



S.A.Nos.445 & 446 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON 14.08.2025	PRONOUNCED ON 26.08.2025
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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

S.A.Nos.445 & 446 of 2018

and

C.M.P.No.12137 of 2018

S.A.No.445 of 2018

Reena

... Appellant

Vs

1.Janaki (Died)

2.Boopathi

3.The Divisional Railway Manager,

4.The Senior Divisional Personal Officer,

5.The Senior Divisional Mechanical

No.3 to 5 are having office at

Palakkad Railway Division,

Southern Railway, Railway Divisional Office,

Olavakode, Palakkad District.

Kerala State

6.Kalaiselvi

... Respondents

R6 brought on record as Legal heirs of the deceased R1 vide Court Orders dated 14.08.2025 made in CMP.No.178 of 2025 in S.A.No.445 of 2018

S.A.No.446 of 2018

Reena

... Appellant

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S.A.Nos.445 & 446 of 2018

Vs

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- 1.Janaki (Died)
 - 2.Boopathi
 - 3.Kalaiselvi
 - 4.The Divisional Railway Manager,
 - 5.The Senior Divisional Personal Officer,
 - 6.The Senior Divisional Mechanical Engineer,
- Nos.4 to 5 are having office at
Palakkad Railway Division,
Southern Railway, Railway Divisional Office,
Olavakode, Palakkad District.
Kerala State

... Respondents

R1 Died, RR2 & 3 already on record and are recorded as Legal heirs of the deceased R1 vide Court order dated 22.02.2024, made in S.A.Nos.445 & 446 of 2018 & CMP.No.12137 of 2018

COMMON PRAYER:- Second Appeal filed under Section 100 of the Civil Procedure Code, filed against the judgment and decree in A.S.No.124 of 2008, dated 29.08.2011 passed by the II Additional Sub-Judge, Salem, partly reversing the decree and judgment in O.S.No.1183 of 2005, dated 20.08.2008, passed by the Principal District Munsif, Salem, partly decreeing the said suit filed by the respondents 1 & 2 herein praying for mandatory injunction and permanent injunction and praying to set aside the same.

For Appellant : Mr.S.Senthil Kumar in both Appeals

For Respondents : R1-Died

No Appearance for R2 in S.A.No.445/2018

Mr.K.Thirukumaran for RR3 to 5

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in S.A.No.445 of 2018
& RR4 to 6 in S.A.No.446 of 2018
No appearance for R3 in S.A.No.446/2018

COMMON JUDGMENT

The Second Appeals had been filed against the judgment and decree in A.S.No.124 of 2008, dated 29.08.2011 passed by the II Additional Sub-Judge, Salem, partly reversing the decree and judgment in O.S.No.1183 of 2005, dated 20.08.2008, passed by the Principal District Munsif, Salem, partly decreeing the said suit filed by the respondents 1 & 2 herein praying for mandatory injunction and permanent injunction and praying to set aside the same.

2. Mr.S.Senthil Kumar, the learned counsel appearing for the appellant, Mr.K.Thirukumaran, learned counsel appearing for the respondents 3 to 5.

3. The learned counsel appearing for the appellant would submit that the respondents 1 & 2 along with 6th respondent had filed a Suit in O.S.No.1183 of 2005, on the file of the Principal District Munsif, Salem seeking for a decree of permanent injunction restraining the

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respondents 3 to 5 from disbursing the death-cum-retirement benefits of the appellant's husband in her favour and also for a mandatory injunction directing the respondents 3 to 5 to pay the said benefits to them. The said Suit was dismissed in so far the respondents 1 & 2 are concerned and was decreed in so far the 6th respondent is concerned and while granting the mandatory injunction apart from the 6th respondent, the daughter of the appellant was also held to be entitled for the death cum retirement benefits of the deceased Dhandapani. The respondents 1 & 2 aggrieved against the same, had filed an appeal against the dismissal of the Suit in their respect, the appellant had also filed a cross appeal as against the decree in favour of the 6th respondent. The cross appeal filed by the appellant, was dismissed and the appeal filed by the respondents 1 & 2 was partly allowed holding that the 1st & the 6th respondents alone are entitled for the death cum retirement benefits of the deceased Dhandapani.

4. He would submit that the first Appellate Court had grossly erred in rejecting the service records of the deceased Dhandapani in

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that regard. The first Appellate Court had also held that there was a valid marriage of the first respondent with the deceased Dhandapani to overthrow the claim of the appellant and also dis-regarded the oral and documentary evidence of respondents 3 to 5, which categorically substantiates the claim of the appellant. He would further submit that the 6th respondent would not be entitled for the death cum retirement benefits of the deceased Dhandapani, since as on the date, the second plaintiff even according to the plaint, was aged 32 years and had been married. Therefore, he seeks interference with the judgment and decree passed by the Courts below.

5. The learned counsel appearing for the respondents 3 to 5 would submit that as per the records of the employee, the employee has nominated the appellant for receiving his death cum retirement benefits by giving the relationship of the appellant to be his wife. He would submit that the official respondents are bound by whatever orders that was passed by the Civil Court with regard to the parties eligibility to claim the death-cum-retirement benefits of their deceased employee.

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6. I have considered the submissions made by the learned counsels appearing for the parties and perused the materials placed on record.

