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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.816 of 2006

S.Pitchaiammal

... Appellant/Appellant/Plaintiff

Vs.

1.G.Annammal alias Santhi

2.A.Ravi

3.National Highways Department,
Dindigul Division,
Through its,
Divisional Manager.

4.National Highways Department,
Kodaikanal Sub Division,
Through its Assistant Divisional Engineer,
Kodaikanal.

5.The Principal Accountant General,
Office of the Principal Accountant General,
Chennai – 600 0018. ... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 25.11.2005 passed in A.S.No.5 of 2005, on the file of the Sub Court, Palani, confirming the judgment and decree dated 20.01.2005 passed in O.S.No.11 of 2000 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal.



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For Appellant : Mr.I.Sam Jegan
For R – 4 : Mr.R.Ragavendran
Government Advocate
For R – 5 : Mr.P.Gunasekaran

JUDGMENT

The Judgments and decrees passed in O.S.No.11 of 2000 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal and in A.S.No.5 of 2005, on the file of the Sub Court, Palani, are being challenged in the present Second Appeal.

2.The appellant herein as plaintiff instituted a suit in O.S.No.11 of 2000 on the file of the trial Court as against the respondents for the relief of declaration, to declare that the plaintiff is the legal heir of her husband late.Subramani and for the consequential injunction not to disburse the pension benefits, D.C.R.G and other benefits to any person by the defendants 3 to 5 except the plaintiff and for costs.

3.For the sake of convenience, the parties are referred to as, as described before the trial Court.



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4.The case of the plaintiff is that the marriage between herself and late.Subramani was held on 17.05.1961 at Kodaikanal, Subramaniam Kovil, as per the Hindu rites and customs. On 27.07.1962, a male child was born and they were residing at Anandhagiri 2nd street at Kodaikanal and the child died on 18.08.1965. Since the husband of the plaintiff was working as a Watchman at the Highways Department for 20 days in one month, he went to Moolaiyar and he resides there. Due to his ill health, while in service, the plaintiff's husband died on 11.10.1999. After his death, the funeral was conducted by the plaintiff by printing cards on 26.10.1999, since there were no legal heirs except the plaintiff. But immediately after the death of the plaintiff's husband, the defendants 1 and 2 claimed that they were the legal heirs of the deceased Subramani by creating forged documents and trying to get death benefits from the defendants 3 to 5. Hence, on 14.10.1999, the plaintiff issued a legal notice to the defendants 3 and 4 and a reply was also given by the defendants 3 and 4. Since the defendants 1 and 2 by creating forged documents are trying to get the death benefits of the late.Subramani, the plaintiff has filed the said suit for the abovestated relief.



5.The defendants 1 and 2 had filed a written statement stating that the alleged marriage was not held between the plaintiff and the husband of the first defendant and likewise, no male child was born and died. To the late.Subramani, except the defendants 1 and 2, there were no other legal heirs. After the death of her husband, the second defendant, conducted funeral expenses by printing cards and a sum of Rs.5,000/- was disbursed by the Highways Department for funeral expenses to them. Thereafter, a sum of Rs.95,000/- was received by the first defendant. The Tahsildar of Kodaikanal issued a legal heir certificate stating that the defendants 1 and 2 are the legal heirs of late.Subramani. Since the Highways Department recognised the defendants 1 and 2 as legal heirs of late.Subramani, the third defendant had passed an order for disbursing G.P.F, S.P.F, D.C.R.G and N.B.F. On 07.04.1996, at Kodaikanal Kurinchi Andavar Kovil, the marriage was held between late.Subramani and the first defendant. Due the the marriage, on 07.05.1969, the second defendant Murugan alias Ravi was born. In the School records, it is mentioned that R.Subramani is the father of the second defendant and they were residing at Mooalaiyar. The said late.Subramani in his service register mentioned the defendants 1 and 2 as his nominees. After the marriage, late.Subramani with his family resided in a quarters which



belongs to the Highways Department at Mayladumparai and thereafter, till the death of late.Subramani, resided in the Inspection bungalow belonging to the Highways Department at Moolariyar. There is no husband and wife relationship between the plaintiff and late.Subramani. The plaintiff already married one Rajamanickam and they had a daughter by name Vanasundari. In the voter's list and ration card, the plaintiff's name was shown as the wife of Rajamanickam and prayed for the dismissal of the suit.

