



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2023

PRONOUNCED ON : 29.11.2023

CORAM:

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

AS.No.925 of 2010
and MP.No.1 of 2010

1.K.Malarkodi
2.Minor K.Govardhani
3.Minor K.Raman
4.Minor K.Lakshmanan
(Minors 2 to 4 represented by
their mother and next friend
K.Malarkodi) Appellants

vs.

1.Vanitha
2.Kavitha
3.Vijaya Anand
4.Durai Rajan
5.The Branch Manager,
LFC of India, Ranipet. ... Respondents

PRAYER: Appeal is filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 29.06.2010 by the learned Additional District Judge (Fast Track Court), Ranipet and made in O.S. No.3 of 2009.



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For Appellants : Mr.A.Rajendra Kumar
For R1 to R4 : Mr.T.P.Prabakaran, Advocate
For R5 : No Appearance

JUDGMENT

This Appeal is filed challenging the judgment and decree dated 29.06.2010 in OS.No.3 of 2009 by the Additional District Court, Fast Track Court, Ranipet decreeing the suit in favour of the plaintiffs granting 1/8 share each or 4/8 share together in respect of items 1, 2 and 4 of the suit properties and dismissing the suit as against the item 3 of the suit property.

2. For the sake of convenience, the parties are referred to as per their rankings before the Trial Court.

3. The Plaintiffs are the sons and daughters born through first wife of their father Kannan. Plaintiffs father divorced his first wife



Alamelu and married the first defendant Malarkodi. The defendants 2 to 4 are the children born through the first defendant.

4. It is the case of the plaintiff that their father was working as the Office Assistant in the Office of the fifth defendant / LIC and died in harness, leaving behind the Plaintiffs and the defendants 1 to 4 as his legal heirs.

5. After the death of their father Plaintiffs and Defendants 1 to 4 are entitled to succeed both the death benefits payable from the 5th defendant and also the immovable properties owned by late Kannan. The Plaintiffs and the defendants, jointly are in possession of all the immovable properties. It is the further case of the Plaintiffs that the 1st defendant, suppressing the presence of the plaintiffs, made a claim and received the entire death benefits of Rs.14,01,657/-. Since the 5th defendant has paid the entire amount to the 1st defendant despite the objections of the plaintiffs, the 5th defendant has been impleaded in the suit.



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6. According to the plaintiffs, the immovable properties mentioned in items 1 and 2 of the suit are the absolute properties of said Kannan. In addition, the 1st defendant has also purchased the house property mentioned in Item 3 of the suit schedule. Thus, according to the



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plaintiffs, they are entitled to a $4/8^{\text{th}}$ share in all four items of the suit properties.

7. The plaintiffs issued a legal notice dated 21.02.2008, calling upon the defendant for an amicable partition by dividing the schedule property into eight equal shares and allotting $1/4^{\text{th}}$ share to defendants 1 to 4. After receiving the notice, the defendants 1 to 4 replied on 04.03.2008, admitting the plaintiff's share in the suit properties and sought time for partition. However, defendants 1 to 4 remained silent after issuing the reply notice, and therefore the plaintiffs were compelled to file suit for partition and seek separate possession of their share in the suit properties.

8. The defendants 2 to 4 are minors represented by the first defendant's mother. The first defendant has filed a written statement opposing the relief. According to the first defendant, her husband Kannan legally divorced his wife Alamelu long ago. At that time, the first wife demanded and got permanent alimony for her and her children and she promised that she will not make any other claims in the future.



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The 1st defendant claims that even after Kannan married her and they had 3 children, still the plaintiffs were taken care of and sufficiently provided for. According to the first defendant, deceased Kannan nominated her as nominee in the 5th respondent office to receive the terminal benefits that could be paid to them. As per the the nomination, the 5th defendant has paid the entire death benefits of deceased Kannan to her, as per the nomination.

9. In view of the nomination made by the deceased Kannan in favour of the first defendant, the plaintiffs are not entitled to make any claim in so far as the item 4 of the suit property is concerned. In respect of the item 3 of the suit property, the same does not belong to first defendant nor the deceased Kannan. Therefore, the claim as against Item 3 and 4 are not sustainable.

