

Felix Vs. Jemi,

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Court : Chennai

Decided On : Aug-19-2002

Reported in : I(2003)DMC430

Judge : A. Ramamurthi, J.

Acts : Payment of Gratuity Act - Sections 6; Divorce Act - Sections 12, 13, 14 and 47

Appeal No. : Second Appeal No. 181 of 2001

Appellant : Felix

Respondent : Jemi, ;gnana Selvi Gawsiga, ;gnana Seeli Gowsalya, ;The Director of Medical Services and Family Welf

Advocate for Def. : P. Gopalan for R1 to R3 and ;M.C. Samy, Spl. Govt. Pleader for R4 and R5

Advocate for Pet/Ap. : V.R. Kamalanathan, Adv.

Disposition : Second appeal dismissed

Judgement :

A. Ramamurthi, J.

1. The unsuccessful 3rd defendant in both the courts below is the appellant.

2. The case in brief is as follows:- The plaintiffs filed a suit for declaration that they are the legal heirs of the deceased Chelladurai and entitled to collect all the terminal benefits and for permanent injunction. The first plaintiff is the legally wedded wife and plaintiffs 2 and 3 are the children born to the 1st plaintiff and Chelladurai. Their marriage took place on 25.08.1962 as per the custom prevailing in the Christian community and he died on 19.09.1989. The deceased was employed as a Male Nurse Orderly in the Government Headquarters Hospital at Tuticorin. He was having illicit intimacy with the 3rd defendant. Now, the 3rd defendant proclaims herself as the wife of the deceased and attempting to claim the terminal benefits payable by defendants 1 and 2. Hence, the suit.

The 3rd defendant resisted the suit and contended that the marriage between the 1st plaintiff and the deceased was divorced under a document dated 16.08.1971. The marriage between the 3rd defendant and Chelladurai took place on 04.02.1972 and the marriage was also registered. Both of them lived as husband and wife for a period of 19 years and she was also recognised as the wife of the deceased. The 3rd defendant was also employed and she had nominated Chelladurai and similarly the deceased had also nominated the 3rd defendant as his nominee. The last rites of the deceased was also performed only by her and not by the 1st plaintiff.

The trial court framed 4 issues and on behalf of the plaintiffs, 1st plaintiff was examined as P.W.1 and Exs.A-1 to A-4 were marked and on the side of the defendants, D.Ws.1 to 4 were examined and Exs.B-1 to B-12 were marked. The trial court decreed the suit in favour of the plaintiffs and aggrieved against this, the 3rd defendant preferred A.S.No.20 of 1993 on the file of Sub Court, Tuticorin and the learned Judge after hearing the parties, dismissed the appeal. Aggrieved against this, the 3rd defendant has come forward with the present second appeal.

3. The appellant has raised the following substantial questions of law for consideration in the memorandum of grounds of appeal;

(1) Whether the lower courts erred in law in holding that the Divorce Deed dated 16.08.1971 is not valid ?

(2) Whether the lower courts erred in law in finding that the 3rd defendant / appellant is not the family member of the deceased Mr. P. Chelladurai?

(3) Whether the lower courts erred in law in holding the plaintiffs as the legal heirs of the deceased P. Chelladurai ?

(4) Whether the lower courts erred in law in holding that the nomination in favour of the 3rd defendant / appellant herein is invalid under section 6 of the Payment of Gratuity Act

4. Heard the learned counsel for the parties.

5. There is no dispute that the marriage between P.W.1 and the deceased Chelladurai took place on 25.08.1962 as per the custom prevailing in the Christian community and plaintiffs 2 and 3 are the children born out of the said lawful wedlock. The deceased Chelladurai died on 19.09.1989 and the 3rd defendant claims that she is the legally wedded wife of the deceased and attempting to claim the terminal benefits payable by defendants 1 and 2. The deceased was employed as a Male Nurse Orderly in the Government Headquarters Hospital at Tuticorin. Now, the plaintiffs claim that they are the legal heirs of the deceased, entitled to claim the terminal benefits, whereas the 3rd defendant claims that she is the legally wedded wife. The learned counsel for the appellant / 3rd defendant contended that the courts below ought not to have rejected the divorce deed dated 16.08.1971, Ex.B-7 particularly when it is a mutually agreed deed signed by the deceased as well as P.W.1 and it was acted upon. It also failed to appreciate the fact that the intention of P.W.1 as well as the deceased was to dissolve their marriage and live separately which was promptly acted upon and continued till his death. The courts below erred in not appreciating the fact that the 3rd defendant had also nominated the deceased as her nominee. The courts below also failed to appreciate that P.W.1 had waived her right as wife by living separately from the deceased as per Ex.B-7.

