



S.A.No.972 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.08.2025
Pronounced on	14.11.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.972 of 2019

Violet (died)

1. Ravi
2. Prema
3. K. Vasanthi
4. Pappy

...Appellants

Vs.

1. Apporvammal @ Pattu
2. The Chief Security Commissioner,
Southern Railway
Chennai
3. The Senior Divisional Security Commissioner,
Southern Railway,
Chennai

...Respondents



S.A.No.972 of 2019

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Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 22.01.2019 passed in A.S. No.45 of 2017, on the file of the Subordinate Judge, Tirupattur, Vellore District, confirming the Judgment and decree dated 20.09.2013 passed in O.S.No.221 of 2007, on the file of the Principal District Munsif, Tirupattur.

For Appellants : Ms. Elizabeth Ravi
For Respondents : Mr.V.V. Sathya for R1
Mr. M. Vijay Anand
Additional Standing Counsel
for Railways for R2 and R3.

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 22.01.2019 passed in A.S. No.45 of 2017, on the file of the Subordinate Judge, Tirupattur, Vellore District, confirming the Judgment and decree dated 20.09.2013 passed in O.S.No.221 of 2007, on the file of the Principal District Munsif, Tirupattur.



S.A.No.972 of 2019

WEB COPY

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

3. The legal heirs of the 1st defendant are on appeal.

4. The case of the plaintiff is that, she is the wife of one Krishnan and having married him in the month of September 1962, begotten two children, by name, Mohan and Prema. The said Krishnan was working in the defendants' 2 and 3 LOKE Work at Perambur. Since the said Krishnan neglected the plaintiff and her children, she filed M.C. No.17/1990 for maintenance and a sum of Rs.500/- was ordered as maintenance. Despite the order, the said Krishnan failed to maintain the plaintiff and therefore, she filed a suit in O.S. No.263/01 against her husband Krishnan and against the present defendants 2 and 3 for injunction restraining them from disbursing the retirement benefits to Krishnan. Pending suit, the said Krishnan died on 30.08.2003 and hence, the plaintiff not pressed the above suit. Thereafter, the plaintiff demanded the defendants 2 and 3 to disburse the retirement and Family



S.A.No.972 of 2019

WEB COPY

Pension to her. But the defendants 2 and 3 protracted the proceedings.

Hence, the plaintiff issued a legal notice dated 26.12.2006 to the defendants 2 and 3. But the above defendants failed to disburse the retirement benefits and family pension to the plaintiff. Hence, the plaintiff was constrained to file the above suit for declaration that she is the only legally wedded wife of Krishnan and also for permanent injunction restraining the defendants 2 and 3 from disbursing the pensionary benefits to the 1st defendant.

5. The claim of the plaintiff was resisted by the 1st defendant stating that the plaintiff filed the Maintenance Petition against the said Krishnan in which the said Krishnan filed a counter statement stating that the plaintiff was leading an adulterous life with one Ekilarian and a panchayat was held in which the said Krishnan agreed to pay a sum of Rs.300/- as maintenance to the plaintiff. The said amount was sent through Money Order. Thereafter, the plaintiff filed a suit in O.S. No.263/2001 and the same was dismissed on 07.12.2006. Hence, the present suit is barred by *Res Judicata*. The said Krishnan had divorced



S.A.No.972 of 2019

WEB COPY

the plaintiff as per the prevailing customs in the year 1962 and thereafter, he married the 1st defendant. In all his service records the 1st defendant's name alone is found and therefore, the 1st defendant alone is the legally wedded wife of Krishnan and so the plaintiff is not entitled to any pensionary benefit of late Krishnan. Hence prayed for dismissal of the suit.

6. The defendants 2 and 3 in their written statement has stated that the said Krishnan was appointed as Rakshak on 18.10.1962 in the RPF. He then retired from service as an Assistant Sub Inspector at LW/PER after attaining superannuation on 31.10.2001 and he had received all his settlement dues on 01.11.2001 itself. Hence the suit is infructuous. Further the suit filed by the plaintiff in O.S. No.263/2001 for the same remedy was dismissed on 07.12.2006. Based on the legal opinion by the Deputy Chief Law Officer, the 1st defendant was sanctioned enhanced Family Pension and other benefits from 31.08.2003 to 30.10.2008. As per the service records, the said Krishnan has nominated the 1st defendant as his wife. Hence, they have not sanctioned the Family Pension and



S.A.No.972 of 2019

WEB COPY

other benefits during the pendency of the above suit. Only after dismissal of the suit in O.S. No.263/2001 on 07.12.2006, they sanctioned Family Pension lawfully after scrutinizing the relevant records submitted by the 1st defendant. Hence, prayed for dismissal of the suit.

