

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.1669 of 2005
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JUDGMENT:

This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity) by the unsuccessful plaintiff/appellant is directed against the decree and judgment dated 04.04.2005 of the learned V Additional Senior Civil Judge, (Judge, Fast Track Court) at Vijayawada of Krishna District passed in A.S.No.70 of 2002. The learned Additional Senior Civil Judge while dismissing the said first appeal had confirmed the decree and judgment dated 13.03.2002 passed in O.S.No.928 of 2000 of the learned III Additional Junior Civil Judge, Vijayawada filed for recovery of a sum of Rs.1,00,000/- against the 1st defendant-Andhra Bank and 2nd defendant-United India Insurance Company Limited.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff', for short) and the learned Standing Counsel for the respondents 1 and 2/defendants 1 and 2 ('the defendants 1 and 2', for short).

3. At the time of admission of this second appeal, this Court had formulated the following substantial questions of law:

“Whether the finding of the Courts below that the nominee of the policy is a necessary party to the suit filed by the legal heir of the deceased and that the suit is bad for non-joinder of the nominee of the policy?

Whether the finding of the Courts below that in a suit filed for paying the proceeds to the survivor to the either or survivor of the account of the Bank without impleading the nominee to the said Account?”

(Reproduced verbatim)

4. The facts that lead to filing of this second appeal and the cases of the parties, in brief, are as follows: “The sole plaintiff is the wife of one Koteswara Rao. They together had opened a Joint Savings Bank Account

no.1295 on 21.01.1998 with the 1st defendant Bank under Abhaya Gold Scheme with “either or survivor” clause. At the time of the opening of the said account, the 1st defendant bank had informed the plaintiff that under Abhaya Gold Scheme, both the joint account holders are provided with accident insurance cover under the group personal accident policy issued by the 2nd defendant-Insurance company and that the insurance cover will be available for all the joint account holders including minors. The plaintiff was specifically informed by the 1st defendant Bank that in case of death of either of the account holders, the benefit is available and the amount of insurance in a sum of Rs.1,00,000/- will be paid to the legal heirs on the death or disablement of one of the account holders. The husband of the plaintiff, who is the 2nd account holder, had died on 02.08.1998 due to his involvement in a motor vehicle accident. Immediately thereafter, the plaintiff had submitted a letter requesting the 1st defendant Bank to process the insurance claim. In response, the plaintiff had received a letter from the 1st defendant Bank intimating that the benefits of the policy were not available to the second account holder and therefore, the claim is not payable. The plaintiff and her husband are illiterates and they were not given any copy of the insurance policy or any other details at the time of the opening of the joint savings account. They were made to believe that the insurance benefits are available to both the joint account holders. The plaintiff had submitted necessary documents to the defendants for processing the claim. The plaintiff had got issued notice to both the defendants on 16.09.1999 demanding the defendants to settle the claim and also to supply a copy of the policy. The defendants 1 and 2 had received the notice respectively on 20.09.1999 and 05.11.1999 and had kept quiet. It is the duty of the 1st defendant to pay the insurance premium for both the account holders and to arrange the payment of insurance amount to the plaintiff. Accordingly, the plaintiff is entitled to a sum of Rs.1,00,000/- and the defendants are jointly and severally liable to pay the same with interest at the rate of 24% per annum from the date of the suit till the date of final settlement. Hence, the suit is filed.’

5. The 1st defendant Bank had filed a written statement denying the material averments in plaint, but admitting that the plaintiff and her late husband had jointly opened an Abhaya Gold Savings Account bearing no.1295 with the Bank and that later, the 1st defendant Bank had paid the premium to cover the risk of one of the account holders and that the said amount was collected on 21.01.1998 from the joint account of the plaintiff and her husband and that the same was credited to the non-operative CD account no.122 of the United India Insurance Company Limited and that as per the terms and conditions of Abhaya Gold Savings Scheme, it is the duty of the customer to verify the passbook and the statement of account and ensure that the insurance charges are debited to his/her account immediately after opening of the account and that the plaintiff and her husband who are the account holders are educated persons and that they have given the name of their daughter Talluri Padmavathi as their nominee, but, she had not made any claim and that the plaintiff has no locus *standi* to file the suit and that the suit may be dismissed.

