IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.226 of 2015

R.Saravana Kumar .. Appellant/Plaintiff

Versus

Stock Holding Corporation of India Limited,
Justice Basheer Ahmed Sayeed Building,
3rd Floor, No.45, Moore Street,
Second Line Beach,
Chennai-1. .. Respondent/Defendant

Prayer: Appeal filed under section 100 of the Civil Procedure Code against the Judgment and decree dated 22.07.2014 passed by the learned III Additional Judge, City Civil Court, Chennai in A.S.No.443 of 2013 confirming the judgment and decree dated 20.03.2013 passed by the learned V Assistant Judge, City Civil Court, Chennai in O.S.No.7488 of 2012.

For Appellant : Mr.T.Ramesh
For Respondent : Ms.P.Meghana Nair

J U D G M E N T

The unsuccessful plaintiff before both the Courts below is the appellant before this Court challenging the dismissal of the suit filed for declaration and for permanent injunction.

2. He sought for the relief of declaration to declare that the nomination form, dated 14.11.2012, signed by one M.Murugesan, the DEMAT account holder of the defendants nominating the plaintiff is valid and for permanent injunction restraining the defendants to deal with the said DEMAT Account No.22163542 of the said late M.Murugesan.

3. The case of the plaintiff in short is as follows:

(i) The defendant is the Stock Holding Corporation and the said M.Murugesan was the client of the defendant having DEMAT Account No22163542. The said M.Murugesan submitted a nomination form on 11.11.2012 nominating the plaintiff as the nominee of the said DEMAT Account. Since, the signature of the said M.Murugesan in the said nomination form was not matching with his earlier signatures found in the DEMAT account, the defendant advised the plaintiff to get another nomination form with signature of the said account holder and accordingly the plaintiff has submitted a nomination form on 14.11.2012, signed by the said M.Murugesan in the presence of two witnesses. The said Murugesan died on 15.11.2012 i.e. next date of submitting the nomination form. The defendants did not accept the nomination form on the ground that the signature of the deceased not matched with his specimen signature available on record with the defendant.

4. The defendant resisted the suit, by contending as follows:

(i) As per the NSDL business rules, the nomination form should be submitted by the account holder or the person authorised by him or power holder of the account holder. In this case, the plaintiff failed to furnish such power of attorney letter or the authority letter nor he had brought the account holder to the bank. On the other hand, the signature found in the nomination form did not match with the signature available with the bank records of the DEMAT account holder. Only in the physical presence of the account holder, the nomination form should be verified and attested by the account holder's bank's Manager, accompanied with an affidavit duly inter-alia deposing therein that the signatures are not matching due to the reasons recorded in the affidavit. No such affidavit is filed. Just one day prior to the death of the account holder who was infact not in good state of mind, the nomination form was submitted. Therefore, the nomination submitted by the plaintiff was rightly rejected.

5. The Courts below considering the entire facts and circumstances of the case and also the evidence let in by the parties, rejected the contention of the plaintiff and dismissed the suit. Both the Courts have taken note of the relevant rules, more particularly, the rule regarding the Transmission of of Securities in case of nomination under Rule 12.6.3.58 with byelaws and found that plaintiff is not entitled to decree for declaration since prayer is against the above said rules.

6. Heard the learned counsel for appellant and the learned counsel for respondent.

7. It is seen that rule 12.06.3.58 which has been referred to by both the Courts below contemplates several conditions for accepting a nomination filed by the account holder which reads as follows:

> “12.6.3.58 TRANSMISSION OF SECURITIES IN CASE OF NOMINATION.
>
> 12.6.3.1. The Client (s) may make a nomination of his/their account in favour of any person by filing with the relevant participant the form laid out in Annexure IA of
>
> these Business Rules to the case of joint accounts, all the Clients shall be required to affix their signatures to the said form. Such nomination shall be
>
> conclusive evidence of the Client (s) disposition in respect of all the securities in the account for which nomination has been made.
>
> 12.6.3.2. A nomination once made shall not be considered to have been varied. Substituted or cancelled. Unless the client (s) files another form as laid out in Annexure IA.
>
> With the participant, expressly signifying the interest to vary, substitute or cancel all nominations made earlier. Unless a fresh variation, substitution or cancellation is registered with the participant, the Depository shall consider the nomination last validly recorded in its book as being conclusive evidence of the Clients(s) disposition in respect of the securities.
>
> 12.6.3.3. A nomination. Substitution shall be valid only if:-
>
> a) It is submitted to the Participant by the rightful client(s) or under his/their due authority.
>
> b) It is in prescribed form (Annexure I/IA)
>
> c) It is duly signed by Client (s)
>
> d) It is properly signed and witnessed.

e) Signature of the Client(s) tally with the specimen signature records.

f) The details of the securities entered in nomination forms match those in the records of the participant.

g) The Photograph of the Nominee is annexed to the nomination form.

h) The Nominee has signed the nomination form and guardian in case of the nominee being a minor.”

8. It is the factual finding rendered by both the Courts that the plaintiff has not complied with such conditions strictly for accepting the nomination. It is stated by the learned counsel appearing for the appellant that the said Murugesan was under the care of the plaintiff, who is admittedly not related to said Murugesan. It is also stated by the learned counsel for the appellant that the said Murugesan has not left any Legal Heirs. In fact, no such plea was raised by the plaintiff in the plaint.

9. On the other hand, the learned counsel for the respondent submitted that when the DEMAT account held by the deceased Murugesan holds an amount running to some crores, the bank was justified in rejecting the claim of the plaintiff especially when there was mismatching of signature of the account holder. Admittedly, the nomination form was submitted on 14.11.2012 and the very next date, the said Murugesan died. It is seen that at the time of his death, as per the medical certificate marked as Ex.A4, he was not in good mental capacity and he died out of senility/hypertension. The Courts below have found that the mental capacity of deceased at the time his death was not stable and therefore, the defendant was right in rejecting the nomination form especially when the signature was mismatching with the signature found in the records. Such factual findings, concurrently rendered by the Courts below, do not call for any interference by this Court as they do not raise any question of law, more particularly a substantial one even to entertain this Second Appeal. Needless to say that while dealing with the nomination in respect of a DEMAT account holding several crores of rupees, the respondent bank must be doubly careful and hence they are justified in not accepting the nomination when there is a reasonable doubt in the mind of the bank with regard to its execution. Perusal of the conditions stipulated for submitting a nomination form and accepting the same by the respondent Corporation would show in clear and

categorical terms that a simple presentation of the nomination form said to have been signed by the account holder is not sufficient or valid unless such nomination was made strictly in accordance with the above stated terms and conditions. Certainly, the respondent like Banking Authorities are justified in imposing stringent condition for submitting nomination forms and the procedure to be followed therein since a fool proof presentation and acceptance of such nomination alone will protect the interest of the financial institution as well as the account holder in the event of there being any litigation at a later point of time. In this case, the nomination form was submitted on 14.11.2012 just one day prior to the death of the account holder. Apart from the above fact, it is found by the courts below that the signature found in the nomination did not match with the admitted signatures of the account holder available with the defendant corporation. The plaintiff has also not filed any affidavit of the account holder and he was not present before the bank at the time of presenting the nomination. Admittedly, no authorisation letter or power of attorney was issued by the account holder for presenting the nomination form. All these factual aspects of the matter which go to the root of the issue undoubtedly established that the plaintiff is not entitled to the relief sought for in the suit. Therefore, both the Courts below are justified in rejecting the relief sought for by the plaintiff with which I find no infirmity or irregularity, as no substantial question of law arises for consideration in this appeal.

Accordingly, this Second Appeal fails and stands dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Registrar
III Additional
City Civil Court, Chennai.

2. The Registrar
V Assistant City Civil Court, Chennai

+1 cc to M/s.Meghana Nair Advocate sr.33957
+1 cc to Mr.T.Ramesh Advocate sr.34032

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aa28/07/2016