



WEB COPY

CMA NO.2543 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18 / 11 / 2024

JUDGMENT DELIVERED ON : 19 / 02 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NO.2543 OF 2018
AND CMP NO.19332 OF 2018**

Mrs.Indira Priyadarshini

... Appellant / 1st Defendant

Vs.

1.Mrs.Santhanalakshmi @ Saraswathi

... Respondent / Plaintiff

2.The Commissioner

The Corporation of Chennai
Rippon Buildings
Chennai.

... Respondent / 2nd Defendant

PRAYER : Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, praying to set aside the Judgment and Decree dated February 20, 2018 made in O.S.No.86 of 2005 on the file of the VII Additional Family Court at Chennai.

For Appellant	:	Ms.V.N.Shanthi
For Respondent-1	:	Mr.N.Manikandan & Mr.M.Elumalai
For Respondent-2	:	Ms.P.T.Ramadevi



CMA NO.2543 OF 2018

JUDGMENT

WEB COPY

R.SAKTHIVEL, J.

Challenging the Judgment and Decree dated February 20, 2018 made in O.S.No.86 of 2005 on the file of the 'VII Additional Family Court at Chennai' ['Family Court' for brevity], the appellant / 1st defendant therein has preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The plaintiff married one Sundaramoorthy on March 11, 1987, as per Hindu Rites and Customs. Through their wedlock, a female child, namely Gayathri was born. Her husband - Sundaramoorthy, worked as a Clerk in the second defendant's office. While so, the first defendant claimed that subsequent to the plaintiff's marriage, she married Sundaramoorthy. According to the plaintiff, her marriage is the first in point of time and her daughter is the legitimate legal heir of her husband, who passed away on December 18, 2004. Hence, she has every right after



WEB COPY

his death in terminal benefits. The alleged marriage between the plaintiff's husband and the first defendant is *void ab initio* and *non-est* in the eyes of the law. The plaintiff denied the marriage between the first defendant and her husband, as the plaintiff and her husband lived together throughout. Accordingly, the plaintiff prayed to declare her as the legally wedded wife of Sundaramoorthy and that she is entitled to receive all his terminal benefits.

FIRST DEFENDANT'S CASE

4. The first defendant filed a written statement wherein it is stated that the marriage between the first defendant and her husband - Sundaramoorthy was solemnized on January 4, 1987, as per Hindu Rites and Customs. In their wedlock, two children were born, one on November 2, 1990, and other on November 22, 1992. Her husband - Sundaramoorthy was employed as a Clerk in the second defendant's office until his death. The first defendant is the lawful wife of Sundaramoorthy and not the plaintiff. Sundaramoorthy lived with the first defendant from the date of their marriage until his death. In fact, at the time of her delivery, her husband - Sundaramoorthy produced an NGO certificate at Government



CMA NO.2543 OF 2018

Gosha Hospital, Triplicane, Chennai - 600 005. Hence, the plaintiff is not entitled to the death-cum-terminal benefits of her husband - Sundaramoorthy. Therefore, the first defendant prayed that the suit be dismissed with costs.

FAMILY COURT

5. Based on these pleadings, the Family Court framed the following issues for consideration:

- “1) Whether there is no cause of action for filing the suit as contended by the 1st defendant?*
- 2) Whether the plaintiff is entitled for a declaration that she is the legally wedded wife of the deceased Sundaramoorthy?*
- 3) Whether the plaintiff is entitled for the terminal benefits of the deceased Sundaramoorthy as prayed?*
- 4) Whether the plaintiff is entitled for a decree as prayed for?*
- 5) To what other relief is the plaintiff entitled?”*

5.1. Then the issues were recast on February 20, 2018, as hereunder:



WEB COPY



CMA NO.2543 OF 2018

- “1) Whether the plaintiff is the 1st wife of the deceased Sundaramoorthy?*
- 2) Whether the plaintiff is entitled for the terminal benefits of the deceased Sundaramoorthy as prayed?*
- 3) Whether the plaintiff is entitled for a decree as prayed for?*
- 4) To what other relief is the plaintiff entitled? ”*

6. On the side of the plaintiff, plaintiff was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3 and Ex-A.1 to Ex-A.4 were marked. On the side of the defendants, 1st defendant was examined as D.W.1 and Ex-B.1 to Ex-B.6 were marked.