10. In respect of item no.2 of the suit property, it is her case that the property absolutely belonged to deceased Kannan and that during his life time he voluntarily executed a registered the Will dated 09.07.2003, bequeathing item 2 of the suit property, which is the house, in favour of



the first defendant. As per the will the first defendant became the absolute owner of the second item of the suit property. In view of the same, the plaintiffs cannot make any legal claim over the same.

11. Further according to the first defendant, since defendants 2 to 4 are minors, no claim can be made in respect of item 1 of the suit property for partition as those are lands. The 5th defendant/LIC has filed a written statement stating that according to the office records, the first defendant named Malarkodi is the wife of late Kannan. He was appointed to LIC on 18.08.1993 and during the time of appointment, he did not mention anything about his first wife or about the plaintiffs.

12. Therefore according to the nomination executed by the deceased employee late Kannan, the first defendant is the only nominee. The plaintiffs, who are legal heirs of the deceased Kannan's divorced wife, did not make any objections or claimed the death benefits. Therefore after deducting the housing loan of Rs.87,717.94, from out of the total amount of Rs.14,01,657/-, a sum of Rs.13,13,939.69/- has been paid in entirety to the first defendant.



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13. Considering the pleadings of the parties, the Trial Court framed the following issues:

Re-cast Issues

(a) Is the Will dated July 09, 2003, which D1 pleaded in respect of the property in item(2) enforceable against the plaintiffs on fact and law?

(b) Have the plaintiff made out a case for declaring 4/8 share for them in the plaint-schedule properties. That's item Nos.(1) to (4).

(c) What's this court's decree on the suit? What are its terms?

14. In the Trial, the fourth plaintiff examined himself as PW.1 and marked documents Ex.A1 to Ex.A6. The first defendant examined herself as DW.1 and marked 9 documents Ex.B1 to Ex.B9, The attestors in the will in Ex.B1 were examined as DW.2 and DW.3.

15. After considering the evidences, the Trial Court, by judgment and decree dated 29.06.2010, decreed the suit, granting 4/8th share in favour of the plaintiffs in respect of Item 1, 2 and 4 of the suit properties and dismissed the suit in respect of item 3.



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16. Before the Trial Court, the plaintiffs themselves have given up the claim in respect of Item 3 of the suit properties and further defendants 1 to 4 have conceded the share of the plaintiff in Item 1 of the suit property. Therefore, the issue before the Trial Court was in respect of Item 2 and Item 4 of the suit property. The Trial Court disbelieved the Will executed in Ex.B1 in favour of the first defendant on the ground that there are suspicious circumstances and the first defendant failed to prove the execution of the Will. In respect of Item 4 of the suit property, the Trial Court has come to the conclusion that even though the nomination has been made by the deceased in favour of the first defendant, the first defendant is entitled to receive the benefits only on behalf of the legal heirs, and the nomination cannot retain the entire benefits for herself. In other words, the first defendant as the nominee only holds the Trust for the benefit of all the legal heirs and the same shall be distributed to all of them. The further defense raised by the first defendant is that the entire money received from the fifth defendant as the death benefits of the deceased Kannan was spent towards medical expenses through borrowings from 3rd parties were rejected by the Trial Court. It is



observed that even according to the first defendant, the deceased being the employee of the fifth defendant is entitled to claim the medical benefits and only due to the same, the original bills were not able to be filed in Court. Aggrieved by the Judgment and decree of the Trial Court, defendants 1 to 4 are on appeal.

17. The learned counsel for the appellant argued that in respect of Item 1 of the suit property, even before the Trial Court, they conceded for partition to allot shares in favour of the plaintiffs and in respect of claim for Item 3 of the suit property, neither the 1st defendant nor the deceased Kannan is the owner and it belongs to some third party. And a such the counsel for the appellant restricted his arguments only in respect of item 2 and 4 of the suit property.

18. According to the learned counsel for the appellant, as far as Item 2 of the suit property is concerned, it is absolute property of the deceased Kannan. While he was in sound state of mind, he executed a registered Will dated 09.07.2003 Ex.B.1, bequeathing the entire Item 2 of the suit property to the first defendant. Testator died in the year 2011,



and after his death, as per the Will the first defendant became the absolute owner of Item 2 of the suit property.