6. The case of the 2nd defendant-Insurance Company, in brief, is this:

The material allegations in the plaint are not true and correct. The suit is not maintainable in law. The material allegations are concocted for the purpose of the suit. The 2nd defendant-insurance company is not aware of the death of the husband of the plaintiff in an accident that was said to have occurred on 02.08.1998. The copy of the FIR does not disclose his name.

There is no nexus between the death and the alleged accident. The 2nd defendant-insurance company is not aware of the correspondence between the plaintiff and the 1st defendant Bank. The 1st defendant Bank had made correspondence with the 2nd defendant on 26.08.1998, 30.11.1998, 09.02.1999 and on 17.03.1999; and, in turn, this defendant had sent replies on 16.10.1998, 03.03.1999 and on 08.04.1999. The said correspondence may be read as part of the defence of this defendant. Neither the plaintiff nor the 1st defendant had paid any premium for the second account holder. As

such, the benefits of the alleged insurance scheme are not available to the case of the deceased. The 1st defendant Bank had clearly stated that the insurance premium was paid only in respect of the 1st account holder, i.e., the plaintiff herein and as such, the benefits of the alleged insurance scheme are available only to the 1st account holder, but, not to the 2nd account holder/deceased. This fact was informed to the 1st defendant Bank through their letter dated 08.04.1999. There is no privity of contract between the plaintiff and the 2nd defendant-insurance company. There is no valid insurance coverage for the 2nd account holder. Hence, the suit may be dismissed against this defendant.

7. On the strength of the above pleadings, the trial Court had framed the following issues for trial:

1. Whether the plaintiff is entitled to recover the suit claim?
2. To what relief?

At trial, the plaintiff was examined as PW1 and exhibits A1 to A8 were marked on her side. DWs 1 and 2 were examined on the side of the defendants, but no documents were marked on their side. On merits, the trial Court had dismissed the suit. As already noted, the 1st appeal was also dismissed. Hence, the aggrieved plaintiff is before this Court.

8. I have carefully perused the pleadings and the evidence brought on record, both oral and documentary.

9. The learned counsel for the plaintiff while reiterating the pleaded case of the plaintiff would submit that the judgments and decrees of the courts below are unsustainable being perverse and unjust. The Court below had reversed the finding of the trial Court in respect of the liability of the 1st defendant Bank in not paying the premium without there being any appeal preferred by either of the defendants. The observation of the court below that the suit is bad for non joinder of the nominee to the policy as a party to the suit is erroneous. The suit is filed for paying the proceeds to the survivor as

there is a “either or survivor” clause in respect of the joint savings account opened jointly by the plaintiff and her deceased husband. Under the “either or survivor” clause, the survivor among the joint account holders is entitled to receive the amount after the death of one of the account holders. The judgments were passed without properly appreciating the facts and the evidence. For the inaction and failure on the part of the officers of the 1st defendant-Bank and their dereliction of duties in not paying the premium and also the inaction and failure on the part of the officers of the 2nd defendant-insurance company and their dereliction of duties the plaintiff cannot be found fault and penalized by not paying the claim amount, which is lawfully due and payable to her. As the insurance is a group insurance, and the correspondence between the defendants, which is material evidence, was suppressed, an adverse inference may be drawn. In the facts and circumstances of the case, the Courts below ought not to have penalized the plaintiff for no fault of her and ought to have decreed the suit as prayed for. Hence the second appeal be allowed and the suit be decreed as prayed.