7. The Family Court, after analyzing the oral and documentary evidence available on record, decreed the Suit and declared that the plaintiff is the legally wedded wife of the deceased Sundaramoorthy. The plaintiff is entitled to the terminal benefits, such as Provident Fund, Gratuity, Family Pension, Death Cum Retirement Gratuity [DCRG], Insurance, and any other benefits and amounts due to the deceased Sundaramoorthy.

8. Feeling aggrieved, the appellant / 1st defendant has



CMA NO.2543 OF 2018

preferred this Civil Miscellaneous Appeal seeking to set aside the Judgment and Decree passed by the Family Court.

ARGUMENTS

9. Ms.V.N.Shanthi, learned Counsel for the appellant / first defendant would argue that the plaintiff failed to produce birth certificate of her female child – Gayathri and to mention Gayathri's year of birth; that no document relating to Gayathri was filed and no explanation was assigned in this regard; that after the demise of Sundaramoorthy, his mortal remains were brought to the 1st defendant's residence, where the final rituals for the departed soul were conducted; that the plaintiff did not produce even the family ration card; the Family Court failed to consider the aforesaid facts. She would further argue that the Family Court did not take into account the birth certificate and other documents filed on behalf of the 1st defendant; that the Family Court failed to appreciate the evidence in the right perspective; that the Family Court's findings are perverse and not in accordance with the law. Accordingly, the learned Counsel prayed to allow the appeal.



10. Per contra, Mr.N.Manikandan & Mr.M.Elumalai, the

WEB COPY

learned Counsels for the respondent / plaintiff would argue that the plaintiff proved the marriage by examining herself as P.W.1, along with two independent witnesses, P.W.2 and P.W.3; that Ex-A.1 – Original Marriage Invitation coupled with the evidence of P.W.2 and P.W.3 establishes that the marriage between the plaintiff and the deceased Sundaramoorthy took place on March 11, 1987; that the 1st defendant's documents, in particular Ex-B.1 – Marriage Invitation and Ex-B.6 – Marriage Receipt, were created after filing of the Suit with an intention to defeat and defraud the lawful claim of the plaintiff; that the 1st defendant did not prove the alleged marriage between the first defendant and Sundaramoorthy on January 4, 1987; that Ex-B.6 – Marriage Certificate (alleged) is an inadmissible document and cannot be relied on to support any claim; that the Family Court, after properly considering the evidence, rightly decreed the Suit; and that there is no need to interfere with its decision. Accordingly, they prayed to dismiss the appeal.

DISCUSSION

11. This Court has considered the submissions made on either



side and perused the materials available on record.

WEB COPY

12. The plaintiff's case is that she married Sundaramoorthy on March 11, 1987 and that through this marriage, a female child namely Gayathri was born. According to the plaintiff, she alone is the legally wedded wife. In order to prove her case, the plaintiff marked Ex-A.1– Marriage Invitation & Photo, and examined P.W.2 and P.W.3.

13. The 1st defendant's case is that she married Sundaramoorthy on January 4, 1987 *i.e.*, before the alleged marriage between the plaintiff and Sundaramoorthy. Furthermore, the 1st defendant claims that through their marriage, a daughter and a son were born on November 2, 1990 and November 22, 1992 respectively. In order to prove the same, the 1st defendant produced Ex-B.1 – Marriage Invitation, Ex-B.2 & Ex-B.3 - Birth Certificates and Ex-B.4 – Extract from Hospital Birth Register, Ex-B.5 – Ration Card, and Ex-B.6 – Marriage Receipt.

14. The marriages of both, the plaintiff and the first defendant, with Sundaramoorthy are admitted, as gathered from a cumulative reading of the pleadings and evidence. The key question in this case is 'who is the legally wedded wife of Sundaramoorthy'.