19. According to the learned counsel for the appellants, the Will has been proved by examining attesting witnesses. Once the execution of the Will stands proved, Item 2 of the suit property is no longer available for partition, as the 1st defendant became the owner.

20. According to the appellant's counsel, mere participation of beneficiary while executing the document is not a suspicious circumstances. Further mere disinheriting other legal heirs cannot be suspicious circumstances to disbelieve the will. Trial Court has given much importance to minor discrepancies in the evidence of the witnesses.

21. In support of his arguments, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court reported in **Mageshkumar (Dead) By Lrs. Vs. Vinod Kumnar and Others** reported in **2012 (4) SCC 387** for the proposition that active participation of the beneficiary will not amount to suspicious circumstances.



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22. Per contra, the learned counsel for the respondents 1 to 4 submitted that Kannan died intestate, leaving behind the plaintiffs as the legal heirs and they are entitled for the share in item 1, 2 and 4 of the suit property. The learned counsel further submitted that in respect of Item 2 of the suit property, the Will in favour of the first defendant in Ex.B.1, is not true and it was not executed by the deceased while in sound state of mind.

23. According to the respondent counsel, DW.1 evidence is totally contradictory to signature of the testator in all pages. He further states that regarding attestation of the Will DW.3 Balaraman and DW.2 Gajendran, have given totally contradictory statements. DW.2 Gajendran, in his evidence claims that the Will was already prepared and after he signed in the Will DW.3 Balaraman signed. Whereas, DW.3 Balaraman claims that only after he came the Will was prepared and he first signed as the witness before DW.2. The learned counsel for the respondent further argued that the evidence given by DW.1, 2 and 3 regarding the signing of the Will by the testator deceased Kannan are not clear and



raises suspicious circumstances and their evidence is untrustworthy to believe. The Trial Court has rightly disbelieved the evidences and rejected the Will in Ex.B.2, in respect of Item 2 of the suit property. The learned counsel for the respondents submits that the first defendant cannot claim the entire death benefits as a nominee. The first defendant can only hold the trust for receiving the benefits and benefits received from the 5th defendant has to be properly distributed among the legal heirs.

24. The learned counsel for the respondents submits that the deceased Kannan died in an accident and even in the claim before the Motor Accident Claims Tribunal, the plaintiffs were also made as parties along with the defendants, and the award was passed in favour of plaintiffs and defendants. According to the counsel for the respondents, taking into account all the above aspects, the Trial Court has decreed the suit in respect of Item Nos.1, 2 and 4 of the suit property granting 4/8th share to the plaintiff and submits that since it is a well considered judgment, the appeal may be dismissed.



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25. Heard Mr. A. Rajendra Kumar, counsel for the appellants and Mr. T.P. Prabhakaran, counsel for the respondents 1 to 4 and perused the entire documents and evidences on record.

26. After hearing the parties, the following points arises for consideration by this Court in the above appeal.

(1) Whether the Will Exhibit Ex.B.1 is proved as required under law?

(2) Whether the will Exhibit B1 is surrounded with suspicious circumstances?. If so whether propounder has dispelled the suspicious circumstances?

(3) Whether the 1st defendant is entitled to retain the entire service benefits received by her as a nominee from the 5th defendant without distributing it to the other legal heirs.

(4) Whether the plaintiffs are entitled to partition of 1 to 4 items of suit property as prayed?

Point Nos.1 & 2:

27. The relationship of the parties is not in dispute. Both the



plaintiffs and the defendants 1 to 4 admit that deceased Kannan had a first wife Alamelu and the plaintiffs 1 to 4 were born to Kannan through the first wife. The deceased Kannan married the first defendant Malarkodi, and defendants 2 to 4 were born through the second wife Malarkodi. It is the admitted case of both sides that first defendant married Kannan after the divorce of his wife Alamelu.

28. The first defendant resists the claim in respect of Item 2 of the suit property based on the registered will dated 09.07.2003 in Ex.B.1. It is her stand that her husband executed will in sound state of mind bequeathing entire second item to the first defendant. Now it has to be analyzed whether Exhibit B1 has been proved in a manner known to law or whether it is attached with any suspicious circumstances.

