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A.S.No.488 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.488 of 2022

and

C.M.P.No.7705 of 2024

Banu Rekha,
Wife of Late S.Ravi,
Apartment A-1, F-153, F Block,
8th Street, Anna Nagar East,
Chennai 600 102.

.. Appellant/plaintiff

/versus/

1.Preeti,
No.8/4, MIG Flats,
Wanjari Nagar,
Nagpur, Maharashtra.

2.Chief of Air Staff Air Headquarters,
Vayu Bhawan, Rafi Marg,
New Delhi 110 106.

3.Principal Controller of Defence Accounts(Pension),
Draupati Ghat, Allahabad,
Uttar Pradesh 211 014.

..Respondents/Defendants



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Appeal Suit has been filed under Section 96 of C.P.C, praying to set aside the judgment and decree passed in O.S.No.212 of 2015, dated 20.06.2022 by the Principal Family Court, Chennai and decree the suit as prayed for.

For Appellant :Mr.C.Prasanna Venkatesh for
Mr.N.Elayaraja

For Respondents :Mr.M.Karthikeyan for R2 and R3
R1-Exparte

JUDGMENT

The suit for declaration in respect of the marital status and payment of pensionary benefits was dismissed by the trial Court. Hence, the present appeal has been filed by the aggrieved plaintiff.

2.The facts of the case runs as below:-

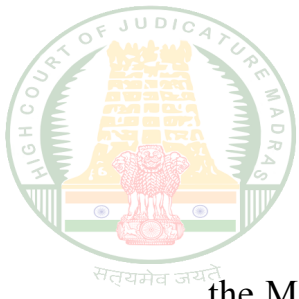
Ravi, the deceased, had earlier married one Preeti, but the martial relationship did not last long. The said Preeti had deserted her husband Ravi, which led to filing of petition in F.C.O.P.No.828 of 1993 seeking restitution of conjugal rights. The Additional Principal Judge, Family Court



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at Madras, vide, order dated 28.04.1994 allowed the petition filed under Section 9 of the Hindu Marriage Act, 1955. In this Petition, the said Preeti, who was shown as first respondent, did not appear on summons. Notice sent several times was returned as “unserved”. Private notice sent by courier appears to have been received by the said Preeti, but did not appear before the Court and hence, she was called absent and set exparte. After obtaining the decree of restitution of conjugal rights, neither the said Ravi nor Preeti, took any action while the matter stood as it is. The said Ravi has written a letter to the Commanding Officer, M.T.I, Air Force, Air Force Station, Tambaram, Madras, on 06.01.1994, intimating that he had been separated from his wife Preeti since 15.09.1989 and was contemplating to file a petition for divorce in the near future, since he has not joined him despite the decree of restitution of conjugal right. He had further intimated to his superior that he do not want his terminal benefits enjoyed by anybody else other than him. He has named his mother in the official records as his nominee. After nearly 10 years, he married the appellant Banu Rekha in Chennai and the marriage was duly registered under Sl.No.426 of 2004 at

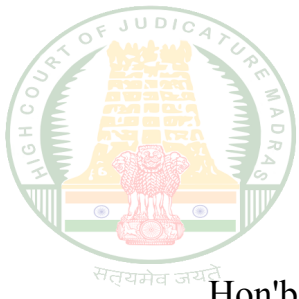


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the Marriage Registration Office, Anna Nagar, Chennai. The said Ravi died on 09.11.2012.