6.The defendants 3 to 5 had filed a written statement stating that there was no detail regarding the marriage between the plaintiff and late.Subramani and he has not given any detail with regard to the plaintiff. The persons stated as legal heirs by the servant are eligible to get the amount. In Moolaiyar, at Inspection bungalow, late.Subramani was working as a temporary Watchman. He died on 11.10.1999. Late.Subramani in his nomination form referred the defendants 1 and 2 as legal heirs. As per Government Rules, the Highways Department disburses funeral expenses amount and family benefit fund regarding G.P.F and pension. The defendants 3 to 5 cannot disburse the amount of their own. Only the nominees appointed by late.Subramani is entitled. Since the family benefits were disbursed to



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the defendants 1 and 2 before filing of the suit, the plaintiff cannot claim any relief and she is not entitled to get a declaration as prayed for. Only the leave salary benefits of late.Subramani has been withheld from disbursing to the defendants 1 and 2. The defendants 1 and 2 have received a sum of Rs.5,000/- on 29.10.1999 and on 24.12.1999, a sum of Rs.95,000/- and again a sum of Rs.7,267/- on 24.12.1999 from the office of the fourth defendant. Therefore, the plaintiff has no right to stop the payments. Since the funeral expenses, family benefit funds and S.P.F have already been disbursed to the defendants 1 and 2, there is no cause of action. As per the nomination of late.Subramani, the plaintiff is not entitled to get any amount and prayed for dismissal of the suit.

7.Before the trial Court, on the side of the plaintiff, the plaintiff herself was examined as P.W.1 and P.W.2 to P.W.6 were examined and Exs.A1 to A28 were marked. On the side of the defendants, the defendants 1 and 2 were examined as D.W.1 and D.W. 2 and one P.Vadivel (Junior Assistant of Highways Department) was examined as D.W.3 and Exs.B.1 to B.25 were marked.



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8.On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

9.Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff herein as appellant, had filed an Appeal Suit in A.S.No.5 of 2005 on the file of the first Appellate Court.

10.The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

11.Challenging the said Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiff as appellant.



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12.The appellants have raised the following substantial questions of law in the Second Appeal:

'1. Whether the nomination made by the deceased vide Exs.B.23-25 in his service register would by itself confer the status of legally wedded wife in favour of the nominee?

2.Whether the Courts below applied the correct principles relating to standard of proof while rejecting the case of the plaintiff?'

13.The learned counsel appearing for the appellant/plaintiff would submit that the Courts below have not considered the documents viz., marriage invitation card-Ex.A.1, Family card issued by the Kodaikanal Township for the year 1967-Ex.A.4, Ex.A.8 and Ex.A.23 and other documents would show that the plaintiff is the wife of late.Subramani; the Courts below failed to appreciate the oral evidence of P.W.4 and P.W.5, who had attended marriage of the plaintiff and late.Surbamani; though the plaintiff has proved her case through oral and documentary evidence, the Courts below have wrongly concluded that the plaintiff has not proved her case; though the nomination made



by a person and the legal heir certificate issued by the Tahsildar constitute the proof of marital relationship and succession rights, the Courts below have wrongly taken into consideration; the Courts below have wrongly concluded that the first defendant is the legally wedded wife of late.Subramani on the basis of irrelevant records and the Courts below have failed to consider the proved facts that the first defendant is a Christian, she married one George in the year 1960 and gave birth to Presinalammal, baptised her daughter before the Church Parish Priest and the said Christian marriage was still in existence, there cannot be any valid marriage between Annammal @ Shanthi and the said late.Subramani and prayed for allowing the Second Appeal.

14.The learned counsel appearing for the respondents 4 and 5 reiterated the averments made in the plaint and the appeal and submitted that the Courts below had rightly dismissed the suit.

15.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 4 and 5 and also perused the records carefully.



16. According to the plaintiff, as per the Hindu rites and customs, the marriage between herself and late. Subramani was held on 17.05.1961 at Kodaikanal, Subramaniam Kovil. On 27.07.1962, a male child was born and they were residing at Anandhagiri 2nd street at Kodaikanal and the child died on 18.08.1965. Since the husband of the plaintiff was working as a Watchman at the Highways Department for 20 days in one month, he went to Moolaiyar and resides there. Due to his ill health, while in service, the plaintiff's husband died on 11.10.1999. After his death, the funeral was conducted by the plaintiff by printing cards on 26.10.1999, since there were no legal heirs except the plaintiff. But immediately after the death of the plaintiff's husband, the defendants 1 and 2 claimed that they were the legal heirs of the deceased Subramani by creating forged documents and trying to get death benefits from the defendants 3 to 5. Hence, on 14.10.1999, the plaintiff issued a legal notice to the defendants 3 and 4 and a reply was also given by the defendants 3 and 4.