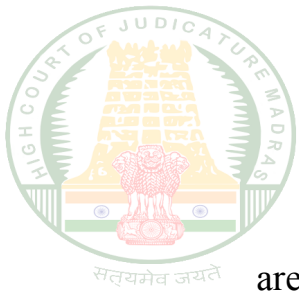
7. The following substantial questions of law were framed by this Court in its order dated 12.11.2018, which has been extracted hereunder:-

"(i) Is not the burden of proving the factum of marriage of the 1st Respondent with the deceased C.Dhandapani on her?

(ii) Have not the courts below committed a grave error in having failed to rely upon the service records of the deceased C.Dhandapani which is a conclusive proof under the provisions of Indian Evidence Act to prove the marriage of the appellant with the deceased C.Dhandapani?

(iii) Have not the courts below committed a grave error in having relied upon oral evidence than the documentary evidence produced by the appellant and the respondents 3 to 5?

8. For easy reference and better appreciation of facts, the parties



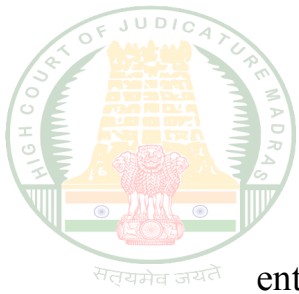
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are referred as to their rank in original suit. The Trial Court on relying upon the oral and documentary evidence particularly the service records of the deceased employee had granted a decree in favour of the 2nd plaintiff, first defendant and her daughter Durgadevi. The Trial Court had categorically held that the marriage between the first plaintiff and the deceased has not been proved and that the first defendant's relationship with the deceased had been proved by various documents. The Trial Court had also failed to recognise the third plaintiff as the son of the deceased Dhandapani.

9. On the contrary, the first Appellate Court on the oral evidence of PW-3 and on Ex.A1 alone had come to a conclusion that the first plaintiff is legally wedded wife and the first defendant is the 2nd wife of the deceased, who is not legally valid to hold that the first plaintiff is entitled for the death-cum-retirement benefits of the deceased and not the first defendant. The first Appellate Court had also set aside the decree in favour of the daughter of the first defendant by holding that she had not been a party to the Suit and therefore, she would not be

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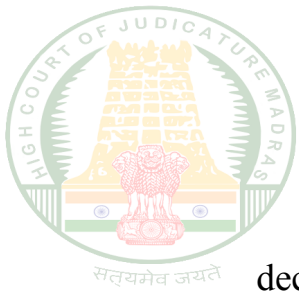
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entitled to the relief. The claim by the third plaintiff had also been negatived by the first Appellate Court and the third plaintiff had not filed any independent appeal as against the first Appellate Court's order.

10. Since the first plaintiff had not filed an independent appeal, there is no question of granting any relief to her in any manner. Subsequently, the first plaintiff had died during the pendency of the proceedings. Even assuming that the first Appellate Court judgment is upheld, the third plaintiff cannot claim the same being the legal heir of the first plaintiff, as his claim to be the son of the first plaintiff with the deceased have been negatived by both the Courts and utmost, the second plaintiff alone is entitled for the relief. The findings of the first Appellate Court to hold that the first plaintiff was the legally wedded wife is based upon Ex.A1 and the oral evidence of PW-3. The Trial Court had categorically held that except for Ex.A1 and the oral evidence of PWs-1 to 3, there has been no substantial evidence to prove that the marriage subsistence between the first plaintiff and the

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deceased. On the other hand, the findings of the Trial Court that it is the first defendant had produced various documents to substantiate her relationship with the deceased, apart from the service records, which were placed as Exhibits before the Court. The first Appellate Court had interfered with the said finding by overthrowing the documentary evidence whereby the deceased himself had shown the first defendant to be his wife. The Trial Court had categorically held that the second plaintiff had been born to the deceased employee, which has also been upheld by the first Appellate Court. The first Appellate Court had committed an error in holding that the first plaintiff was entitled for a relief as prayed for.

11. Even though the second plaintiff has been impleaded as sixth respondent in S.A.No.445 of 2018, notice to her is dispensed with as inspite of notice to her in S.A.No.446 of 2018, where she is a party, she had failed to appear before this Court. Further this Court has come to the conclusion to dismiss the S.A.No.445 of 2018 and to restore the Trial Court order, under which she was entitled to the relief.

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12. For the aforesaid reasons recorded supra, the substantial questions of law are answered in favour of the first defendant. S.A.No.446 of 2018 stands partly allowed by setting aside the judgment and decree granted in favour of the first plaintiff alone and the judgment and decree made by the Trial Court in O.S.No.1183 of 2005, dated 20.08.2008 stands restored. As a consequence, the official respondents are directed to disburse the death-cum-retirement benefits in favour of the first defendant, her daughter Durga Devi and the second plaintiff as per the provisions of the Rules governing the Department in that regard. S.A.No.445 of 2018 stands dismissed. Consequently, connected Miscellaneous Petition is also closed. However, there shall be no order as to costs.

26.08.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

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To

- 1) Principal District Munsif, Salem,
- 2) II Additional Sub-Judge, Salem,

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K.KUMARESH BABU,J.

Pbn

Pre-Delivery Judgment in
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