3. To get pensionary benefits, the appellant has filed an Original Petition for the issuance of Succession Certificate and the said O.P.No.562 of 2014 was allowed by the Hon'ble High Court on 18.02.2015 granting Succession Certificate to the appellant V.Banu Rekha empowering her to collect the pensionary benefits of the deceased Ravi, estimated to the tune of Rs.7,00,000/-. Despite the issuance of the Succession Certificate, the respondents 2 and 3 were unable to disburse the pensionary benefits accrued to the deceased employee Ravi, since the official records still carry the name of as the wife of the deceased Ravi. When the respondents 2 and 3 sought clarification from the appellant, she had thought fit to file a suit for declaration that she is the legally wedded wife of the deceased Ravi, entitled to the pensionary benefits and other benefits and for a direction to the second and third defendants to disburse the pensionary benefits of the deceased S.Ravi on the basis of the Succession Certificate issued by the



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Hon'ble Court of Madras in O.P.No.562 of 2014.

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4. The defendants 2 and 3 had filed a written statement stating that the deceased Ravi had named Preeti as his wife. During his lifetime, he did not inform the respondents about his marriage with the appellant. Even his earlier communication had only been to inform about the proceedings initiated against his wife and his intention to file a divorce petition in the future. The marriage certificate relied upon by the appellant clearly indicates that the second marriage was solemnised, while the first marriage was still in force. Therefore, it is not a valid force to consider the request of the appellant and pay the pensionary benefits. In the written statement, the respondents also contended that if the first wife of Ravi had not been heard for more than 7 years, an appropriate steps should have been taken to declare her civil dead, as contemplated under Section 108 of Indian Evidence Act. In the absence of such declaration, the department cannot recognise the appellant as the wife of the deceased employee and pay the retirement benefits.



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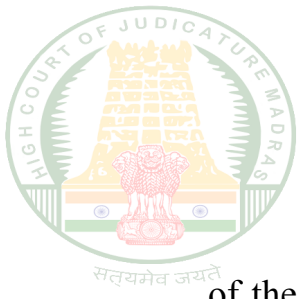
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5. Before the trial Court, the plaintiff, the mother of the deceased Ravi was examined as PW-1 and one Seetha Rajan was examined as PW-2. 14 exhibits were marked in support of the plaintiff. On behalf of the second and third defendants, one Chandan Kumar was examined as DW-1. 8 exhibits were marked.

6. The trial Court framed the following Issues:-

- (i) Whether the plaintiff is entitled for declaration as prayed for?
- (ii) Whether the plaintiff is entitled for pensionary benefits and entitlement arising out of Ravi's death as prayed for?
- (iii) To what other relief?

7. The trial Court considering oral and documentary evidence held against the plaintiff on the ground that Section 34 of the Armed Forces Tribunal Act, 2007, any suit or proceedings with regard to the service benefits or entitlement to have, or to be dealt with only by the Tribunal constituted in this regard. Moreover, seeking the benefits upon the demise



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of the person, who has served the forces would also fall under the purview of service matter in term of the definition in Section 3(o) of the Armed Forces Tribunal Act, 2007 and therefore, the civil Court cannot entertain the suit.

8. Further, the trial Court has observed that the marriage of the plaintiff with Ravi took place on 03.11.2004, only after the dissolution of the first marriage of the said deceased Ravi with Preeti. While the service records show Preeti as wife, the divorce of the same cannot be substituted in the name of the appellant without a valid declaration of dissolution of marriage or proof that 's whereabouts were not known for more than 7 years, prior to 03.11.2004, the date on which the appellant married the said Ravi.

9. The learned counsel appearing for the appellant submitted that the said Ravi, after obtaining a decree of restitution of conjugal rights, soon after intimated the respondents 2 and 3 about separation. He has already nominated his mother Seetha Rajan, as nominee and she had consented to

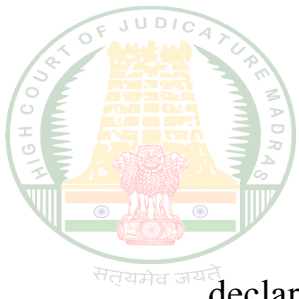


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issue Succession Certificate in favour of the appellant and the Succession Certificate issued by the High Court holds good for the purpose of disbursing the death-cum-retirement benefits of the deceased Ravi to and in favour of the appellant. Though enough evidence both oral and documentary has been placed before the trial Court to show that Preeti has not been heard for more than 7 years, she remained absent in F.C.O.P.No.828 of 1993, which was filed for restitution of conjugal rights. Even in the present suit, adequate steps have been taken to serve notice on the said Preeti including substitute service by way of paper publication in the locality of the last known address of the said Preeti. Therefore, the presumption under Section 108 of the Indian Evidence Act ought to have been drawn by the Court though there is no specific relief sought to that effect.