WEB COPY

15. P.W.1 in her evidence has deposed that she married Sundaramoorthy on March 11, 1987 at Gandhilal Jain Kalyana Mandapam, Kodambakkam Road, Saidapet, Chennai and that their wedlock resulted in the birth of Gayathri. P.W.2 and P.W.3 who are relatives of P.W.1 corroborate the evidence of P.W.1. The first defendant's side while cross examining P.W.1 put a suggestion that Sundaramoorthy was the *Dharmakartha* of 8 temples surrounding Mettukuppam, due to which, he was made to marry the plaintiff who belongs to the same community as his with a view to secure his family pride, though he was already married to first defendant, who belonged to Telugu Brahmin community; the same was denied by the plaintiff. From the suggestion, it is made clear that the first defendant impliedly admits the marriage between the plaintiff and Sundaramoorthy. Conjoint reading of the evidence of Ex-A.1, P.W.1, P.W.2 and P.W.3 would *prima facie* establish that the marriage between the plaintiff and Sundaramoorthy was solemnized on March 11, 1987 at Gandhilal Jain Kalyana Mandapam, Kodambakkam Road, Saidapet, Chennai.

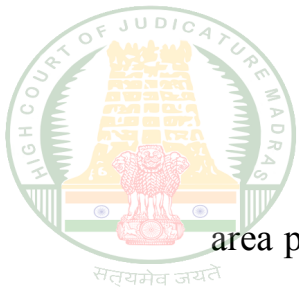
16. Ex-A.4 is the Legal Heir Certificate issued in favour of plaintiff and her daughter - Gayathri. The first defendant denied Ex-A.4 -



WEB COPY

Legal Heir Certificate as obtained behind her back without any inquiry and the authority who issued Ex-A.4 lacked jurisdiction. This Court is of the considered view that Ex-A.4 – Legal Heir Certificate has no legal sanction to prove the factum of marriage, when the factum of marriage is in question before the Court of law. It is true that the plaintiff did not produce any particulars with regard to her daughter – Gayathri. However in view of Section 112 of Indian Evidence Act, 1872, since lawful marriage is proved, Sundaramoorthy is the father of the plaintiff's daughter - Gayathri.

17. Contention of first defendant is that she married Sundaramoorthy on January 4, 1987 at Tirupathi Thirumala Devasthanam. To that effect, she produced Ex-B.1 – Original Marriage Invitation. The said document was not filed along with written statement; it was produced and marked during trial. Ex-B.1 is in Telugu language. There is no evidence to corroborate Ex-B.1. Ex-B.6 is a photocopy of the Marriage Receipt issued by Tirupathi Devasthanam, which the first defendant claims to be a Marriage Certificate. Neither Sundaramoorthy's signature nor first defendant's signature was found in Ex-B.6. Nor was there signature of any witness. In fact, there was no such column / specified



CMA NO.2543 OF 2018

WEB COPY

area provided for such signatures. Hence, Ex-B.6 is not a certificate but a mere receipt in which the names of the Sundaramoorthy, first defendant, first defendant's father and the priest alone are mentioned. The only signature found therein is that of first defendant's father. In the absence of signatures of the contracting parties viz., the alleged bridegroom – Sundaramoorthy & the alleged bride - first defendant, and that of the witness (if any), Ex-B.6 cannot be construed as a Marriage Certificate. Moreover, it being a photocopy, it is inadmissible in evidence. Further the first defendant did not examine any other independent witness to prove that her marriage took place on January 4, 1987. If really marriage took place on January 4, 1987, she could have summoned the temple authorities to prove Ex-B.1, Ex-B.6 and ultimately, the alleged factum of marriage. The first defendant failed to do so. Hence this Court is of the view that the first defendant has not proved her marriage with Sundaramoorthy as on January 4, 1987.

18. However, Ex-B.2 and Ex-B.3 – Birth Certificates and Ex-B.4 – Extract from Birth Register would prove that on November 2, 1990, Aswini alias Bhuvaneswari was born and on November 22, 1992, Srinivasan was born. In both the certificates, the father's name is shown



WEB COPY

as Sundaramoorthy. Further the family card and the oral evidence reveals that Sundaramoorthy and first defendant were living as husband and wife under one roof in a manner that it is known to everyone in the society including the plaintiff. P.W.1 herself admitted that the last rituals for the deceased – Sundaramoorthy were performed at first defendant's house. The relevant extract of the evidence of P.W.1 reads as follows:.

