



CM.S.A (MD)No.51 of 2011

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Dated: 06.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.S.A (MD)No.51 of 2011

and

C.M.P(MD) Nos.3 of 2011 and 1 of 2012

Chellathayee

..Appellant/Respondent/petitioner

.VS.

1. Thavamani
2. Radha @ Anuradha
3. Sudandirajan

..Respondents/Appellants/Respondents

Prayer : This Civil Miscellaneous Second Appeal filed under order 41 Rule 6 of C.P.C r/w 100 of the Code of Civil Procedure against the fair and decreetal order made in CMA No.7 of 2006 on the file of the Principal Sub Court, Dindigul dated 28.04.2006 reversing the well considered fair and decreetal order made in S.O.P.No.1 of 2004 on the file of the Principal District Munsif Court, Nilakottai dated 05.10.2005.

For Appellant : Mr.M.Mohangandhi

For Respondents: Mr.R.Karunanithi

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed as against the fair and decreetal order made in CMA No.7 of 2006 on the file of the Principal Sub Judge, Dindigul wherein the appellant



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herein has filed petition before the District Munsif Court, Nilakottai in SOP No.1 of 2004 and the same was decreed in her favour. As against the fair and decreetal order the respondent herein has preferred this appeal before the Principal Sub Court, Dindigul in CMA No.7 of 2006 and the same was allowed and the order passed by the District Munsif Court, Nilakottai was set aside. As against the order passed by the Principal Sub Court, Dindigul, the present Civil Miscellaneous Second Appeal has been filed.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.

3. The brief facts of the petition averments before the Trial Court are as follows:

The petitioner is the wife of one Palanivel who was working in Tamil Nadu Electricity Board and died on 03.02.2004 while he was in service. The marriage between the petitioner and the deceased Palanivel was solemnized on 22.01.1981 at Nilakottai as per Hindu rites and customs. Since the said Palanivel demanded dowry they were living separately and thereby the petitioner filed petition before the Sub Court, Madurai in HMOP No.93 of 2000 and



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the same was decreed in her favour. The petitioner has filed petition seeking maintenance and same was also allowed in her favour on 01.04.2001. In the meantime on 03.02.2004 Palanivel died . When the petitioner applied for pension before the Tamil Nadu Electricity Board they advised to get succession certificate. Hence she filed petition.

4. The brief facts of the counter filed by the respondent are as follows:

No marriage was solemnized between the Palanivel and the petitioner on 22.01.1981 as alleged in the petition. Infact on 30.12.1980 the marriage between the first respondent and the Palanivel was solemnized and the same was registered in the Registrar Office at Attur. Due to wedlock the second and third respondents were born to them. The decree obtained by the petitioner in HMOP No. 39 of 2000 and maintenance petition in I.A. No.94 of 2001 are all exparte decrees. At the relevant point of time the deceased Palanivel was bedridden since from the year 1999. Taking advantage of his bedridden the petitioner had filed those petitions and got exparte orders. The deceased Palanivel while he was working in Tamil Nadu Electricity Board he nominated the first respondent for family pension and in the school records also the



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deceased Palanivel was shown as father of the second and third respondents. The petitioner is not the legal heir of the deceased Palanivel, therefore the petition is liable to be dismissed.

5. Before the Trial Court on the side of the petitioner she had examined P.W. 1 to P.W. 4 and marked documents Ex.P.1 to P.6. On the side of the respondents they have examined R.W.1 to R.W.3 and marked documents Exs.R.1 to R9. The trial Court after analyzing the evidence adduced on both sides allowed the petition and issued succession certificate in favour of the petitioner. Aggrieved by the said order the respondent therein have preferred appeal before the Sub Court, Dindiguul in CMA No. 7 of 2006. The first appellate Court after analyzing the evidence adduced on either side reversed the order of the trial Court and dismissed the original petition. As against the fair and decreetal order the present Civil Miscellaneous Second Appeal has been filed on various grounds.

6.The learned counsel appearing for the appellant would contend that the appellant is the legally wedded wife of the deceased Palanivel and already filed petition for restitution of conjugal rights as against the deceased Palanivel in HMOP No. 93 of 2000 on the file of the Sub Court, Madurai and the same was also



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allowed. The first respondent claimed that she is the legally wedded wife of the deceased Palanivel but there is no evidence produced by them to prove the marriage between the first respondent and the deceased Palanivel. The deceased Palanivel has not taken any steps to set aside the order passed by the Sub Court, Madurai in HMOP NO. 93 of 2000 till his death. The said Palanivel was represented through Counsel in that petition but the same was set exparte due to non -filing of counter. The document filed by the respondents are not genuine because Ex.R.5 shows that the birth of the second respondent was within four months from the date of marriage. As per Ex.R.1 marriage took place on 22.01.1981 but as per Ex.P.5 the second respondent was born within four months. Therefore the case of the respondent is falsified through document. Therefore the trial Court after elaborate discussion allowed the petition and issued succession certificate to the petitioner. The first appellate Court failed to consider all the above aspects and erroneously allowed the appeal and dismissed the petition filed by the petitioner. Therefore the order passed by the first appellate court is liable to be set aside by restoring the order passed by the trial Court.