29. Ex. B.1 is the registered Will. Mere registration of the document alone cannot be taken as proof that the Will is proved. In other words despite the Will being registered it is on the propounder to lead



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cogent evidence and dispel the suspicious circumstances and prove the execution of the Will, to satisfy the conscience of the Court to accept the Will. For proving the execution, the propounder of the Will, first defendant has given evidence as DW.1 and examined both the attesting witnesses as DW2 and DW3.

30. On analyzing the oral evidence, it is seen that D.W.1 in her evidence categorically states that the Will was prepared on 09.07.2003 and the testator himself dictated the Will to one Parthasarathy. The Will was typed and kept ready and thereafter both the witnesses arrived.

31. D.W.1 in her cross examination has deposed that DW.3 Balaraman works in the BSNL office and during the lunch break, he came from the office and after executing the Will, he immediately left to his office. It is her further evidence that D.W.3, first came and signed the Will as a witness and thereafter D.W.2 Gajendran came and signed the will. They both witnessed the execution of the Will. Further in her cross examination, DW.1 submitted that the testator signed only the first page of the Will, and then she corrected her statement and stated that the



testator signed all the pages.

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32. DW.2 Gajendran in his chief examination stated that the Will was prepared in his presence and he saw the testator signing the Will and thereafter he also signed it, and then DW.3 attested the Will. But, during cross examination, DW.2 state that the Will was prepared, signed and kept ready when he came to the office. If, the Will was already prepared, signed, and kept ready, then there was no occasion for him to witness the testator's signing the Will. Therefore DW.2 witnessing the testator signing the Will is highly doubtful.

33. Further, DW.3 Balaraman has given evidence stating that he was on leave for office for the whole day and was very much available in the place and saw the Will being prepared and the testator signing the Will. He deposed that only when DW.2 Gajendran arrived they started preparing the Will. Thereafter Gajendran DW.2 signed in the Will and thereafter he signed. Further DW.3 stated that deceased Kannan entered the registrar office and signed the Will. Thereafter he corrected his statement and stated that he also signed when it was attested.



34. The relevant portion of evidences of D.W.1, D.W.2 and Dw3 are extracted hereunder for easy reference.

Evidence of DW.1:

தாவா உயிலை என் கணவர் எழுதியபோது, நானும் கூடியிருந்தேன். தாவா உயிலை பதிவு செய்த காலத்தில் நான் உடனிருந்தேன். மேற்படி உயிலில் 1வது பக்கத்தில் மட்டும் என் கணவர் கையெழுத்து போட்டு சார்பதிவாளர், அலுவலகத்தில் கொடுத்துவிட்டார். சாட்சி மீண்டும் எல்லா பக்கத்திலும் கையெழுத்து போட்டதாக சொல்கிறார். சாட்சியாக பலராமன் என்பவர் முதலிலும். கஜேந்திரன் என்பவர் இரண்டாவதாகவும் கையெழுத்து போட்டார்கள். என் கணவரே சாட்சிகளை அழைத்து வந்தார். சாட்சி பலராமன் பி.எஸ்.என். எல்லில் வேலை பார்க்கிறார். அவருடைய சாப்பாடு நேரத்தில் சாட்சிக்காக என் கணவர் அழைத்து வந்தார். லன்ச் டைமில் சாட்சி பலராமன் வாலாஜாவிலுள்ள தன் வீட்டிலிருந்து வந்து சாட்சி கையெழுத்து போட்டுவிட்டு ஆபிசுக்கு போய்விட்டார். சாட்சி கஜேந்திரன் அவருடைய வீட்டில் இருந்தார். என் கணவர் அழைத்து வந்தார். உயிலை டைப் பண்ணி வைத்தப் பிறகுதான் சாட்சிகள் பலராமன் கஜேந்திரன் ஆகியோரை அவர் அவரது வீட்டிலிருந்து அழைத்து வந்தார்.

Evidence of DW.2:

நான் போவதற்கு முன்பே சாட்சி ஜானகிராமன் பலராமன் என்பவர்கள் இருந்தார்கள். மலர் கொடியும் கூடியிருந்தார். நான் போகும்போது, உயில் எழுதி கையெழுத்து போட்டு ரெடியாக வைத்திருந்தார்கள். அதன் பிறகு நான் சென்று சாட்சி கையொப்பம் போட்டேன். எனக்கு பிறகு பலராமன் சாட்சி கையொப்பம் போட்டார்.