10. On the other hand, the learned Standing Counsel for the defendants 1 and 2 while supporting the findings of the courts below had contended that the courts below had considered the facts accurately and the evidence in the right perspective and that the courts below had recorded concurrent findings of fact supported by valid and cogent reasons and that none of the grounds raised are valid and that the substantial questions raised are not pure questions of law and that for not impleading the nominee, who is the daughter of the plaintiff and the deceased, the suit is bad for mis-joinder and non-joinder of the necessary party and that no valid grounds much less substantial questions are made out for entertaining the second appeal and hence, the second appeal is devoid of merit and is liable to be dismissed.

11.1 The pleadings of the parties are already stated supra, in detail. I have noted the submissions.

11.2 The plaintiff as PW1 had reiterated her pleaded case and exhibited

exhibits A1 to A8. Exhibit A1 is the pass book no.1295 issued by the 1st defendant Bank; exhibit A2 is the copy of the broacher of the Andhra Bank with the terms and conditions of the Abhaya Gold Savings Bank Insurance scheme in association with the 2nd defendant Insurance Company; exhibit A3 is the death certificate of plaintiff's husband, exhibit A4 is the copy of the FIR given by the Station House Officer, Munagala, exhibit A5 is the Photostat copy of the post mortem report of the deceased husband of the plaintiff; exhibit A6 is the office copy of the legal notice dated 16.9.1999; and exhibits A7 and A8 are the postal acknowledgments. The defendants 1 and 2 had examined DWs 1 and 2 to substantiate the contentions in their respective written statements. I have gone through the oral and documentary evidence.

11.3 The plaintiff and her husband-Koteswara Rao had jointly opened a joint savings bank account with the 1st defendant Bank under Abhaya Gold Scheme linked with Insurance and that under the said scheme, there is an accident insurance cover under the group personal accident policy of the 2nd defendant insurance company and that under the said scheme, account holders in the age group of 5 to 70 years are provided with accident insurance cover under the group personal accident policy of the 2nd defendant insurance company and that the insurance cover is available to all the joint account holders including minors is admitted and undisputed. However, it is also a fact that in case of joint accounts, all account holders, who are to necessarily be covered under this policy would be covered on payment of the prescribed insurance premium/charges, i.e., Rs.50/- per person/account holder and that the insurance cover provided by the 2nd defendant/insurance company is subject to the terms and conditions of the insurance policy. The said amount is inclusive of insurance premium and bank charges. There is no dispute that as per the scheme, the procedure for payment of insurance coverage charges is as follows: "Rs.50/- per head or per each account holder in case of joint account had to be debited to the joint account on the opening of such account itself and also subsequently on 31st

October of every year subject to the availability of sufficient balance in the account and that such deducted charges shall be credited to the non-operative CD account no.122 of the United India Insurance Company Limited.” From the evidence brought out on record, it is clear that on the date when the joint account was opened by the plaintiff and her husband with “either or survivor” clause under the subject scheme, the 1st defendant Bank had debited only Rs.50/- towards the said charges at the time of opening of the said joint account itself and had debited another sum of Rs.50/- in October 1998. It is also not in dispute that the said deducted sums were credited to the non-operative CD account no.122 of the 2nd defendant-Insurance Company. Thus, instead of deducting Rs.50/- each towards charges per each account holders of the joint account, the 1st defendant-Bank had deducted the amount in respect of one account holder only though the account is a joint account. Why the Bank had not deducted the necessary charges in respect of the other of the two joint account holders could not be explained by the defendants. Conversely, the 1st defendant Bank is trying to throw the blame on to the plaintiff by stating that she and her husband are educated and they ought to have verified their passbook entries and account statement as to whether the necessary deductions were made towards the said charges though it is the duty and obligation of the officers of the Bank to deduct the charges in respect of both the joint account holders, who are entitled to the benefits of the scheme. Therefore, for no fault of the plaintiff and her husband, and more particularly, when there is admittedly sufficient balance in their account, the plaintiff cannot be penalized. As per the scheme and the arrangement between the 1st defendant Bank and 2nd defendant-insurance company, when once an account ‘whether single or joint is opened’, it is the duty of the officers of the 1st defendant Bank to debit the necessary charges in respect of the account holder in case of single account and in respect of each account holder in case of joint account and credit the debited amounts to the non-operative CD account no.122 of the 2nd defendant-insurance company in order that any account holder either single account holder or joint account holder would be covered by the scheme