7. The learned counsel appearing for the respondents would contend that the first respondent is the legally wedded wife of



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Palanivel and their marriage was registered and the marriage took place on 22.01.1981, due to wedlock the second and third respondents were born to them. The deceased was bed ridden from the year 1999 by suppressing the above said facts the appellant/petitioner has filed petition before the Sub Court for restitution of conjugal rights and the same was obtained as exparte decree. The said order and maintenance orders were obtained fraudulently. The first respondent was shown as nominee in the official records of the deceased and she was recommended for family pension. The trial Court without considering the above aspects erroneously allowed the petition by holding that date of marriage is 30.12.1980 and within four months the first child was born to them. The above said findings is erroneous and the marriage was registered marriage and as per the contention of the petitioner she only married Palanivel on 22.01.1981 but no documents were produced by the first appellant.

8. After taking into consideration all the aspects the first appellate Court set aside the order passed by the trial Court and dismissed the petition filed by the petitioner. More over the petitioner herself admitted that the marriage between the petitioner and the first respondent was prior to her marriage and the same was



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cancelled through Ex.P.6, once marriage was solemnized the same has to be dissolved by the Court of law in exceptional cases the same can be dissolved through customary practice but the petitioner herein has not proved customary divorce. Therefore the first appellate Court after elaborate discussion set aside the order passed by the trial Court and rightly dismissed the petition and there is no substantial question of law involved in this case. Hence the Civil Miscellaneous Second Appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Trial Court framed the following point for determination in this appeal:

i) Whether any substantial question of law involved in this case?

10. In this case the appellant has filed this Civil Miscellaneous Second Appeal as against the order passed by the first appellate Court in which the appeal filed by the respondent herein was allowed. Infact the appellant herein has filed petition before the trial Court for granting succession certificate and the same was allowed. As against the order passed by the trial court the respondents



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therein have preferred first appeal. In the first appeal the order of the trial Court was reversed and the Succession Original Petition filed by the petitioner was dismissed. As against the dismissal order the present second appeal has been filed.

11. According to the appellant she is wife of the deceased Palanivel who was working in Tamil Nadu Electricity Board, she already filed petitions before the Court of law for restitution of conjugal rights and maintenance and the same were allowed. The respondents are claiming that there are the legal heirs of the deceased Palanivel and already Palanivel cancelled the marriage solemnized between him and the first respondent through cancellation deed dated 10.02.2005. According to the respondent she married the Palanivel on 22.01.1981 and her marriage was duly registered at the Registrar Officer. Thereafter childrens were born to them and they also produced documents Exs.R.1 to R9 and also examined R.W.1.

12. The petitioner has examined P.W.1 to P.W.4 and marked documents Exps.P1 to P6 and the respondents have examined R.W.1 to R.W.3 and marked documents Exs.R.1 to R9. The trial Court allowed the petition by stating that after the registration of marriage



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the first child was born within four months, thereby disbelieved the marriage of the first respondent. The first appellate Court reversed the judgment on the ground that the petitioner has not produced any documents. Moreover the petitioner herself admitted the marriage between the first respondent and the deceased Palanivel by producing Ex.P.6 in which Palanivel admitted the marriage between the first respondent and the deceased, whereas marriage was dissolved through deed. To prove the divorce between the deceased and the first respondent no documents were produced. Even as per Ex.P.6 document i.e., unilateral document it cannot be said that through the said document marriage was dissolved. Moreover Ex.R.1 reveals the date of marriage between the deceased and the first respondent and Exps. R2 to R4 reveals that the rationcard, bank passbook were also given in the name of the deceased Palanivel and the first respondent. ExR.5 and R.6 shows that the name of the father of the respondents 3 and 4 mentioned in the school document as Palanivel. Moreover documents Ex.R.8 settlement deed executed by the deceased Palanivel in favour of the first respondent shows the relationship of the parties. The petitioner has not produced any documents to show the marriage took place between the petitioner and the deceased/Palanivel.



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13. The learned counsel appearing for the respondents relied on the judgment in the case of **Mahendranath yadav .vs. Sheela Devi** reported in **2019 9 SCC 484**. On careful perusal of the above said judgment it is clear that customary dissolution of marriage has to be proved through sufficient evidence and dissolution of marriage through panchayat as per customary practice in that area and in that community customary divorce cannot be a ground for granting divorce under Section 13 of the Hindu Marriage Act, 1955. In the case on hand also the petitioner relied Ex.P.6 and there is no proof for customary dissolution of marriage and that document is unilateral document thereby the contention of the appellant that the marriage was cancelled through customary practice is not acceptable one.

14. Further the first appellate court has reversed the judgment of the trial Court based on the documents and evidenced adduced on either side. Further there is no substantial question of law involved in this case and the appellant has not raised any substantial question of law in the appeal and the grounds raised are all factual aspects and no substantial question of law involved in this case. This Civil Miscellaneous Second Appeal has been preferred as against the order passed by the first appellate court and thereby the



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appellant has to establish that the substantial question of law involved in this case and there is no such substantial question of law is involved in this case and thereby this Civil Miscellaneous Second Appeal has no merits and deserves to be dismissed.

15. Accordingly this Civil Miscellaneous Second Appeal stands dismissed. No cost. Consequently connected miscellaneous petitions are closed.

06.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Principal Sub Court, Dindigul
2. The Principal District Munsif Court, Nilakottai
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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