10. Insofar as the jurisdiction of the Civil Court entertaining the suit citing under Section 33 of the Armed Forces Tribunal Act, 2007, the learned counsel appearing for the appellant submitted that the relief sought is not only confined to the service benefits, but also civil status of the appellant to



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declare her as the legally wedded wife of Ravi.

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11. Section 9 of the Civil Procedure Code confers jurisdiction of Civil Court, except where such jurisdiction is ousted by a special law. The Hon'ble Supreme Court in catena of judgments including the judgment in *Dhulabhai and others v. The State of Madhya Pradesh and another reported in [1964 AIR 78]* wherein it is held that the jurisdiction of the Civil Court cannot be ousted, unless there is an alternate remedy or provision available for the aggrieved person. The Armed Forces Tribunal have no jurisdiction to declare the civil status of a person. Therefore, the trial Court dismissal of the suit on the said ground is erroneous. The learned counsel appearing for the appellant also submitted that the trial Court has not framed any issue about the ouster of Civil Court jurisdiction. However, a finding was rendered on that aspect without the framing of issue and that ground also, the judgment of the trial Court is liable to be dismissed.



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12. The learned counsel appearing for the respondents 2 and 3 submitted that the Service Rules governing Arms Personal clearly contemplates the service benefits i.e. Death-cum-retirement benefits has already been nominated or disclosed as his legal heirs. As per the records maintained by the respondents, the said Preeti is shown as the wife of the deceased Ravi and that has not been changed at any point of time. Particularly, the said Ravi had never informed his superior that he has married the appellant. Further, even if the said Ravi had married the appellant, without dissolving his earlier marriage with Preeti, the subsequent marriage cannot be a valid marriage. Hence, the trial Court judgment has to be up held.

13. Point for determination:-

(1)Whether Section 33 of the Armed Force
Tribunal ousted Civil Court jurisdiction?

(2)Whether failure to get declaration under



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Section 108 of the Indian Evidence Act that the first defendant is a civil dead, will stand in the way of the appellant to get the relief prayed?

14. The evidence placed before the Court indicates that the deceased Ravi married Preeti on 03.09.1982 at Nagpur. They have come down to Chennai and was living together till 06.07.1989. Later the said Preeti had deserted Ravi and gone to her parents house at Nagpur. Thereafter, she has not returned back to the matrimonial home. In the said circumstances narrating the said facts, the deceased Ravi had filed F.C.O.P.No.828 of 1993 in which, inspite of taking necessary steps to serve notice on the said Preeti, she had not received it or even after receiving, she did not turn up to contest the petition for restitution of conjugal rights. As a result, the decree was passed under Section 9 of the Hindu Marriage Act by the Additional Family Court on 28.04.1994. This has become final and no appeal has been preferred. The deceased Ravi had left the issue as it is and not taken any steps dissolving the marriage by filing subsequent petition for divorce.



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Though he had expressed his intention to file the petition for divorce in future, we find from his letter to the Commender, Armed Force, Tambaram which is marked as Ex.B4 dated 06.01.1994.

15. No doubt, Ex.B2 and Ex.B5, which are the service records and pension payment order maintained by the second respondent, would disclose that the said deceased Ravi had not taken any steps to include the name of the appellant as his wife, despite the fact that he had married and got the marriage registered under Ex.A3. In the said circumstances, after the demise of Ravi on 09.11.2012, the appellant had taken steps to get succession certificate and after obtaining succession certificate, sought for the pensionary benefits, which is the second limb of the relief sought in the suit. As submitted by the learned counsel appearing for the appellant, the declaration of the civil status of the appellant, will not fall within the purview of Armed Force Tribunal. Therefore, the reason for dismissing the suit assigned by the trial Court is not sustainable.