would become eligible to avail the benefit of the scheme of insurance on the happening of the contingency or the event. However, in the case on hand, the 1st defendant Bank had only paid premium of Rs.50/- covering only in respect of one of the two joint account holders and did not debit the premium from the joint account of the plaintiff and her husband as per the terms of the scheme to cover the risk of both the joint account holders under the scheme. It is not the case of the bank that sufficient balance was not available in the joint account of the plaintiff and her deceased husband at any relevant time. The contention of the 1st defendant Bank that the plaintiff and her husband being educated persons ought to have verified their account and the statement of account in regard to the debit entries pertaining to the payment of premium charges to cover the risk of both the account holders and that as they had failed to do so, the plaintiff cannot now make the claim, cannot be countenanced as under the scheme, it is the obligation of the bank once an account is opened under the scheme to debit the necessary premium/charges per head covering each account holder in case of joint account holders and credit the same to non operative CD account no.122 of the 2nd defendant-insurance company as per the terms and conditions of the scheme. The Bank did not do so. The entries in the account passbook and the evidence brought on record do not disclose as to whether the premium that was admittedly debited in respect of one account holder corresponds to which of the two joint account holders. To put it in other words, there is nothing on record to show that the premium was paid to cover the risk of the first account holder only. As per the clauses of the scheme as is evident from the terms and conditions under exhibit A1, all the account holders including minors are covered under the scheme of insurance. It is for the 1st defendant bank to pay the charges in respect of each account holder even in cases of a joint account by following the procedure as per the terms and conditions of the scheme. As already noted, the evidence brought on record does not specifically show that Rs.50/- that was paid towards insurance charges is only in respect of the plaintiff, but not in respect of the other joint account holder, who is her deceased husband. The Bank was said to have made a

claim in the correspondence it had with the 2nd defendant Insurance Company that Rs.50/- towards the premium was paid to cover the risk of the 1st account holder. However, what is the basis for such claim said to have been made by the Bank is not forthcoming. The averments and the claims in the *inter se* correspondence between the defendants, if any, is not binding on the plaintiff and hence the contentions of the defendants that the charges were paid only respect of the plaintiff and not her husband, who is a joint account holder, cannot be countenanced more particularly, when there is no material brought on record to substantiate the alleged defence that the debit entry in regard to Rs.50/- showing deduction towards the insurance charges specifically indicates that it is intended to cover the risk of the first account holder between the joint account holders. Further, it appears that a number of letters were exchanged between the 1st defendant Bank and the 2nd defendant insurance company; and the dates of such letters exchanged are also stated in the written statement of the 2nd defendant and it is pleaded that the said correspondence be read as part of the defence of the 2nd defendant-insurance company. However, none of those documents were exhibited for the reasons best known to the 1st defendant Bank and the 2nd defendant insurance company. As rightly contended by the learned counsel for the appellant/ plaintiff, the non filing and marking of the said documents (correspondence), if any, is fatal to the defence of the defendants. And, an adverse inference has to be necessarily drawn against the defendants for not filing the correspondence, which is material evidence, even according to the defence of the defendants and it is trite to presume that the evidence, which could be and is not produced, would, if produced, be unfavorable to the defendants who had withheld it. In the facts and circumstances in the absence of any evidence to accept the contention that the premium/charges of Rs.50/- admittedly paid are in respect of the plaintiff and not her deceased husband, there is a possibility, plausibility and high probability to take a view that the said charges were in fact paid to cover the risk of the other joint account holder, i.e., the late husband of the plaintiff, as rightly urged by the learned counsel for the plaintiff. As such a view is possible and probable, it