17. The defendants 1 and 2 denied that the alleged marriage between the plaintiff and the husband of the first defendant are all false and likewise, the male child was born and died are all false. To the late. Subramani, except the defendants 1 and 2, there

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were no other legal heirs. After the death of her husband, the second defendant, conducted funeral expenses by printing cards and a sum of Rs.5,000/- was disbursed by the Highways Department for funeral expenses to them. Thereafter, a sum of Rs.95,000/- was received by the first defendant. The Tahsildar of Kodaikanal issued a legal heir certificate stating that the defendants 1 and 2 are the legal heirs of late.Subramani. Since the Highways Department recognised the defendants 1 and 2 as legal heirs of late.Subramani, the third defendant had passed an order for disbursing G.P.F, S.P.F, D.C.R.G and N.B.F. On 07.04.1996, at Kodaikanal Kurinchi Andavar Kovil, the marriage was held between late.Subramani and the first defendant. Due the the marriage, on 07.05.1969, the second defendant Murugan alias Ravi was born. In the School records, it is mentioned that R.Subramani is the father of the second defendant and they were residing at Mooalaiyar. The said late.Subramani in his service register mentioned the defendants 1 and 2 as his nominees. After the marriage, late.Subramani with his family resided in quarters which belonged to the Highways Department at Mayladumparai and thereafter, till his death, they resided in the Inspection bungalow belonging to the Highways Department at Moolariyar. There is no husband and wife relationship between the plaintiff and



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late.Subramani. The plaintiff already married one Rajamanickam and they had a daughter by name Vanasundari. In the voter's list and ration card, the plaintiff's name was shown as the wife of Rajamanickam.

18.According to the defendants 3 to 5, there was no detail regarding the marriage between the plaintiff and late.Subramani and he has not given any detail with regard to the plaintiff. The persons stated as legal heirs by the servant are eligible to get the amount. In Moolaiyar, at Inspection bungalow, late.Subramani was working as a temporary Watchman and he died on 11.10.1999. Late.Subramani in his nomination form referred the defendants 1 and 2 as legal heirs. As per Government Rules, the Highways Department disbursed funeral expenses amount and family benefit fund regarding G.P.F and pension. Only the nominees appointed by late.Subramani is entitled. Only the leave salary benefits of late.Subramani has been withheld from disbursing to the defendants 1 and 2. The defendants 1 and 2 have received a sum of Rs.5,000/- on 29.10.1999 and on 24.12.1999, a sum of Rs.95,000/- and again a sum of Rs.7,267/- on 24.12.1999 from the office of the fourth defendant. Therefore, the plaintiff has no right to stop the payments. Since the funeral expenses, family benefit funds



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and G.P.F have already been disbursed to the defendants 1 and 2,
there is no cause of action.

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19.On perusal of the materials available on record, it is seen that as per the existing and prevailing Rules of the Highways Department, the service register is the authenticated document to prove, who are the nominees as the legal heirs. It is to be seen that in the nomination form, the said late.Subramani has mentioned the names of the defendants 1 and 2 as his legal heirs, in which the plaintiff's name is not found and that being the case, when the late.Subramani recognised the defendants 1 and 2 as his nominees and he has filled in the nomination form, the Court has to consider the same and that would confer the status of the legally wedded wife in favour of the first defendant, as there is no documentary material filed by the plaintiff to prove that the marriage between herself and the late.Subramani and she has not produced any material to show that the wedding was conducted in the Temple or any other witnesses to prove that she was the legally wedded wife of late.Subramani and the first question of law is decided against the plaintiff.



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20.The Courts below had considered the aspect that who is the legally wedded wife of late.Subramani through evidence. It is to be seen that in the plaintiff's averment, she has stated that she got married at Subramaniam Kovil, but no document has been produced, except Ex.A.1, which is a marriage invitation and no other document has been filed to show that she is the legally wedded wife of late.Subramani and the plaintiff's contention that she produced ration card. However, this Court found that the said document is a factual aspect and other than ration card, no other documents have been filed to prove that she is the wife of late.Subramani. No answer to show why she was not residing with the late.Subramani at the time of death, when the defendants 1 and 2 proved that they have resided in the quarters provided in the Inspection Bungalow in Moolariyar. The plaintiff has also not produced sufficient documents to show that she is the legally wedded wife. Ex.A.3-the death certificate, the name of the wife is not noted and Ex.A.1 and Ex.A.2 can be printed on their own and that will not give any legal right to prove that she is the legally wedded wife. The Department has also deposed that the said late.Subramani was working in the Highways Department and his service register was produced and nomination form was also



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considered by the Courts below and found that the late.Subramani and the first defendant lived as husband and wife and the second defendant is their son and they have been made as nominees, after the death of the late.Subramani, who received the retirement benefits or any other benefits available to him and the marriage between the first defendant and the late.Subramani has been proved beyond any doubt by the first defendant and the plaintiff has not proved any such claim made by her with appropriate evidences.

21.It is to be seen that P.W.6-Paulraj, in his examination has deposed that the said late.Subramani married Annammal @ Santhi. Further, he has stated that he has not witnessed the marriage of Annamal, the Court has come to the conclusion that the defendants 1 and 2 had proved their case that they are the legal heirs of the late.Subramani and the plaintiff was not in a position to prove her case beyond doubt.

22.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any



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interference. Accordingly, the substantial questions of law raised are ordered as against the plaintiff and in favour of the defendants.

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23.In the result, the Second Appeal stands dismissed. No costs.

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To

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1.The Sub Court,
Palani.

2.The District Munsif cum Judicial Magistrate,
Kodaikanal.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.816 of 2006

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