVERNMENT
EDUCATIONAL DEPARTMENT CHENNAI-600 009.



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4 THE DIRECTOR OF SCHOOL EDUCATION COLLEGE ROAD
CHENNAI-600 006

5 THE CHIEF EDUCATIONAL OFFICER
GOVT.HIGHER SECONDARY SCHOOL SOUTH CHENNAI
CHENNAI-600 008.

6 THE DISTRICT EDUCATIONAL
OFFICER SOUTH CHENNAI CHENNAI-600 008.

7 THE HEAD MASTER
GOVT. HIGHER SECONDARY SCHOOL NANDANAM
CHENNAI-600 015.

...Respondents 3 to 7/Respondents 1 to 5/Defendants 1 to 5

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgement & Decree passed in A.S No. 462 of 2012 dated 29.01.2016 on the file of IV Additional Judge, City Civil Court at Madras reversing the judgement and decree passed in OS No. 3065 of 2006 dated 15.02.2012, by the XVII Assistant Judge, City Civil Court, Madras.

For Appellants : Mr.A.Amalraj

For R1 & R2 : Mr. K.Chandrasekaran

For R3 to R7 : Mr.P. Harish Government Advocate.



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JUDGMENT

This appeal has been filed to set aside the judgment and decree passed in A.S No. 462 of 2012 by the IV Additional Judge, City Court Chennai dated 29.01.2016 and confirming the judgment and decree passed by the XVII Assistant judge, City Civil Court, Chennai in O.S No. 3065 of 2006 dated 15.02.2012.

2. Originally suit in O.S No. 3065 of 2006 was filed by the Deceased Sakunthala for the relief of declaration to the declare her as the sole representative of the deceased S.Dhanasekaran, consequently to direct the defendants 1 to 5 to pay the entire death cum benefits to the plaintiffs. During the pendency of the suit, the first plaintiff Sakunthala was died her daughters were added as second and third plaintiff. Before the Trial Court the plaintiffs claimed relief only against the defendants 1 to 5. Subsequently one Ashiya claimed herself as wife of the deceased Dhanasekaran praying to implead herself and his two children born to her as defendants.



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Accordingly, they were added as the defendants 6 to 8. The contention of the original plaintiffs is that her son Dhanasekaran was worked as Scavenger in Government School and thereafter he was died due to illness on 13.05.2005 leaving behind the plaintiff as legal heirs and till his death he was not married any women. Therefore, the plaintiffs are the legal heirs of the said Dhanasekaran. During the life time of the said Dhanasekaran he had illegal connection with one Ashiya, the Ashiya attempted to receive the death benefits of the said Dhanasekaran. Hence, the suit.

3. The fifth defendant Head Master of the school where deceased worked as a Scavenger, stated that the Said Dhanasekaran nominated one Ahiya, Appan Raj and Shanthi as legal heirs. Furthermore, the legal heirs certificate issued by the Tahsildar also reveals that Defendant 6 to 8 are legal heirs of the said Dhanasekaran along with his mother. Therefore as per the legal heir certificate the defendants 6 to 8 are entitled for the death benefits. Further, the plaintiff was not nominated by the deceased Dhanasekaran. Hence they have not consider the request made by the plaintiff.

4. The contention of the sixth defendant is that she is a legally wedded wife of the said Dhanasekaran son and her daughters are born out



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of wed lock with the deceased Dhanasekaran. Further, submits that she hails from Muslim Community and got married with said Dhanasekaran but she professed Hindu Religion in all walks of life son and daughter also professing Hindu Religion they were lived as husband and wife along with children. So she is legally wedded wife and the same was rightly considered by the Tahsildar and issued legal heir certificate in their favour. Therefore, she claimed that she was nominated by the deceased and entitled to receive death benefits of the deceased Dhanasekaran as a legal heir.

5. After considering the oral and documentary evidence, the Trial Court that the plaintiffs are not entitled for any benefits. Accordingly, dismissed the suit. Aggrieved over the same, the plaintiff/mother of the the Dhanasekaran filed the appeal in A.S No. 462 of 2012 wherein the appellate Judge independently analysed the facts and evidence finally held that marriage with deceased Dhanasekaran was not registered since both are belongs to different religion therefore marriage is not acceptable one. Accordingly, declared the plaintiff as mother of the deceased Dhanasekaran. Accordingly, the suit was decreed by reversing the findings of the Trial Court. Challenging the same the sixth defendant filed this appeal.

6. The learned counsel for the appellants Submits that the Court



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below erroneously allowed the appeal by declaring the sisters of the deceased Dhanasekaran as his legal heir without application of mind. The learned counsel for the appellants prayed to allow this appeal on the following grounds:

The Court below has erred in allowing the appeal filed by the sisters of the deceased S. Dhanasekaran, the Class-II Legal Heirs by non-application of mind without discussing considering either the oral evidence and the other materials on record or the position of Law settled in this regard when Class-1 Legal Heirs, namely wife & children are already on record. The Court below has not arrived at a finding as per plea taken by the parties concerned, but arrived an imaginary and perverse nature of finding without any basis or materials for such nature of finding and hence the same is liable to be set-aside considering nature of finding and conclusion in as much as the same is ex-facie illegal and perverse in nature.