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16. Regarding the status of the first respondent Preeti, the Court cannot fail to take note of the fact that it is pleaded by Ravi himself that Preeti had deserted him in the year 1989 and had not turn up. It is borne out by records that even after the decree of restitution of conjugal rights passed by the Family Court in the year 1993, there is no evidence to show that she returned to the marital home and joined the said Ravi. In the said circumstances, after 10 years of the decree of restitution of conjugal rights, the said Ravi has solemnized his marriage with the appellant on 03.11.2004 and living with the appellant as husband and wife till his death. The mother of the deceased Ravi has come forward to mount the witness box and give evidence that Preeti is unheard for more than 7 years and her son Ravi thereafter married the appellant and living with the plaintiff as husband and wife. Hence, she has no objection for passing the decree as prayed.

17. In the said circumstances, when there is enough pleadings about the civil dead of Preeti, who has not heard for more than 7 years and the

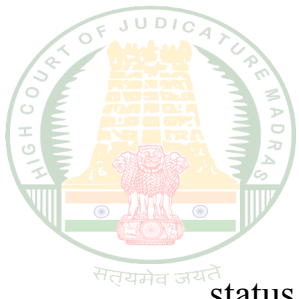


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evidence by the person, who is likely to hear about her, had deposed that they have not heard about her for more than 7 years, the conditions stipulated under Section 108 of the Indian Evidence Act is fully complied and therefore, the trial Court need not have dismissed the suit on the ground that after pleadings, that Preeti was not heard for more than 7 years, but at the same time, impleading her as a party, is contradictory. There is no contradiction in the case of the appellant as she has placed relevant facts on record. To avoid objection of non-impleading of necessary party, the plaintiff had shown Preeti as the defendant. By impleading Preeti as a defendant and failure of the efforts taken to serve on her fortifies the plea that she is not heard.

18. In the said circumstances, the Court holds that the trial Court failed to appreciate the facts of the case in proper prospective. Under Section 33 of the Armed Forces Tribunal Act 2007, the Civil Court does not have jurisdiction only in the matters related to service exclusively. However, it does not oust the civil court jurisdiction to decide the civil



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status of a person for the plea of civil death of Preeti made in the plaint and also substantially proved by the oral evidence as well as the returned unserved notice from the Court. He factual efforts taken to serve strengthen the case of the appellant.

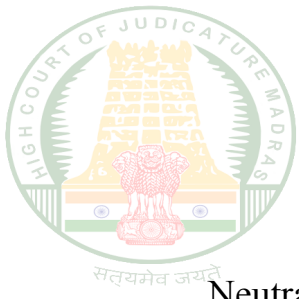
19. Hence, it is hereby declared that the appellant is the legally wedded wife of the deceased Ravi and the appellant is entitled for the death-cum-retirement benefits of the deceased Ravi based on the Succession Certificate already issued by the High Court in O.P.No.562 of 2014.

20. In view of the above fact, the judgment of the trial Court in O.S.No.212 of 2015 dated 20.06.2022 is set side and ***the Appeal Suit is allowed.*** Consequently, connected Miscellaneous Petition is closed. No order as to costs.

24.06.2025

Index:yes/no
Speaking order/non speaking order

15/17



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Neutral citation:yes/no
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To

- 1.The Principal Family Court, Chennai.
- 2.Chief of Air Staff Air Headquarters,
Vayu Bhawan, Rafi Marg,
New Delhi 110 106.
- 3.Principal Controller of Defence Accounts(Pension),
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- 4.The Section Officer, V.R.Section,
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DR.G.JAYACHANDRAN,J.

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