7. The trial court, vide its judgment and decree dated 20.09.2013, decreed the suit in favour of the plaintiff, against which the 1st defendant has preferred an appeal in A.S. No.45/2017 before the Subordinate Court, Tirupattur, Vellore District. The first appellate court also dismissed the appeal suit vide its judgment and decree dated 22.01.2019 confirming the judgment and decree passed by the trial court. During the pendency of the first appeal, the 1st defendant died and her legal heirs were impleaded. The present Second Appeal is preferred by the legal heirs of the 1st defendant.

8. The Second Appeal has been admitted on the following substantial question of law.

"Whether the courts below were right in holding that the



S.A.No.972 of 2019

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9. The learned counsel for the appellants would submit that the suit is hopelessly barred by limitation under Article 58 of the Limitation Act, 1963, since the cause of action arose well before 1971 when the status of the plaintiff as wife of the deceased was in dispute and the present suit was filed only in the year 2007. Hence it is barred by limitation under Article 58 of the Limitation Act. He would further submit that the said Krishnan died on 30.08.2003 during the pendency of the suit in O.S. No.263/2001. While so, the plaintiff ought to have taken steps to implead the legal representatives of the deceased Krishnan by amending the plaint. Rather, she withdrew the suit by getting an order of dismissal on 07.12.2006. The plaintiff ought to have filed the present suit within 3 years from 30.08.2003, the date of death of Krishnan, however, filed the present suit only on 12.07.2007, which is hopelessly barred by limitation. It is further submitted that the plaintiff failed to establish the factum of marriage between herself and the deceased Krishnan when the same was disputed by the respondents 2 and 3 themselves. While so, the courts

Page 7 of 16



S.A.No.972 of 2019

WEB COPY

below wrongly placed the onus of proof upon the deceased 1st defendant regarding the customary divorce, where as, the onus of proof is only upon the plaintiff herself and not upon the deceased 1st defendant. It is further submitted that the order of maintenance passed in M.C. No.17/1990 cannot be a proof of marriage since the order of maintenance was passed in a summary procedure under Section 125 of the Code of Criminal Procedure, 1973, and the same cannot be taken as a conclusive proof binding upon the parties in a Civil proceedings. The first appellate ought to have adverted to the provisions contained in Section 16 of the Hindu Marriage Act, wherein the right of such illegitimate children born out of the void marriage, separate properties and the courts below ought to have held that the defendants are equally entitled to their share in the estate of the deceased Krishnan. Hence prayed for setting aside the judgment and decree passed by the courts below.

10. On the other hand, the learned counsel for the 1st respondent/plaintiff submits that the factum of ordering of maintenance to the plaintiff and the marriage between the plaintiff and late Krishnan



S.A.No.972 of 2019

was not dissolved by any competent court and hence it has to be presumed that the plaintiff alone is the legally wedded wife of the deceased Krishnan. Though the 1st defendant was shown as nominee in the Service Registers of the said Krishnan, the 1st defendant is not the legally wedded wife of Krishnan and therefore, she is not entitled for the retirement benefits of late Krishnan. The courts below have rightly appreciated the above facts which warrants any interference by this Court. Hence, prayed for dismissal of the Second Appeal.

11. Heard on both sides. Records perused.

12. The above suit is filed by the plaintiff to declare her as the legally wedded wife of late Krishnan and to restrain the defendants 2 and 3 from disbursing the retirement benefits of late Krishnan to the 1st defendant in the above suit. The trial court and the first appellate court have categorically held that since the marriage between the plaintiff and late Krishnan was not dissolved by any competent court and also held that the marriage between the plaintiff and late Krishnan was dissolved



S.A.No.972 of 2019

WEB COPY

as per customs not proved. Hence, the courts below held that the plaintiff being the legally wedded wife of deceased Krishnan is entitled to receive the pension. On perusal of records it is seen that the 1st defendant has admitted the marriage between deceased Krishnan and the plaintiff even prior to the 1st defendant's marriage with Krishnan. She had only pleaded that Krishnan had divorced the plaintiff as per customs, which was not established by any tangible evidence. Though the said Krishnan had nominated the 1st defendant to receive the Family Pension it will not be binding on the plaintiff. In respect of Family Pension, the deceased Krishnan had no right to nominate the 1st defendant, in violation of the Pension Rules, as a person entitled to receive the pension and, any such nomination made by him is invalid. Hence, the plaintiff being the legally wedded wife of deceased Krishnan is entitled to receive the pension. Moreover, the Family Pension Scheme is in the nature of a welfare scheme. The courts below applying the principles laid down in the case reported in **2012 (2) L.W. 486** has rightly concluded that the plaintiff is entitled to receive the pension of deceased Krishnan. No perversity or infirmity found in the said findings of the courts below.



