

**Arputham Vs. Radhamani**

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**Court :** Chennai

**Decided On :** Feb-27-2014

**Judge :** R.Karuppiah

**Appellant :** Arputham

**Respondent :** Radhamani

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

27. 2.2014 CORAM THE HON'BLE MR. JUSTICE R.KARUPPIAH S.A.No.215 of 2002 Arputham ..Appellant /vs/ 1.Radhamani 2.Rajalakshmi 3.Minor Raja Rajeswari 4.Minor Raja Rajeswaran Minor respondents 3 and 4 represented by their mother Radhamani 5.Assistant Educational Officer Yercaud 6.Accountant General Govt.of Tamil Nadu Chennai. ..Respondents Prayer: Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 18.10.2001 made in A.S.No.126 of 2001 on the file of II Additional District Court, Salem reversing the judgment and decree dated 22.06.2001 made in O.S.No.316 of 2000 on the file of II Additional District Munsif Court (I Additional District Munsif Court incharge) Salem. For Appellant :M/s G.Jistin For Respondents :Mr.R.Elango for R1 to R4 Mrs.T.S.Selvarani for R6 No appearance for R5 -----

JUDGMENT

The appellant, who is the first defendant in the original suit filed this second appeal against the judgment and decree dated 18.10.2001 made in A.S.No.126 of 2001 on the file of the II Additional District Court, Salem, reversing the judgment and decree, dated 22.06.2001 made in O.S.No.316 of 2000 on the file of the II Additional District Court, Salem.

2. For the sake of convenience, the first defendant in the suit is referred as appellant and the plaintiffs in the suit are referred as respondents 1 to 4 and defendants 2 and 3 are referred as respondents 5 and 6 hereafter.

3. The respondents 1 to 4/plaintiffs filed the suit for declaration that the 1st respondent is lawfully wedded wife of the deceased Rajagopal and respondents 2 to 4 are legitimate children of the deceased Rajagopal.

4. Briefly the case of respondents 1 to 4/plaintiffs is that the first respondent and her husband Rajagopal belongs to Hindu Adi-Dravidar community. The first respondent married the said Rajagopal on 19.03.1975 according to their caste customs and after the marriage, both of them, lived together as husband and wife till the death of Rajagopal (i.e.)09.05.1994. Three children namely, Rajalakshmi, Rajarajeswari, Rajarajeswaran are born to them. At the time of death of the deceased Rajagopal, he was working as Head Master, Panchayat Union School, Nagalur. In all his service records, the deceased Rajagopal described the first respondent as his wife and respondents 2 to 4 are his children. After the death of Rajagopal, the appellant falsely claimed that she married the deceased Rajagopal in a church at Yercard. The above said Rajagopal was born, lived and died as Hindu Adi-Dravidar and he never changed his religion. The deceased Rajagopal, even during his life time, has nominated the first respondent as wife and respondents 2 to 4 are children to draw the family pension and other benefits due to his death. But, the appellant had managed to get a false legal heir certificate, as the appellant and her children are legal heirs of the deceased Rajagopal. According to respondents 1 to 4, the above said certificate is false and not valid in law and the appellant influenced respondents 4 and 5 and other officials to support their claim. The family pension should be paid to the person, who nominated by the Employee. Since the appellant and respondents 4 and 5 denied the legal

status of respondents 1 to 4, they filed the suit and prayed for to declare the first respondent as legally wedded wife and respondents 2 to 4 are legitimate children of deceased Rajagopal.

5. The appellant, who is the first defendant in the suit filed a written statement, in which, denied the contention that the first respondent was married to Rajagopal on 19.03.1975 and they are living as husband and wife. According to the appellant, the first respondent was never married the above said Rajagopal and even if she was married to Rajagopal, the above said marriage is not valid in law as the marriage was already solemnized between the appellant and the deceased Rajagopal. The above said Rajagopal died only on 07.05.1994 and not on 09.05.1994. The first respondent is to prove that respondents 2 to 4 were born through the deceased Rajagopal. Accordingly to the appellant, the marriage between the appellant and the deceased Rajagopal took place in the month of May' 1963 at Yercaud and they are having three children namely, A.R.A.Hilda Vedakumari born on 01.08.1964, A.R.J.Ida Mangalakumari born on 15.11.1965 and Charles Kennedy born on 21.10.1970. The records maintained in the above said school (i.e.) Master's Attendance Register, Monthly Returns, Acquittance etc., will prove the above said fact that the marriage was held between the appellant and the deceased Rajagopal even prior to the marriage between the first respondent and the deceased Rajagopal. It is also averred in the written statement that the first respondent is not a legitimate wife of the deceased Rajagopal. Though the appellant and her children were nominated by the deceased Rajagopal for his family pension, only this appellant is entitled to the family pension of the deceased Rajagopal and as far as the other benefits are concerned, the appellant and her children are equally entitled to as the legal heirs of the deceased Rajagopal. The appellant also denied the contention that the appellant managed to get a false legal heirship certificate with the help of respondents 5 and 6. In fact, the respondents 2 to 4 are also shown along with the appellant and her children as the legal heirs of the deceased Rajagopal. The appellant has also stated that she reserved the right to recover the death benefits by way of separate procedure. Therefore, the appellant prayed for dismissal of the suit.