The Court below having completely erred in appreciating the various provisions contained under part-II of the Indian Evidence Act, 1872 has simply ignored the settled position of Law laid down by the Hon'ble Supreme Court reported in AIR 1992 SC 756 that, "If a man and woman are living under the same roof and co-habiting for number of years, there will be a presumption under Section-114 of the Evidence Act, they live as husband and wife and the children born to them will not be illegitimate. The Learned Judge having found that the Plaintiffs had failed and neglected to give any evidence after raising a specific plea that "One Ashiya, a Muslim Woman had illegal connection with S. Dhanasekaran with ulterior motive to grab the monthly salary of Dhanasekaran as against the plea taken by Defendants 6 to 8 and oral and documentary evidence adduced in support of their plea has arrived at a finding that, "In the absence of positive evidence from the 6th Respondent/6th Plaintiff regarding marriage, it has to be



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presumed that both parties are in co-habitation in some period which cannot give 6th Respondent/6th Plaintiff. The legal status of wife and the marriage between the deceased S. Dhanasekaran and the 6th Respondent/6th Plaintiff. Hence, the above Second Appeal before this Hon'ble Court.

06. The Court below ought to have seen that the presumption under Section-114 of the Evidence Act, that they live as husband and wife and the children born to them will not be illegitimate, can be rebutted by leading unimpeachable evidence as ruled by the Hon'ble Supreme Court concomitantly reported in 1996 (7) SCC 681, 2005 (2) SCC 244. Admittedly, the Plaintiffs have not rebutted by adducing any nature of evidence and consequently the Learned Judge ought to have dismissed the appeal filed by the Plaintiffs. Hence, the above Second Appeal before this Hon'ble Court.

The Learned Judge of the Court below while arriving at a finding that the marriage between the 6th Plaintiff and the deceased S. Dhanasekaran is not established, but the 6th Plaintiff and the deceased S. Dhanasekaran have just co-habited together for certain time, ought to have seen that assuming that the said finding of her is true and correct such relationship is permissible as ruled by the Hon'ble Supreme Court, reported in 2006 (5) SCC 475.

The Plaintiffs having preferred appeal before the Court below mainly on the ground that the 1st Plaintiff stood as 'Nominee' and therefore on the strength of such nomination, they are entitled to be declared as the Legal Heirs of deceased S. Dhanasekaran in the place of the deceased 1st Plaintiff. The said plea has not only been rejected by the Trial Court, but the lower appellate court below, but the Lower Appellate Court below after negating the main ground urged for consideration, erroneously allowed the Appeal shifting the burden of proof erroneously on the Defendants 6 to 8 holding that the Defendants 6 to 8 have not proved their Legal Status as wife & children after picking holes on the oral & documentary evidence adduced by Defendants 6 to 8. As the finding arrived



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at by the Court below has no Legal sanctity without having any materials on record is thoroughly mischievous, arbitrary & illegal and consequently the same is liable to be set-aside. Hence, the above second appeal.

7. This Court admitted the appeal with the following substantial questions of law

1. Whether the lower appellate Court is correct in law in rendering a finding that there is no material relationship between the deceased dhanasekaran and the first appellant despite the fact that she has been nominated to receive the terminal benefits and further that the appellants 2 and 3 had also born out of the said relationship?

8. By way of reply, the learned counsel for the respondent submits that during the life time of the deceased Dhanasekaran he was not married with with Aiysha. Besides, she belongs to Muslim religion developed illegal intimacy with the Dhanasekaran without any registration of marriage and the same was rightly appreciated by the first appellate Court as such is valid. Hence, he prayed to dismiss the appeal as no merits.

9. Considering the submissions on either side, and also on perusal of



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records, it reveals that the originally the deceased Sakuntala/plaintiff filed the suit to declare herself as legal heir of the deceased son Dhanasekaran in order to receive the entire death benefits of the deceased Dhanasekaran, who was worked as Scavenger in the Government school in the year 2005. The Head Master of the said school filed the written statement stating that the as per the service register the Dhanasekaran nominated the defendants 6 to 8 as his legal heirs. Therefore, as per the nomination they are entitled for the death benefits of the deceased Dhanasekaran.

10. The first appellant submits that though she belongs to the Muslim religion she married the Dhanasekaran and the live together as husband and wife and she begotten children and she followed the Hindu Rituals along with her husband and they were nominated as nominee in the Service Register but the first appellate Court observed that the sixth defendant is belongs to Muslim religion and the deceased Dhansekaran belongs to Hindu Religion if at all they got married they should have registered the marriage but no such register certificate was produced hence the alleged marriage cannot be accepted. Thereby, granting relief in favour of the plaintiffs and declared the plaintiffs as legal heirs of the deceased Dhanasekaran. But as per the legal heir certificate issued by the Revenue authorities it is



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mentioned that the D6 to D8 are his legal heirs and also in the Service Register they were nominated as nominee which reveals that the Dhanasekaran nominated the Aiysha and his son and daughters as legal heirs to receive the death benefits. Furthermore, pass book, ration card, marriage invitation of D6 marked as Ex.B9 to B11 clearly reveals that Dhanasekaran was father of the appellants. Though there is no certificate was relied on the side of the sixth defendant, the men and women living under the one roof presumed that they were lived as husband and wife for a long period of cohabitation and the said presumption also not been disproved by the plaintiffs.

11. Therefore, even assuming that there is no proof for marriage, in the service register of the deceased Dhanasekaran, he nominated defendants 6 to 8 as nominees and they are entitled to receive the death benefits. Therefore, by relying those documents the Trial Court rightly concluded that the plaintiffs are not entitled for death benefits. During the pendency of the proceedings the original plaintiff/mother of the deceased Dhanasekaran was died, but the first appellate Court erroneously declared unmarried daughters of first plaintiff as legal heirs, who are class 2 legal heirs. Furthermore, the appellant established that they are legal heir of the



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deceased Dhanasekaran who are entitled to receive the death benefits of deceased Dhanasekaran. The judgment passed by the first appellate Court is set aside. Accordingly, questions of law is answered.

12. In the result, the Second appeal is allowed. Thus suit dismissed.

No Costs. Consequentially, connected miscellaneous petition are closed.

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T.V.THAMILSELVI,J.

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To
1.The Section Officer,
V.R Section.

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