6. Ex.A-1 is the marriage invitation between P.W.1 and the deceased. Exs.A-2 and A-3 are the birth extracts relating to plaintiffs 2 and 3. Ex.A-4 is the death extract of the deceased. Ex.B-4 is the copy of registration certificate of marriage between the

3rd defendant and the deceased. Ex.B-7 dated 16.08.1971 is the divorce deed entered into between P.W.1 and the deceased. By virtue of Ex.B-7, the learned counsel for the appellant contended that the marriage between P.W.1 and the deceased ended in divorce and therefore, there was no relationship of husband and wife. On the other hand, after the marriage of D.W.1 with the deceased i.e. from 04.02.1972, they lived as husband and wife for a period of nearly 17 years and the public had also recognised them as husband and wife and under the circumstance, the appellant is entitled to claim the status of wife. Moreover, the last rites for the deceased was also performed only by the 3rd defendant at a cost of Rs.5,000/= and P.W.1 did not attend the same. The 3rd defendant was also employed as a Nurse in the Government Hospital and she had nominated the deceased and similarly the deceased had nominated her as a nominee. In short, by virtue of these nominations, the appellant attempted to explain that she is entitled to collect all the terminal benefits.

7. Both the courts below came to the conclusion that Ex.B-7 will not put an end to the status of P.W.1 as the wife of the deceased. As adverted to, the parties belong to Christianity and as such, the decree for dissolution of marriage by consent of parties is not permissible. It is also admitted that during the lifetime of his lawfully wedded wife, a Christian enters into a second marriage with another woman, the relationship between him and that woman is one of mere concubinage and the children born of that union are illegitimate. Simply because the 3rd defendant and the deceased lived together under one roof, she cannot claim the status as the wife of the deceased. When once the marriage between P.W.1 and the deceased is admitted and it has not been dissolved in a manner known to law, P.W.1 will not lose the status as wife. The registered document under Ex.B-7 will not put an end to the relationship of P.W.1 and the deceased as husband and wife. When once this position is conceded, the alleged marriage between the 3rd defendant and the deceased will not be valid under law and she cannot claim the status as wife of the deceased.

8. It is also settled position of law that if an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more member of his family and any nomination made by such employee in favour of a

person, who is not a member of the family, shall be void. If that be so, even assuming that the deceased had nominated the 3rd defendant entitled to collect the terminal benefits, the nomination itself would be void and under the circumstance, I am of the view that the 3rd defendant is not entitled to claim the terminal benefits in pursuance of the nomination.

9. The learned counsel for respondents 1 to 3 relied on the decision reported in Fazal Masih ..vs.. Patience AIR 1974 Raj 130 for the principle that in view of the provisions of Section 12, 13, 14 and 47 of the Divorce Act, a decree for divorce on consent of the parties is not permissible.

10. It has also been held in Ramasundaram and others .. vs.. Rakkammal and others (1992) 2 L.W.138 that nomination in favour of a person who is not a member of the family is invalid and cannot take away the rights of the legal heirs. Succession certificate directed to be issued to petitioners, instead of the nominees. The same view has also been reiterated in Meenambal ..vs.. Sornathammal (1990) 1 L.W.302.

11. It is therefore clear from the aforesaid decisions and discussion that by virtue of nomination, the appellant is not entitled to claim the status as wife. Moreover, the marital status between P.W.1 and the deceased had not come to an end by virtue of operation of any law. The recognition of public about the 3rd defendant as wife of the deceased, would not confer the legal status as the wife. Both the courts below gave a concurrent finding against the 3rd defendant in respect of the status as the wife of the deceased and there is no reason to interfere in the finding.

12. For the reasons stated above, the Second Appeal fails and is dismissed. No costs. Consequently, CMP No.1822 of 2001 is also dismissed.

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