Evidence of DW.3

09.07.03ல் உயில் பதியப்பட்டது. நான் அன்று லீவ் போட்டு இருந்தேன். நான் வேறு காரணத்திற்காக லீவ் போட்டு இருந்தேன். உயிலில் சாட்சிப் போட அன்றைய தினம் கண்ணன் என்னை கூப்பிட்டார். 09.07.03ல் ஒரு நாள் மட்டும் தான் லீவ் போட்டு இருந்தேன். நான் வந்த பிறகு கஜேந்திரன் என்பவர் வந்தார். ஜானகிராமன் வந்தார். மலர்க்கொடி அங்கு இருந்தார்கள். எனக்கு பின்னால் தான் கஜேந்திரன் வந்தார். நான் வந்தப் பிறகுதான் உயில் தயாரிக்க ஆரம்பித்தார்கள். கண்ணன் சொல்ல சொல்ல ரவிச்சந்திரன் டைப் செய்தார். தமிழ் தட்டச்சில் டைப் செய்தார்கள். முதலில் சாட்சி கையெழுத்து கஜேந்திரன் போட்டார். பிறகு நான் கையெழுத்து போட்டேன். கண்ணன் சார்பதிவாளர் அலுவலகத்திற்கு உள்ளே போய் கையெழுத்து போட்டார். சாட்சி மீண்டும் கண்ணன் வெளியே இருந்தும், கையெழுத்துப் போட்டார் என்கிறார்.

35. A perusal of the above evidence of DW1, DW2 and DW3 shows that they are completely contradictory to each other. The evidence in respect of the preparation of the Will, the testator's signing of the Will and the attestation of the Will after witnessing the same raises several doubts about the nature of the execution of the Will. The propounder of the Will, DW1 beneficiary not only participated in the preparation of the Will but also participated in registration. Evidence of DW2 and DW3 on careful analysis makes it clear that attestation of document has not been proved in the manner known to law. Section 63 of the Indian Succession



Act reads as follows,

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63. Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, ¹² [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

36. Perusal of the above provision makes it clear that attestation as required under Section 63(c) of the Indian Succession Act, is a distinct act. Unless attestation and execution of will is proved, will cannot be admitted in evidence. By analyzing the evidence of DW1 to DW3,



irresistible conclusion could be arrived at that execution and attestation of will has not been established.

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37. Further in the present case, it is admitted that the first defendant is the second wife of the deceased Kannan testator and that she actively participated in the preparation and execution of the Will. Secondly all the sons and daughters of the deceased Kannan numbering 7, including the minor dependents, defendants 2 to 4 and the plaintiffs 1 to 4 have been completely excluded in the will, particularly when the 1st defendant is the sole beneficiary as per the Will. Further there was no reason assigned in the will even to exclude the minor children and that itself is a suspicious circumstance, which has not been dispelled by the propounder of the will.

38. In view of the aforementioned suspicious circumstances surrounding the Will, attestation and execution having not been established by evidence and further propounder has not dispelled the suspicious circumstances by satisfying the conscience of the Court, this Court is not in a position to accept the Will as proved and rejects it for the afore said reasons. Therefore Point No.1 & 2, are answered against the appellants and as a result, Item-2 of the suit property is available for partition and both the parties are entitled to their share.



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Point No.3:

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39. The 1st defendant has resisted the claim of the plaintiffs in respect to the death benefits of the deceased paid by the 5th defendant, on the ground that since she is the sole nominee nominated by the deceased to receive the benefits from the office of the 5th defendant, she is entitled to retain the entire benefits and the plaintiffs are barred from making any claim, The 1st defendant has raised a inter se dispute between the nominee and the legal heirs.