follows that the risk of the deceased is covered under the scheme as he had died due to his involvement in a motor vehicle accident. As a sequel it can be held that both the defendants are jointly and severally liable to pay the claim amount of Rs.1,00,000/- to the plaintiff. Even assuming for a moment that the premium or charges of Rs.50/- were paid only in respect of the plaintiff/the 1st account holder of the joint account and to cover her risk only, even then, the plaintiff cannot be penalized and non-suited for no fault of her and for the fault of the officers of the defendants. Be that as it may. The trial Court having found fault with the officers of the 1st defendant Bank for not deducting the premium/charges to cover the risk of both the joint account holders had dismissed the suit of the plaintiff for not impleading her daughter whose name was mentioned as a nominee. The court below did not even consider in proper perspective the faults and dereliction of duties on the part of the officers of the 1st defendant Bank while dismissing the 1st appeal and confirming the decree and judgment of the trial court. The law is well settled that a nomination only indicates the person who is authorized to receive the amount and further gives a valid discharge to the payer on payment of the amount due to the nominee. A nominee could not be treated as being equivalent to any legal heir or a legatee entitled to the amount. Therefore, the nominee receives the payment not as a beneficiary to the amount; therefore, the amount paid to the nominee can be claimed by the heirs in accordance with the law of succession governing them. The nominee therefore, is only a trustee after the account holder's demise and cannot take the place of the account holder. In case of a joint account with the specific "either or survivor" clause, the survivor of the two joint account holders becomes entitled under law to the amounts payable under the 'Abhaya Gold Scheme'; and the joint account holder is also entitled to continue to operate the account or receive the amount due under the account notwithstanding the death of the joint account holder. The above views of this Court are reinforced by the ratios in the decisions in **Mrs. Parvathy and another v. Post Master General, Chennai**^[1] and **Challamma v. Tilaga**^[2].

12. Having regard to the reasons, this court finds that the approach of the courts below is not correct and that both the courts below are not justified in dismissing the suit of the plaintiff on any of the grounds much less on the grounds that the charges paid under the scheme are in respect of the plaintiff and that not in respect of the daughter of the plaintiff, who is a nominee and is a necessary party and that the suit is bad for not impleading her. In the well considered view of this court, the courts below have failed to consider the facts accurately and the evidence in proper perspective and did not take into consideration the propositions of law applicable to the facts of the case and had therefore, arrived at conclusions, which are erroneous and vitiated. As per the well settled legal position laid down in **Jagdish Singh v. Natthu Singh**^[3], when the findings of the courts below are vitiated by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings in the second appeal. Further, the law is equally well settled that when the findings of the courts below are manifestly unreasonable and unjust in the context of the facts and the evidence on record, this Court is obliged under law to set aside such erroneous findings to remedy the injustice. Therefore, the substantial questions of law are answered holding that the courts below committed a grave error in dismissing the suit of the plaintiff. Viewed thus, this Court finds that the judgments of the Court below brook interference and that there is acceptable merit in this second appeal and that, therefore, the second appeal deserves to be allowed after setting aside the judgments of the Courts below.

13. In the result, the Second Appeal is allowed and the decree and the judgment of the court below confirming the decree and judgment of the trial court are hereby set aside and the suit O.S.No.928 of 2000 on the file of the Court of the learned III Additional Junior Civil Judge, Vijayawada is decreed with costs throughout in favour of the plaintiff for a sum of Rs.1,00,000/- with interest at 12% per annum simple from the date of the suit till the date of the decree and with subsequent interest on the said sum at the rate of 6% per annum from the date of the decree till the date of payment or realization. The defendants are granted two months time from the date of receipt of a copy of

this judgment for paying the amount to the plaintiff with interest. Failing compliance, the plaintiff is at liberty to recover the amount by following the procedure established by law.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

07th October 2015
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[\[1\]](#) AIR 2005 MADRAS 102

[\[2\]](#) (2009) 9 Supreme Court Cases 299

[\[3\]](#) AIR 1996 SUPREME COURT 1604