6. The 5th respondent filed a written statement and adopted by the 6th respondent in which it is stated that the deceased Rajagopal was working as Head Master, Panchayat Union Elementary School, Sorakkapatti and he died on 07.09.1994. In the service records, the deceased has furnished that he got three children namely, Rajalakshmi, Rajeswari, Rajarajeswaran and the date of birth of the children was furnished as 21.11.1978, 27.04.1983, 15.07.1989 and 03.05.1983. The above said deceased Rajagopal nominated the first respondent to receive the Family Pension, Death-cum-Retirement Gratitude, Teacher Provident Fund, Tamil Nadu Family Benefit Fund and Tamil Nadu Government Employees Special Provident Fund Amounts. It is also stated in the written statement that the appellant by her letter dated 07.11.1994 has stated that the marriage between the appellant and the deceased Rajagopal was solemnized on 05.05.1969 at C.S.I Tamil Church at Yercaud. But neither the name of the appellant nor her children's names were recorded in the service register. In pursuance of the application by the first respondent, on 09.05.1994 a sum of Rs.2000/- was sanctioned towards funeral expenses and paid on 10.05.1994. The appellant enclosing the legal heirs certificate dated 08.07.1994 issued by the Thasildar, Yercaud and requested to arrange for payment of death benefits. Further, the first respondent filed S.O.P.No.20 of 1996 for issue of Succession Certificate and the same was allowed on 22.10.1997 and accordingly, the amount was paid to the first respondent. According to these respondents, the first respondent namely, Radhamani is not entitled to the family pension since she is a second wife of late Rajagopal and the appellant alone is entitled to receive the family pension and therefore, they prayed for dismissal of the suit.

7. From the above said pleadings on both sides, the trial Court has framed two issues. To prove the case of respondents 1 to 4/plaintiffs, two witnesses were examined as PW1 and PW2 and marked seven documents as Exs.A1 to A7. On the side of the appellant/first defendant, two witnesses were examined as Dw1 and DW2 and marked 12 documents as Exs.B1 to B12. The trial Court has mainly relied on Ex.B5-Certificate and entries made in Ex.B12 (series) and held that the marriage between the deceased Rajagopal and the first defendant was solemnized on 05.05.1969, but the marriage between the first respondent and the deceased Rajagopal was solemnized on 19.03.1975 and finally dismissed the suit

filed by respondents 1 to 4.

8. The respondents 1 to 4 preferred an appeal in A.S.No126 of 2001 and the first appellate Court has discussed in detail about the oral and documentary evidence adduced on either side and finally held that the appellant document marked as Ex.B5 itself would prove that the marriage has not been established as true and genuine and further, the entries found in Ex.B.5 are quite contradictory with the oral evidence of DW1. Further, the first appellate Court has discussed in detail about the another document Ex.B12 (series) relied on by the appellant and finally held that the above said document could not serve any purpose to hold that the deceased Rajagopal has legally wedded the appellant. The first Appellate Court also discussed the oral and documentary evidence adduced on either side and finally held that the first respondent is legally wedded wife of the deceased Rajagopal and respondents 2 to 4 are the legitimate children of the deceased Rajagopal and therefore, respondents 1 to 4 are entitled to obtain the relief of declaration as claimed in the plaint and therefore, allowed the first appeal and set aside the decree and judgment passed by the trial Court and decreed the suit as prayed for with costs.

9. Aggrieved over the above said reversal finding of the first appellate Court, the first defendant in the above suit alone filed this second appeal.

10. The second appeal is admitted on the following Substantial Questions of Law:-  
1. Whether the marriage between the appellant and the late Rajagopalan is valid in law especially when they lived together for long years as husband and wife, in such circumstances, even in absence of proof a presumption of valid marriage between them would arise in view of the decision in Badrai Prasad -vs- Deputy Director of Consolidation (1978) 3 SCC527AIR 1978 SC1557  
2. Whether the lower appellate Court is correct in law for decreeing the suit, especially when the marriage between the 1st plaintiff(1st respondent) with the deceased was long after the marriage of the appellant/1st defendant with the deceased?.

11. Heard the learned counsel appearing for the appellant and the respondents and perused the entire materials available on record.