“ . . . என் கணவர் மாரடைப்பால் இறந்து போனார். இறந்தது மருத்துவமனையில். மருத்துவமனையிலிருந்து உடலை எந்த வீட்டிற்கு எடுத்துச்சென்றார்கள் என்றால் அவருடைய வேறு ஒரு வீட்டிற்கு எடுத்து செல்லப்பட்டது. அந்த முகவரி தெரியாது. 1ஆம் பிரதிவாதியின் வீட்டிற்குத்தான் எடுத்துச்செல்லப்பட்டது என்றும் 1ஆம் பிரதிவாதி முதல் மனைவி என்பதால் அங்கு வைத்து ஈமக்கிரியை நடந்தது என்றும் அங்கிருந்து அவருடைய உடல் இடுகாட்டிற்கு எடுத்துச்செல்லப்பட்டது என்றால் சரிதான். ஆனால் 1ஆம் பிரதிவாதி முதல் மனைவி அல்ல . . . ”

19. From Ex-B.2 to Ex-B.4 it can be safely concluded that Sundaramoorthy and first defendant were living as husband and wife since 1990 till Sundaramoorthy's demise. Hence, this Court concludes



WEB COPY

that the long cohabitation as husband and wife and begetting children would give rise to a strong presumption in favour of a marriage, but the first defendant failed to establish that her marriage was solemnized before that of the plaintiff. In other words, she failed to establish that she was the legally wedded wife. Hence, this Court holds that the plaintiff is the legally wedded wife of Sundaramoorthy. After his marriage with the plaintiff, Sundaramoorthy married the first defendant as his second wife. Through this second marriage, two children were born to the first defendant. No doubt that the children born to Sundaramoorthy through first defendant, are entitled to the benefit under Section 16 of the Hindu Marriage Act, 1955.

20. The next question is who are all entitled to pension and terminal benefits of Sundaramoorthy.

21. Admittedly, Sundaramoorthy was employed under the second defendant's office as a Clerk. His Employment number is 182692. He passed away in harness on December 18, 2004. The second defendant has an obligation and duty to see that the pension and terminal benefits are disbursed as per the rules. In this case, though summons were served,



second defendant did not appear and file written statement before Family Court. It is very unfortunate that the second defendant failed to appear before the Court and furnish the employment particulars and details of the terminal benefits in his possession. The second defendant could have at least filed a Report containing details of terminal benefits, nomination particulars and other related particulars available at his hand. Had he done so, the same would have been of some help in deciding this case.

22. As regards Family Pension, it is settled law that the legally wedded wife alone is entitled to Family Pension. As per Rule 49 (7) (a) (i) of Tamil Nadu Pension Rules, 1978, where Family Pension is payable to more widows than one, the Family Pension shall be paid to the widows in equal shares. The scope of Section 49 of Tamil Nadu Pension Rules was elaboratively considered by a Hon'ble Division Bench of this Court in ***R.Rajathi -vs- The Superintendent Engineer dated July 5, 2018*** in *W.A.No.977 of 2017*. Relevant extract is as follows:

“42. ...We are, therefore, of the opinion that in order to enable a second wife to claim family pension the marriage should have been valid under the Personal Law applicable to the parties, to hold otherwise would be in violation of the law of the land, viz. the Personal Law of



WEB COPY



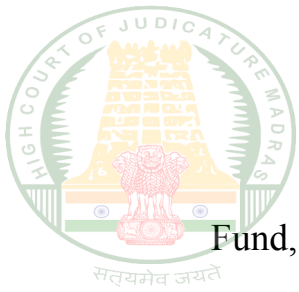
CMA NO.2543 OF 2018

the parties as well as the Criminal Law, which prohibits bigamous marriage.

43. We are, therefore, constrained to conclude that the judgments which conclude that a second wife would be entitled to family pension, irrespective of her marriage being void, under the provisions of their relevant Personal Law's applicable to the parties do not reflect the correct position of law and therefore will stand overruled. The applicability of Sub Rule 7(a)(i) is confined only to cases where the second marriage is valid under the Personal Law applicable to the parties, only in such cases, widows of such marriages would be entitled to family pension."

