



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1052 of 2008

Vasanth Kumari :Appellant/Ist Respondent/Ist Respondent

.VS.

1.Lalitha

2.Manikandan :Respondents 1 and 2/Respondents 3 and 4/
Petitioners 1 and 2

3.Baby Bai

4.Omana :Respondents 3 and 4/Appellants 1 and 2/
Petitioners 3 and 4

5.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
10-A/3, St.Thomas Road,
High Ground, Tirunelveli Post,
Tirunelveli District. :5th Respondent/2nd Respondent/2nd
Respondent

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.46 of 2006, dated 10.6.2008, on the file of Sub-Court, Padmanabhapuram reversing the order and decretal order made in S.O.P.No.2 of 2004, dated 24.10.2005, on the file of Principal District Munsif Court, Padmanabhapuram.

For Appellant

:Mr.V.M.Balamohan Thampi



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For Respondents 1 and 4	:No appearance
For Respondent-2	:Dismissed vide order of this Court, dated 21.2.2020
For Respondent-3	:Mr.K.N.Thampi
For Respondent-5	:Mr.K.Gurunathan Standing Counsel for EPF

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.46 of 2006, dated 10.6.2008, on the file of Sub-Court, Padmanabhapuram reversing the order and decreetal order made in S.O.P.No.2 of 2004, dated 24.10.2005, on the file of Principal District Munsif Court, Padmanabhapuram.

2.The first respondent in Succession O.P is the appellant. The respondents 1 to 4 filed Succession O.P claiming themselves as the legal heirs of their brother Srikumaran Nair. The Succession O.P was dismissed by the trial Court and on appeal filed by the respondents 3 and 4, the First Appellate Court reversed the findings of the trial Court and allowed the Succession O.P. Aggrieved by the same, the first respondent in the Succession O.P has come by way of this Second Appeal.

3.According to the respondents 1 to 4, they are brothers and



sisters of the deceased Srikumaran Nair and he died as a bachelor.

The appellant/first respondent in Succession O.P claiming herself as legally wedded wife of Srikumaran Nair, attempted to withdraw the monetary benefits of the deceased and in these circumstances, the above said O.P was filed by the respondents 1 to 4 by arraying her as first respondent.

4.The Succession O.P was resisted by the appellant/first respondent on the ground that she was the legally wedded wife of Srikumaran Nair and it was her case that the marriage between her and Srikumaran Nair was solemnized in Kumara Koil and thereafter, they had lived as husband and wife.The allegation in the O.P as if Srikumaran Nair died as a bachelor was specifically denied. Therefore the appellant claimed that she was the class-I heir of Srikumaran Nair and sought for dismissal of the Succession O.P.

5.Before the Court of first instance, the third petitioner was examined as P.W.1 and 22 documents were marked as Ex.P1 to Ex.P22. On the side of the appellant/first respondent, she was examined as R.W.1 and three other witnesses, the employees of the company in which the deceased worked, were examined as R.W.2 to R.W.4. On behalf of the respondents in Succession O.P, six



documents were marked as Ex.R1 to Ex.R6.

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6.The Court of first instance, on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant proved her marriage with the deceased Srikumaran Nair and consequently, dismissed the Succession O.P. Aggrieved by the same, the respondents 3 and 4 preferred an appeal in A.S.No.46 of 2006, on the file of Sub-Court, Padmanabhapuram and the First Appellate Court reversed the findings of the Court of First Instance and allowed the appeal. Aggrieved by the same, the first respondent in the Succession O.P has come by way of this Second Appeal.

7.The learned counsel for the appellant vehemently contended that the Marriage Certificate issued by the Manager of Devaswom Board was marked as Ex.R4(wrongly mentioned as Ex.R2 in Trial Court Judgment) and the same clinchingly proved the factum of marriage between the appellant and Srikumaran Nair. The learned counsel for the appellant also submitted that the copy of the Marriage Register issued by Devaswom Board was marked as Ex.R6 and in the said document, second petitioner Manikandan signed as one of the witnesses for the marriage and he has not been examined by the respondents for the reasons best



known to them. Therefore, adverse inference shall be drawn against the respondents. The learned counsel also submitted that the husband of P.W.1, in his evidence in O.S.No.361 of 2001 admitted that the first respondent got married and his deposition was marked as Ex.R5(wrongly mentioned as Ex.R3 in the Trial Court Judgment). The First Appellate Court failed to take into consideration the said material evidence. Therefore, the learned counsel for the appellant sought this Court to set aside the judgment and decree passed by the First Appellate Court.