12. The case of respondents 1 to 4 is that the first respondent and the deceased Rajagopal belongs to Hindu Adi-Dravidar community and the marriage between the deceased Rajagopal and the first respondent was solemnized at Nagalur, Yercaud on 19.03.1975 according to their caste customs. In the said wedlock, respondents 2 to 4 were born to them. The further case of respondents 1 to 4 is that the above said Rajagopal died on 07.05.1994 and after his death, the first respondent as legally wedded wife received the death benefits. After that, the appellant claimed as legally wedded wife of the above said deceased Rajagopal and claimed the death benefits and pension and therefore, she filed the above suit.

13. Per contra, the case of the appellant is that the appellant married the deceased Rajagopal at Yercaud in the month of May, 1963 and the appellant as a wife and her children are legal heirs of the deceased Rajagopal and they are entitled to claim all the death benefits from the Government.

14. The learned counsel appearing for respondents 1 to 4 would submit that respondents 1 to 4 have clearly proved by adducing reliable oral and documentary evidence that the marriage between the deceased Rajagopal and the first respondent was solemnized on 19.03.1975 and respondents 2 to 4 were born to them and the above said facts revealed from the records available in the Office, where the deceased Rajagopal was working as Head Master. The learned counsel further submitted that the documents adduced on the side of the appellant are not proved as genuine documents and also contrary to the oral evidence of the appellant side and therefore, the first appellate Court has correctly discussed about the oral and documentary evidence adduced on either side in detail and correctly held that the first respondent is legally wedded wife of the deceased Rajagopal and respondents 2 to 4 are the legitimate children of the deceased Rajagopal and the first respondent.

15. The learned Counsel further pointed out that the trial Court has not at all considered the documents adduced on the side of respondents 1 to 4 and the trial Court has mainly discussed about Ex.B5-Xerox copy of the Certificate produced to prove that the marriage between the appellant and the deceased Rajagopal was

solemnized on 05.05.1969 and also the trial Court has considered the document Ex.B12-monthly reports and finally concluded that the marriage between the appellant and the deceased Rajagopal was proved by the appellant and therefore, the deceased Rajagopal married the first respondent as second wife and respondents 1 to 4 are not entitled to get any relief and dismissed the suit.

16. As rightly discussed by the first appellate Court, on the side of respondents 1 to 4, the first respondent deposed as PW1 and one Sugachandran was examined as PW2. Further, on the side of respondents 1 to 4, a copy of the marriage invitation of the deceased Rajagopal and the first respondent was marked as Ex.A1. The above said document clearly proved that the marriage was solemnized on 19.03.1975 between the deceased Rajagopal and the first respondent, as contended by the learned counsel appearing for respondents 1 to 4. Further, respondents 1 to 4 have produced a xerox copy of ration card-Ex.A2 and it shows that the deceased Rajagopal and respondents 1 to 4 were living as husband and wife and respondents 2 to 4 were born to them and living together. On the side of respondents 1 to 4, a xerox copy of voters list for the year 1998 was marked as Ex.A3 and also proved that the first respondent and the deceased Rajagopal were living as husband and wife. Respondents 1 to 4 have marked Ex.A4-the death certificate of the deceased Rajagopal. It shows that he died on 07.05.1994. On the side of respondents 1 to 4, they have produced Ex.A5-Service Register maintained in the Office, where the deceased Rajagopal was employed. A perusal of the above said documents reveal that the deceased Rajagopal has recognized the first respondent as his wife and respondents 2 to 4 as his children.

17. On perusal of the above said documents, it clearly proved that the marriage between the deceased Rajagopal and the first respondent was solemnized on 19.03.1975 and respondents 2 to 4 are their children and the deceased Rajagopal also recognized the first respondent as his wife and other respondents 2 to 4 as his children in the Service Register of the deceased Rajagopal. The first Appellate Court has correctly considered the above said facts.

18. Per contra, the appellant has stated in her written statement that the marriage between the appellant and the deceased Rajagopal took place in the month of

May, 1963 at Yercaud and therefore, even prior to the alleged marriage between the first respondent and the deceased Rajagopal, the marriage between the appellant and the deceased Rajagopal was held in the month of May 1963 and therefore, the appellant alone is legally wedded wife. At the time of oral evidence of PW1 also, the learned counsel appearing for the appellant suggested that the first respondent married the deceased Rajagopal knowing very well that he had already married the first respondent. Therefore, the marriage between the first respondent and the deceased Rajagopal was admitted on the side of the appellant, but only contended that even prior to the marriage, the deceased Rajagopal married the appellant in the year 1963.