23. Admittedly the parties are Hindus and the deceased died as a Hindu and hence, the Hindu Succession Act, 1956 ['the H.S.Act' for short] would be the applicable law. The first marriage being in 1987, the second marriage in not valid. Thus, from the above extract, it is clear that, as per the Pension Rules, only the legally wedded wife / plaintiff is entitled to receive Family Pension; in her presence, second wife / first defendant is not entitled to receive any Family Pension.

24. With regard to other terminal benefits such as Provident



CMA NO.2543 OF 2018

WEB COPY

Fund, Gratuity, Death Cum Retirement Gratuity [DCRG], Insurance and

any other benefits and amounts due to the deceased – Sundaramoorthy,

legal position is clear that the children born out of a void or voidable

marriage are entitled for share along with the legally wedded wife and

children born through her as per the applicable Personal Laws. **[See.**

Hon'ble Supreme Court's Judgments in *Rameshwari Devi -vs- State of*

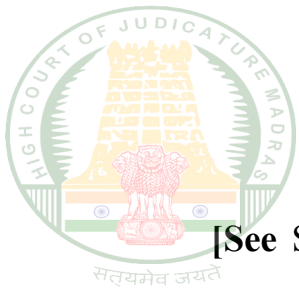
Bihar, reported in (2000) 2 SCC 431 and *Revanasiddappa -vs-*

Mallikarjun, reported in (2023) 10 SCC 1; **Also See** Judgments of this

Court in *S.Sandhya -vs- The Chief General Manager, Bharat Sanchar*

Nigam Ltd., reported in 2012 – 3 – L.W.41]

25. As per Section 16 of the H.S.Act, [i] the plaintiff, [ii] plaintiff's daughter – Gayathri, [iii] first defendant's daughter - Ashwini alias Bhuvaneshwari and [iv] first defendant's son - Srinivasan are legal heirs of Sundaramoorthy entitled to get share in the estate left by him which includes Provident Fund, Gratuity, Death Cum Retirement Gratuity [DCRG], Insurance and any other benefits and amounts due to him, regardless of the nomination by him in the service register and the schemes. In this regard, law is well settled that nominee is a mere trustee who shall receive the benefits and disperse the same among the legal heirs



[See Smt. Sarbati Devi -vs- Smt. Usha Devi, reported in (1984) 1 SCC 424; Ramayee -vs- Krishnaveni, reported in 1996 SCC OnLine Mad 318; S.Sandhya -vs- The Chief General Manager, Bharat Sanchar Nigam Ltd., reported in 2012-3-L.W.41; Shakti Yezdani -vs- Jayanand Jayant Salgaonkar, reported in (2024) 4 SCC 642].

26. In view of the above legal position, the Judgment and Decree passed by the Family Court are liable to be modified as per the following terms:

- (i)** It is hereby declared that the plaintiff is the legally wedded wife of Sundaramoorthy and she alone is entitled to receive the Family Pension as per Rule 49 of Tamil Nadu Pension Rules, 1979;
- (ii)** It is also declared that [a] plaintiff – Santhanalakshmi @ Saraswathi and [b] her daughter - S.Gayathri as well as the first defendant's children, namely [c] Aswini alias Bhuvaneswari and [d] Srinivasan are entitled to receive the other terminal benefits, such as Provident Fund, Gratuity, Death Cum Retirement Gratuity [DCRG], Insurance, and any other benefits and amounts



WEB COPY



CMA NO.2543 OF 2018

due to the deceased – Sundaramoorthy in equal shares, *i.e.*, each entitled to $\frac{1}{4}$ share;

- (iii) The second defendant is directed to act in accordance with the above declarations.

CONCLUSION

27. In fine, this Civil Miscellaneous Appeal is partly allowed to the extent indicated above. In view of the facts and circumstances of this case, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

19 / 02 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

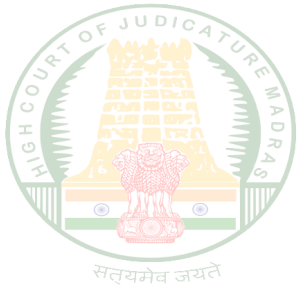
The VII Additional Family Court
Chennai.



WEB COPY



CMA NO.2543 OF 2018



WEB COPY



CMA NO.2543 OF 2018

J. NISHA BANU, J.
AND
R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.2543 OF 2018

19 / 02 / 2025