8.A perusal of Ex.R4-Marriage Certificate issued by the Manager of Devaswom Board and Ex.R6-copy of the Marriage Register maintained by the Devaswom would suggest that on 31.8.1984, the marriage was solemnized between one Srikumaran Nair, son of Ponnu Pillai and one Vasantha Kumari, daughter of Krishna Pillai. The name of the deceased in the present case is Srikumaran Nair, son Of Narayana Pillai. The learned counsel for the appellant submitted that Narayana Pillai was also known as Ponnu Pillai and therefore Ex.R4 and Ex.R6 proved the factum of marriage. P.W.1 in her evidence clearly accepted that the name of Srikumaran Nair's father was Narayana Pillai. When a suggestion was made to her whether Narayana Pillai was also known as Ponnu Pillai, the same was denied. There is no acceptable evidence



available on record to suggest that Srikumaran Nair's father, Narayana Pillai was also known as Ponnu Pillai. Ex.P14 is the Certificate issued by Vijayakumar Hospital. Ex.P15 is the Death Certificate of Srikumaran Nair. In Ex.P14 and Ex.P15, Srikumaran Nair was described as son of Narayana Pillai. Therefore, we cannot come to a definite conclusion that deceased Srikumaran Nair, son of Narayana Pillai and SriKumaran Nair, son of Ponnu Pillai mentioned in Ex.P4 and Ex.P6 are referring to same person. In Ex.R4(wrongly referred to as Ex.R2 in Trial Court Judgment) and Ex.R6, the deceased was referred as Srikumaran Nair, son of Ponnu Pillai. The First Appellate Court has rightly rejected Ex.R4(wrongly referred as Ex.R2 in Trial Court Judgment) and Ex.R6, pointing out the discrepancy in the name of the father of Srikumaran Nair. Ex.R5(wrongly referred as Ex.R3 in Trial Court Judgment) is the copy of the deposition of P.W.1 in O.S.No.361 of 2001. An earlier Statement of the person who is alive cannot be taken into consideration except under certain circumstances and in this regard, it would be appropriate to refer to Section 32 of the Evidence Act which reads as follows:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant--Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving



evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :

(1)When it relates to cause of death. - When the statement is made by a person as

to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2)Or is made in course of business. - When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities of property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

(3)Or against interest of maker. - When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him, or would have exposed him to a criminal prosecution or to a suit for damages.

(4)Or gives opinion as to public right or custom, or matters of general interest. - When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.



(5)Or relates to existence of relationship. - When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6)Or is made in will or deed relating to family affairs. - When the statement relates to the existence of any relationship [by blood, marriage or adoption] [Inserted by Act 18 of 1872, Section 2.] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7)Or in document relating to transaction mentioned in section 13, clause (a). - When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8)Or is made by several persons and expresses feelings relevant to matter in question. - When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

9.A perusal of the above said provision would suggest that the statement of a person with regard to the existence of relationship like marriage is a relevant fact, provided, that person is dead or cannot be found. In the case on hand, it is not the case of



the appellant that the husband of P.W.1 is dead. In such circumstances, without examining him, copy of the deposition made by him in earlier proceedings cannot be taken into consideration to prove the marriage of Srikumaran Nair with the appellant. It is also stated by the appellant that the second petitioner, brother of Srikumaran Nair signed in Ex.R6 as a witness and the said fact has not been taken into consideration by the First Appellate Court. A perusal of Ex.R6 would suggest that one Manikandan Nair, son of Ponnu Pillai signed the document. As mentioned earlier, father of the deceased is Narayana Pillai and not Ponnu Pillai. In such circumstances, we cannot safely come to the conclusion that Manikandan Nair who signed as a witness in Ex.R6 is only brother of the deceased Srikumaran Nair, son of Narayana Pillai. Therefore, the statement made by the learned counsel for the appellant is not acceptable to this Court. The First Appellate Court, on proper appreciation of evidence available on record, came to the conclusion that the marriage between the appellant and Srikumaran Nair was not proved satisfactorily and hence, the said factual finding of the First Appellate Court requires no interference by this Court. This Court finds no Substantial Question of Law in the Second Appeal filed by the appellant.

10. For the reasons aforesaid, the Second Appeal stands



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dismissed. No costs.

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Index:Yes/No

Internet:Yes/No

NCC:Yes/No

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To

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



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S.SOUNTHAR, J.

vsn

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