40. At this juncture, it will be useful to refer the decision of the Hon'ble Supreme Court in **Sarabati Devi & Another Vs. Usha Devi**, reported in **AIR 1984 (SC) 346**, whether the Court had the occasion to consider the question whether the nominee appointed under Section 39 of the Life Insurance Act, 1938 gets absolute right to amount due under life insurance policy on death of assured, wherein the Hon'ble Supreme Court has held as follows:

“12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in



the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in Fauja Singh's case and in Mrs. Uma Sehgal's case do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of section 39 of the Act and hold that a mere nomination made under section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

41. Again in **Vishin N.Khandchandani Vs. Vidya Lachmandas**

Khanchandani, reported in **2000 (6) SCC 724**, the question whether the nominee specified in the National Savings Certificate, on the death of its holder, becomes entitled to the sum due under the certificate to the



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exclusion of all other persons ? Or whether the amount of the certificate can be retained by him for the benefit of the legal heirs of the deceased? came up for consideration before the Hon'ble Supreme Court and it was held as under:

“13. In the light of what has been noticed hereinabove, it is apparent that though language and phraseology of Section 6 of the Act is different than the one used in Section 39 of the Insurance Act, yet, the effect of both the provisions is the same. The Act only makes the provisions regarding avoiding delay and expense in making the payment of the amount of the national savings certificates, to the nominee of holder, which has been considered to be beneficial both for the holder as also for the post office. Any amount paid to the nominee after valid deductions or becomes the estate of the deceased. Such an estate devolves upon all persons who are entitled to succession under law, custom or testament of the deceased holder. In other words, the law laid down by this Court in Sarbati Devi's case holds field and is equally applicable to the nominee becoming entitled to the payment of the amount on account of national savings certificates received by him under Section 6 read with Section 7 of the Act who in turn is liable to return the amount to those, in whose favour law creates beneficial interest, subject to the provisions of sub-section (2) of Section 8 of the Act.”

42. Further in the decision in **Vidyaa Hari Iyer Vs.**



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M/s.Sundaram Finance Limited, reported in **CDJ 2020 MHC 4925**, a learned Single Judge of this Court, by following the ratio laid down in **Sarabati Devi's case (cited supra)** and **Vishin N.Khandchandani's case (cited supra)**, has observed as follows:

“17. As far as Section 45ZA of the Banking Regulation Act is concerned, the above section indicate that the amount shall be paid to the nominee. It is also to be noted that Section 45ZD makes it clear that when there is an Order or a certificate or other authority from a Court obtained relating to such article is produced before the bank, the bank shall take due note of such decree, Order, certificate or other authority. Therefore, it cannot be said that even after the succession certificate is granted by the competent Court is produced before the bank, they cannot ignore the same merely on the basis of Section 45ZA of the Banking Regulations Act. Even though 45ZA contained non obstante clause, the Apex Court in Vishin N. Khanchandani Vs. Vidya Lachamandas Khanchandani reported in 2000 (6) SCC 724 in para 11 has categorically held that though the overriding effect of non obstante clause to attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made have to kept in mind, as the nominee has to be treated as a trustee and he is entitled to receive the amount only and he has to pay the amount to the persons who are entitled under law of succession. Therefore, when the succession certificate already granted, the object of the Indian Succession Act has to be given importance. Accordingly, the contention that only the nominee alone as per section 45ZA of the Banking Regulations Act is entitled to receive the money



even after succession certificate is granted, cannot be countenanced...

The Hon'ble Supreme Court in Sarabati Devi's case (cited supra) held that nomination only indicated the hand which is authorized to receive the amount, on the payment of which the insurer get a valid discharge of its liability under the policy and the amount, however, can be claimed by the heirs of the assured in accordance with the Law of Succession governing them. The decision of this Court in Vidyaa Hari Iyer's case cited supra emphasis the dictum that the nominee has to be treated as a trustee and he is entitled to receive the amount only and he has to pay the amount to the persons who are entitled under Law of Succession.

43. From the above decisions, the legal position that emerge is that nominee is only entitled to receive the benefits and give a valid discharge to the payee and the nominee only receive the benefits and holds the same as trustee and the same has be distributed equally to the persons entitled as per succession.

44. Coming to case on hand, there is no dispute about relationship between the parties and it is admitted by both the parties that the plaintiffs 1 to 4 and the defendant 1 to 4 are the Class-I legal heirs of the deceased Kannan. The 1st defendant only resists the claim of the plaintiffs on the ground that since she is the nominee, she is entitled to



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retain the entire death benefits received from the 5th defendant. Further it is her case that the benefits received from the 5th defendant has been spent for the treatment and medical expenses incurred by the deceased and has filed documents in Ex.B.8 and Ex.B.9.