S.A.No.972 of 2019

WEB COPY

13. However, in this Second Appeal, the question of law formulated is that the suit is barred under Article 58 of the Limitation Act, 1963. According to the learned counsel for the appellant, when the plaintiff seeks a decree for declaration that she is the lawfully wedded wife of Krishnan, the suit ought to have been filed within a period of 3 years, from the date when the dispute relating to the marital status has been raised, i.e. on the date when the plaintiff filed the suit in O.S. No.263/2001, for permanent injunction against the defendants 2 and 3, the date on which the right to sue accrues. However, such a plea was not raised in the written statement before the trial court or in the appeal memorandum before the lower appellate court. Generally, the issue of limitation should not be raised for the first time in a Second Appeal if it involves a mixed question of law and fact, as it can prejudice the other party. However, courts are bound to dismiss a suit if it is filed after the prescribed period, even if the plea of limitation is not raised by the defendant, as per Section 3 of the Limitation Act, 1963. Under Section 3 of the Limitation Act, a court is obligated to dismiss a suit, appeal, or application that is time barred, regardless of whether the plea was raised



S.A.No.972 of 2019

WEB COPY

by the opponent. This means that a Court can raise the issue on its own motion and dismiss the suit, even if the defendant never mentioned it in their pleadings. But, the issue of limitation must be pure question of law. Raising a mixed question of law and fact for the first time in a Second Appeal can be unfair because it prevents the other party from having an opportunity to present their arguments and evidence in the lower courts. The Limitation Act, 1963, restricts the right of a litigant by prescribing a time limit within which action must be initiated. Its object is to provide a time or period, within which, the action has to be initiated. The object of the Act is not to destroy the vested right available in law but to prevent indefinite litigation and therefore, only prescribes a period for initiation of the litigation. Generally, limitation is a mixed question of fact and law. In cases, where the action is initiated after several years after the right to sue accrued, without any pleadings to explain the reasons for delay or as to when the fraud was discovered, the question of limitation is to be treated as a question of law. Even in the absence of specific pleadings regarding the limitation in the plaint or a plea of defence, there is a bounden duty on every civil court to ascertain as to whether the lis has



S.A.No.972 of 2019

WEB COPY

been initiated within the time prescribed under law, even if the parties to the lis had not raised any objections. This right flows from the mandate of Section 3 of the Limitation Act, 1963, but not in cases where facts have to be pleaded and evidence have to be let in. In the present case, the defendants have not raised the plea of limitation in their written statement or in the memorandum of appeal. No doubt, a suit for declaration of one's status as a legally wedded wife generally has a limitation period of 3 years from when the right to sue first accrues, as per Article 58 of the Limitation Act, 1963. The time when the right to sue first accrues is the critical point in determining the start of any limitation period. Therefore, in the present case, evidence is required as to when the dispute relating to the marital status of the plaintiff was raised. If Article 58 of the Limitation Act applies, the 3 year period begins when the plaintiff first becomes aware of the circumstances or challenge to her status that necessitates filing a suit. The right to sue first accrues at the point the plaintiff's rights are clearly threatened or violated and successive violations do not give rise to a fresh cause of action under this Article in other types of declaration suits. In matrimonial matter,



S.A.No.972 of 2019

WEB COPY

courts generally lean towards ensuring substantial justice prevails over strict, technical considerations of the Limitation Act. Therefore, substantial justice in such sensitive matters should prevail over technical consideration of delay, especially if there is a recurring cause of action. Accordingly, the substantial question of law is answered against the appellant.

14. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The judgment and decree dated 22.01.2019 passed in A.S. No.45 of 2017, on the file of the Subordinate Judge, Tirupattur, Vellore District, confirming the Judgment and decree dated 20.09.2013 passed in O.S.No.221 of 2007, on the file of the Principal District Munsif, Tirupattur, is upheld.

14.11.2025

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga



S.A.No.972 of 2019

WEB COPY

To

1. The Subordinate Judge, Tirupattur, Vellore District,
2. The Principal District Munsif, Tirupattur
3. The Chief Security Commissioner,
Southern Railway
Chennai
4. The Senior Divisional Security Commissioner,
Southern Railway,
Chennai
5. The Section Officer, VR Section, High Court, Madras.



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S.A.No.972 of 2019

K.GOVINDARAJAN THILAKAVADI,J
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Pre delivery Judgment in
S.A.No.972 of 2019

14.11.2025