



S.A.No.63 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.63 of 2024

1. Kumari
2. Raji
3. Mahalakshmi ... Appellants

Vs.

1. M.Neela
2. M.Jayaseelan
3. M.Kanniappan
4. The Tahsildar,
Tambaram Taluk,
Tambaram, Chennai.
5. The Branch Manager,
Indian Bank, Tambaram Branch,
East Tambaram, Chennai ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 30.11.2016 in A.S.No.5 of 2012 on the file of the Subordinate Court, Tambaram, confirming the judgment and decree dated 30.06.2011 in O.S.No.104 of 2009 on the file of the District Munsif, Tambaram.

For appellants

: Mr.R.Prasadh



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JUDGMENT

The defendants 1 to 3 are the appellants before this Court, challenging the judgment and decree dated 30.06.2011, passed by the District Munsif, Tambaram, in O.S.No.104 of 2009, in and by which, the plaintiffs have been declared as the legal representatives of the deceased Meganathan and injunction has been granted restraining the 5th defendant from disbursing the benefits to the defendants 1 to 3 which has been upheld by the learned Sub Judge, Tambaram in A.S.No.5 of 2012.

2. The facts necessary for deciding this second appeal are set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiffs had filed the above referred suit on the contention that the 1st plaintiff is the wife of Meganathan and plaintiffs



2 and 3 are the children born to them. The marriage of the 1st plaintiff and Meganathan had been registered on 26.04.1974. The marriage between the two was subsisting till the death of the Meganathan on 10.11.2008. Meganathan died intestate leaving behind him the plaintiffs 1 to 3 as his legal representatives.

2.2. It is the case of the plaintiffs that Meganathan was employed as a sub staff with the Indian Bank and he died in harness. The 5th defendant viz., The Branch Manager, Indian Bank, Tambaram Branch, East Tambaram was the authority to disburse the retirement benefits of late Meganathan. The plaintiff had applied to the 5th defendant for disbursing the said amount and they were asked to produce the succession certificate. The plaintiff had, therefore, approached the 4th defendant for issuance of legal heir certificate. The application which was given to the Tahsildar was rejected stating that the 1st defendant had claimed that she was the wife of Meganathan and the defendants 2 and 3 are the children born to her and Meganathan. The Tahsildar advised the plaintiff to approach the Civil Court.



Therefore, the plaintiffs came forward with the suit in question.

2.3. The 1st defendant had filed a written statement which was adopted by the defendants 2 and 3 *inter alia* denying the claim of the 1st plaintiff that she was the legally wedded wife of the Meganathan. The 1st defendant would submit that the said Meganathan had married one Ambika on 16.08.1973 as per the Hindu rites and customs and she had died on 27.01.1986. Meganathan had, thereafter, married the 1st defendant at Vadapalani Temple in Chennai on 09.09.1984 and out of this wedlock, the defendants 2 and 3 were born to them.

2.4. It is the case of the defendants that the first wife *viz.*, Ambika before her death, had filed a petition for maintenance against Meganathan in M.C.No. 21 of 1985 and since she died, the case also had a natural death. The defendants would submit that Meganathan had nominated the 1st defendant as his wife in all official records. That apart, she and the defendants 2 and 3 have been shown as the wife and children of Meganathan in the ration card, *etc.* In all public documents, the 1st defendant was described as the wife of the Meganathan.



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2.5. While so, the plaintiffs, who have no connection with the deceased Meganathan, had now filed the above suit and they are 3rd parties having no interest or right to claim the amount and it is only the defendants who are entitled to the same. Therefore, they sought to have the suit dismissed.

TRIAL COURT:

3. The Trial Court had framed the following issues.

“1. Whether the 1st plaintiff is the legally wedded wife of the deceased Meganathan?

2. Whether the 2nd and 3rd plaintiffs are the children of the deceased Meganathan?

3. Whether the plaintiffs are entitled for declaration as prayed?

4. Whether the plaintiffs are entitled for permanent injunction as prayed for?

5. What are the other reliefs the parties are entitled to?”



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4. The 2nd plaintiff had examined himself as P.W.1 and Exs.A1 to A7 were marked through him. On the side of the defendants, the 1st defendant examined herself as D.W.1 and marked Exs.B1 to B21.

5. The learned Judge, after considering the evidences on record, held that the 1st plaintiff had proved her marriage by marking Ex.A6 marriage certificate which shows that the 1st plaintiff and Meganathan got married as early as on 26.04.1974, whereas, even according to the defendants, she got married to the said Meganathan on 09.09.1984. Therefore, the marriage between the deceased Meganathan and the 1st defendant had been solemnized during the subsistence of his marriage with the 1st plaintiff. Therefore, the marriage between the deceased Meganathan and the 1st defendant is void. However, the children born to her and Meganathan viz., the defendants 2 and 3 are entitled to a share in the properties. Therefore, the learned Judge declared the plaintiffs and the defendants 2 and 3, as the legal heirs of



the deceased Meganathan and the 5th defendant was restrained by means of an injunction order from disbursing the amount to the 1st defendant.

LOWER APPELLATE COURT:

6. Challenging the judgment and decree, only the defendants had filed an appeal in A.S.No.5 of 2012 on the file of the Sub Court, Tambaram. The defendants had also taken out an application for receiving the additional documents. The documents were also taken on file and marked as Exs.B22 and B23.

7. The learned Judge, had not considered these two documents as its officials concerned have not been examined on the side of the defendants. The Lower Appellate Court had also concurred with the judgment and decree of the Trial Court and dismissed the appeal.

8. Challenging the same, the defendants 1 to 3 have moved



this Court. This matter, though it was filed as early as on 19.12.2019, was filed with a delay of 1,072 days and the delay was condoned on 19.12.2023. Then this matter came up for admission.

9. Heard the learned counsel for the appellants and perused the materials available on record.

DISCUSSION:

10. The case of the plaintiffs is that the 1st defendant was not the legally wedded wife of Meganathan and also no document has been filed by the defendants to support this contention. The 1st plaintiff, on the other hand, had filed Ex.A6 - marriage certificate which would clearly show that she and the said Meganathan got married on 26.04.1974. Even according to the 1st defendant, she has married the said Meganathan only on 09.09.1984. At that point in time, the marriage between Meganathan and the 1st plaintiff was subsisting. Therefore, the marriage with the 1st defendant is void. However, the children born to them are the legal heirs of the deceased Meganathan



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along with the plaintiffs.

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11. Both the Courts below have taken into consideration the above fact and I see no reason to hold otherwise. Accordingly, the second appeal stands dismissed as no substantial question of law arises for consideration.

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Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Subordinate Judge, Tambaram.
2. The District Munsif, Tambaram.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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