45. Before considering the documents filed in Ex.B.8 and Ex.B.9 it will be more appropriate to consider the reply notice issued by the defendant's 1 to 4 in Ex.B.3, where the 1st defendant has taken a categorical stand in respect to the claim of the plaintiffs as regards the



death benefit is concerned. Paragraph 7 and 9 are extracted hereunder for easy reference,

“7. That my client being nominee of Mr.P.P.Kannan has obtained total Rs.13,32.391/- lakhs after deductions as terminal benefits from L.I.C., of India and not Rs.14,01,657/- as stated by your clients. Since Mr.P.P.Kannan left behind 8 Legal heirs and the share of each legal heir is Rs.1,66,548/-. As such my client is liable to make the payment of Rs.6,66,192/- as total share of all 4 of your clients.

9. That my clients states that she always treat the other legal heirs are her sons and daughters and she is ready to pay your clients shares amount to Rs.6,66,192/-. However my clients are not holding any amount at present. She offer to sell the property mentioned in No.2 of the schedule of property of your notice and the sale proceeds can be divided into 8 equal shares and my client will be paying the above said Rs.6,66,192/- from her share of sale proceeds. My client will also try to get a genuine Buyer and you may also instruct your client to search for Buyers”.

46. When the reply notice in Ex.B.3 is after the document submitted by the 1st defendant in Ex.B.8 and Ex.B9, where the 1st defendant has admitted and conceded to the claim of the plaintiffs and has stated that they are entitled to 1/4th share each amounting to Rs.1,65,000/-, and the 1st defendant will return the same to the plaintiffs,



the defense raised by the 1st defendant that as a nominee she is entitled to retain the amount received from the 5th defendant cannot be sustained.

In view of the categorical admission of the 1st defendant that the plaintiffs are entitled to a sum of Rs,6,66,192/- in respect of the share. When defendants 1 to 4 admitted share in the benefits to the plaintiffs at earlier point of time in the reply statement, only inference now arise is that Ex.B8 and Ex.B9 are only after thought and cannot be relied on. If really Ex.B8 and Ex.B9 were available, there was no reason as to why the same was not disclosed in the reply notice. Further when this Court pointed out the above admission to the respondents counsel during arguments, the learned counsel for the respondents submitted that in view of the reply notice, he is confining his arguments only in respect of item 2 of the suit property and conceded to the item 4 of the suit property.

47. In such circumstances, it can be safely concluded that the 1st defendant as a nominee is entitled to receive the death benefits from the 5th defendant and hold it only a trustee on behalf of all the legal heirs of the deceased and is duty bound to distribute the amount received, to all



the legal heirs as per the Law of Succession. As it is admitted that the plaintiffs 1 to 4 and defendants 1 to 4 are the class-I legal heirs of the deceased, the plaintiffs are entitled to 1/4th share each in item 4 of the suit property and the point is answered against the 1st defendant and in favor of the plaintiffs.

Point No.4:

48. The defendants 1 to 4 have themselves conceded for partition in the first item of the suit property. As far as item 3 the suit has been dismissed. Therefore in view of the findings given in Point 1 to 3, the properties in item 1, 2 and 4 are available for partition. As deceased Kannan died intestate, Section 8 of the Hindu Succession is applicable and the plaintiffs 1 to 4 and the defendants 1 to 4 being the class-I legal heirs are entitled to 1/8th share each out of items 1, 2 and 4 of the suit property. Accordingly all the points are answered.

49. In view of the same, this Court does not find any infirmity or otherwise to interfere in the judgment and decree of the Trial Court. As



such the appeal is dismissed confirming the judgment and decree of the Trial Court. Considering the relationship between the parties, there is

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no order as to costs. Consequently, connected Miscellaneous Petition is closed.

29.11.2023

drl

Index : Yes / No

Speaking / Non-speaking
Neutral Citation : Yes / No

To

1. The Additional District Judge,
(Fast Track Court), Ranipet



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G.ARUL MURUGAN.J.,

drl

AS.No.925 of 2010
and MP.No.1 of 2010

29.11.2023.