

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.573 of 2016
and C.M.P.No.10487 of 2016

1. The Director,
A.G-I Fund, A.G.I Bhawan,
New Delhi 110 057.
2. The Office incharge-Records,
ASC (AT), Gaya. ... Appellants/3rd & 4th
Defendant/3rd and
4th Respondents
- vs.
1. Y.Kavitha
2. Minor Thomson
(aged 8 years)
rep. by his mother
Y.Kavitha 1 & 2nd Respondents/1st and 2nd
Defendants/1st & 2nd Respondent
3. Gnanadeepam
(R1 and R2 brought as LRs of the
deceased 3rd respondent vide
order of Court dated 04.12/2015
made in M.P.1/2012 in
SA.S.R.81981/2008 ... 3rd Respondent/Plaintiffs/
Appellant (deceased)

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 14.02.2008 made in Appeal No.22/2007 on the file of Subordinate Judge at Vellore allowing the appeal and setting aside the decree and judgement of Additional District Munsiff at Vellore in O.S.No.1224 of 2004 dated 22.12.2006.

For Appellants : Mr.N.Rajan

For Respondents: Mr.R.S.Anandamurthy for R1 and R2

J U D G M E N T

The appellants are the 3rd and 4th defendants in a suit filed by the 3rd respondent herein since deceased, for declaration of her right to get 1/3rd share in the death benefits of her son D.Devanesan and for permanent injunction restraining the official defendants 3 and 4 / appellants herein from disbursing the 1/3rd share of the plaintiff to the defendants 1 and 2, who are none else than the widow and the minor son of the deceased D.Devanesan. The trial Court dismissed the suit by holding that the parties being governed by the Indian Succession Act, the plaintiff namely the mother, is not entitled to any share. Aggrieved by the decision of the trial Court, the plaintiff /mother filed the appeal before the lower appellate Court. The lower appellate Court, by its judgment and decree, allowed the Appeal and directed the appellants herein to disburse 1/3rd share to the plaintiff/ mother from and out of the death benefits of the deceased son. The lower appellate Court decided the issue in favour of the plaintiff by holding that the parties are governed by the Hindu Law and consequently, the mother of the deceased son is also entitled to 1/3rd share.

2. Challenging the said decision of the appellate Court, the present appeal is filed before this Court by the official defendants. After filing the Second Appeal, the 3rd respondent, who is the plaintiff, died on 25.01.2011 and a memo was filed to that effect and consequently, this Court, by order dated 04.12.2015, recorded the death of the 3rd respondent and further recorded the 1st and 2nd respondents herein as the legal heirs of the deceased 3rd respondent.

3. Though this appeal was filed as early as in the month of September, 2008, the same was numbered only recently and accordingly, the same is listed before this Court for admission. On 12.07.2016, there was no representation for the respondents 1 and 2, though they entered appearance through counsel. Hence, it is listed today under the caption 'for orders'. Again, there is no appearance for the respondents 1 and 2.

4. Mr.N.Rajan, learned counsel appearing for the appellants submitted that there is nothing to be adjudicated upon further on the merits of the matter in view of the fact that the 3rd respondent/plaintiff already passed away during the pendency of the appeal and consequently, the respondents 1 and 2 were brought on record as her legal heirs who are thus entitled to the death benefits as per the decree of the trial Court.

5. Considering the above stated facts and circumstances and also the submissions made by the learned counsel appearing for the appellants, this Court is of the view that there is no

necessity to go into the merits of the matter to give any finding as to whether the deceased mother is entitled to a share or not as it appears to this Court that such lis does not survive any more between the parties in view of the death of the 3rd respondent as early as 25.01.2011 and that the 1st and 2nd respondents were already brought on record as her legal representatives. Therefore, this Court is of the view that there cannot be any impediment for the appellants to disburse the death benefits to the 1st and 2nd respondents. Accordingly, the judgment and decree of the lower appellate Court are set aside on the reason that the lis between the parties does not survive any more. The appeal is disposed of with a direction to the appellants to disburse the death benefits of the deceased Devanesan to the 1st and 2nd respondents herein within a period of eight weeks from the date of receipt of a copy of this order, if not already paid. Accordingly, the Second Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, at Vellore
2. The Additional District Munsiff, at Vellore

+1cc to M/S.N.Rajan, Advocate Sr.39633

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Mp[co]
srg 18/08/2016

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