19. At the time of oral evidence, the appellant has produced a xerox copy of the marriage certificate-Ex.B5, in which, it is stated as Certificate of marriage solemnized at C.S.I. Tamil Church, Yercaud. In the above said certificate, in column 1(i.e.) ".when married"., it is stated as ".05.05.1969".. But it is also revealed that the above said document was issued on 02.11.1994. On the side of the appellant, she has not assigned any reason for non-production of the original (or) certified copy of the document. On the side of the appellant, she has not examined anybody relating to the document. The appellant has not taken any steps to summon the original document. The above said document has not been marked through the appellant, but marked through DW1, who was examined as Official witness working as Assistant in the Educational Department. Further, the appellant has not stated in the written statement that the marriage was solemnized on 05.05.1969 at C.S.I. Tamil Church, Yercaud and also not filed the above said document along with the written statement. Therefore, the above said document is not proved as a genuine document as contended by the learned counsel appearing for respondents 1 to 4.

20. The case of the appellant is that the marriage between the deceased Rajagopal and the appellant was solemnized in the month of May 1963. But, as per Ex.B5 document, the alleged marriage was solemnized on 05.05.1969. Therefore, the above said document is against the case of the appellant.

21. On the side of the appellant, she has produced another document namely, Ex.B12 (series). The learned counsel appearing for the appellant pointed out that in Ex.B12 series, the deceased Rajagopal has been shown as husband of the appellant.

22. The contention of the appellant is that the deceased Rajagopal was originally Hindu Adi-Dravidar community and he was converted as Christian and then, he married the appellant in the year 1963. A perusal of the Ex.B12 revealed that the said Rajagopal belongs to Adi-dravidar community and not shown as converted Christian. Further, nowhere the deceased Rajagopal has recognized and stated in the document as the appellant is the wife of the deceased Rajagopal and the deceased Rajagopal is the father of the children. The other documents produced by the appellant are not helpful to prove the case of the appellant.

23. On a perusal of the judgment pronounced by the first Appellate Court, it revealed that the first Appellate Court has considered the entire oral evidence adduced on either side and also discussed in detail about the documents produced on either side and finally, concluded that the first respondent is legally wedded wife and other respondents 2 to 4 are legitimate children of the deceased Rajagopal. But the trial Court has not at all considered the reliable oral and documentary evidence adduced on the side of respondents 1 to 4 and only relying on Ex.B5-marriage certificate and the entries found in Ex.B12 concluded that the marriage between the deceased Rajagopal and the appellant has been proved.

24. A perusal of the trial Court judgment revealed that the trial Court has held as in Ex.B5-Marriage Certificate, the date of marriage is shown as 05.05.1969 whereas the appellant claims that she married the deceased Rajagopal in the year 1963. But Ex.B12 series shows that even in the year 1966, the appellant was shown as wife of the deceased Rajagopal and therefore, it reveals that the deceased Rajagopal and the appellant might have lived as husband and wife prior to 1969 and they regularized their marriage on 05.05.1969 and therefore, the marriage between the deceased Rajagopal and the appellant was solemnized on 05.05.1969, which is crystal clear.

25. The above said finding of the trial Court is perverse finding, as rightly pointed out by the learned counsel appearing for the respondents 1 to 4. Without pleadings and oral evidence, the trial Court suo motu given the said finding. The appellant has not stated in the written statement or at the time of evidence that the marriage was solemnized on 05.05.1969 and prior to that, they lived as husband and wife without any marriage. Therefore, the pleadings in the written statement and the oral and documentary evidence adduced on the side of the appellant are completely contradictory as rightly held by the first Appellate Court and therefore, from the above said discussion, it is made clear that the appellant has miserably failed to prove the marriage between the appellant and the deceased Rajagopal alleged to have been solemnized in the year 1963 and also failed to prove that both of them were lived together for long years as husband and wife, by adducing reliable oral and documentary evidence. In the above circumstances, the facts of the decision relied on by the appellant (i.e.) (1978) 3 SCC527AIR 1978 SC1557 are not applicable to the facts of the present case. As already discussed, the appellant has not proved the marriage between the appellant and the deceased Rajagopal and also not proved they were living together as husband and wife for long period.

26. Per contra, on the side of respondents 1 to 4, they have clearly proved that the marriage between the deceased Rajagopal and the first respondent was solemnized on 19.03.1975 and respondents 2 to 4 are the legitimate children of the deceased Rajagopal and the first respondent by adducing reliable oral and documentary evidence. But the appellant failed to prove her marriage with the deceased Rajagopal was solemnized prior to the marriage of the first respondent with the deceased Rajagopal. The first Appellate Court has discussed in detail and given a correct finding and therefore, the above said finding of the first appellate Court is not perverse or illegal and the two substantial questions of law are answered as against the appellant.

27. In view of the above said discussion, the decree and judgment passed by the first Appellate Court are to be confirmed and the second appeal is to be dismissed.

28. In the result, the second appeal is dismissed. No order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed. 27.02.2014  
ari Index:Yes/No Internet:Yes/No R.KARUPPIAH,J.

ari S.A.No.215 of 2002 27.02.2014

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