



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 18.07.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P(MD)No.12509 of 2016

A.Soosai Raj

..Petitioner

Vs

1.The Registrar of Co-operative Societies,
No.170. N.B.Nadarajan Maligai,
Poonthamali High Road,
Kilpauk,
Chennai-10

2.Swaidhas,
Secretary,
Irenipuram Primary Agricultural Cooperative Society,
Killiyoor, Killiyoor Post,
Kanyakumari District

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to hand-over the deposited amount to the Petitioner as a nominee, deposited by the Petitioner's deceased brother Thanislas in S.B.No.10704 and the Fixed Deposit Account Nos.688 and 780 under the second respondent's Co-operative Society and to consider the Petitioner's representation dated 12.3.2016.

For Petitioner :M/s.D.Christenson Jugunu

For Respondents :Mr.N.S.Karthikeyan
Addl.Govt.Pleader

ORDER

Heard both sides.

2.By consent of both sides, the main Writ Petition itself is taken up for final disposal.

3.No counter is filed on behalf of the Respondents.

4.Accounting to the Petitioner, his brother Thanislas, son of Antony and his Wife Ambika residing at Kattuvilai, Kanyakumari District, do not have any children. In fact, his brother Thanislas

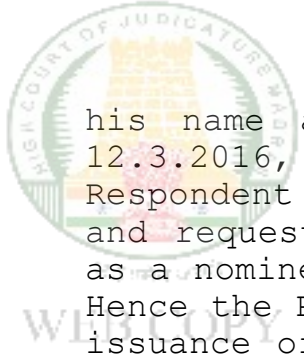


had operated a Savings Account and further, he deposited money in Fixed Deposits in Irenipuram Primary Agricultural Co-operative Society, Killiyoor, Killiyoor Post, Kanyakumari District. His brother nominated the Petitioner as nominee in the Savings Bank Accounts and Fixed Deposits. Also, his brother's wife Ambika, who had deposited a sum of Rs.6 lakhs as Fixed Deposit in the Second Respondent/Society, got expired on 11.09.2008. After her demise, the Petitioner's brother operated his wife's account and transferred the above said Fixed Deposits Accounts in his name and also he nominated the Petitioner in the aforesaid Fixed Deposits in S.B.No.10704 and the Fixed Deposit Account Nos. 688 and 780. Thereafter, the Petitioner took care of his brother and he lived along with him for some time. In the year 2012, the Petitioner was suffering from sickness and he took treatment in a Private Hospital at Nattalam and on compelling circumstance, he and his wife are living separately at Nattalam in a rental house and while-so, the Petitioner's brother met the Petitioner every week on every Sundays.

5.The stand of the Petitioner is that in the year 2009, his brother sold a property belonged to him and the sale consideration of Rs.2,50,000/- and the same was deposited in his account in the Second Respondent/Society. As a matter of fact, his brother had deposited a sum of Rs.8,50,000/- as Fixed Deposit in the Second Respondent/Society.

6.At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that his brother expired on 20.2.2013 and it was informed by one Michael Dhas(who was his friend and residing in the same village) and he had taken away the Fixed Deposit Receipts and some documents from his house and when the same was questioned by the Petitioner and when a request was made to him to hand-over the documents to him, he had not come forward to return back the documents to him. As a matter of fact on 17.12.2013, the Petitioner made a representation to the President of the Second Respondent/Society, as a nominee and request the Second Respondent to return back the said deposited amount to him. But they had not given any reply to him and also he sent a legal notice through his lawyer on 9.2.2016 to the Second Respondent/Society, as a nominee, to return back the deposited amount to him(deposited by his deceased brother Thanislas).Apart from that, the Petitioner made representation to the Superintendent of Police, Kanyakumari District on 15.2.2016 and they had not taken any steps on his representation and the same is kept in cold storage.

7.It transpires that the Second Respondent on 4.3.2016 sent a reply to the Petitioner stating that his brother had submitted a letter before them in his own handwriting to change the nominee from Soosai Raj to A.Peter Johnson. His deceased brother Thanislas had nominated the Petitioner as nominee to the Fixed Deposits made by him and till his death, the Petitioner's brother had not changed the nomination. In deed, the Second Respondent and A.Peter Johnson had colluded together and created a fabricated document and included



his name as a nominee, in the said Fixed Deposits. Further on 12.3.2016, the Petitioner made a representation to the First Respondent to take necessary action against the Second Respondent and requested him to return back the Fixed Deposit amounts to him as a nominee., But the same was not considered by the Respondents. Hence the Petitioner has filed the present Writ Petition seeking for issuance of a direction by this Court to the Respondents to hand-over the deposited amount to him, as a nominee(deposited by his deceased brother Thanislas in S.B.No.10704 and the Fixed Deposit Account Nos.688 and 780 in the Second Respondent's/Society and to consider the Petitioner's representation, dated 12.3.2016.

8.In response, the Learned Additional Government Pleader appearing for the Respondents 1 and 2 brings it to the notice of this Court that a reply Notice was issued on behalf of the Second Respondent/Secretary of the Society, whereby and where-under, it was mentioned that the Petitioner's deceased brother Thanislas had given letter to the Society in and by which he had changed the name of nominee from one Soosairaj to A.Peter Johnson and subsequently, after his demise, the entire deposited amounts were changed in the name of Peter Johnson. Finally, the Petitioner was directed to obtain Succession Certificate from the competent Court, because of the reason that one of the Fixed Deposit Account No.1149 will get matured on 3.2.2017. Viewed in this background, the Petitioner was directed by the Second Respondent/Society to produce the Succession Certificate from a competent Court.

9.It is to be remembered that in Law, the role of a nominee is only to receive the amount from the appropriate authority/person and he/she is not entitled to the deposited amount in any manner. Furthermore, it is the primordial duty of a 'Nominee' to receive the amount/maturity value of the deposit from the Society concerned and to find out as to the legal heirs of person who made the deposit. In this regard, it appears that the petitioner has not made any endeavour.

10.Considering the fact that there is a serious dispute in regard to the entitlement of the Petitioner as a 'Nominee' purported to have been mentioned as a nominee by the Petitioner's deceased brother Thanislas and in this regard, this Court is of the considered view that the Petitioner has to work out his remedy either before the competent Civil forum or he has to obtain a Succession Certificate from the Court concerned under the Indian Succession Act and it is for him to exercise the above option in this regard. It appears that the Petitioner has not taken any steps to obtain either a Succession Certificate from the competent Court of Law and also till date, he had not laid any suit before the competent Civil Court for the entitlement of the Savings Bank Account and Fixed Deposit Amount of his deceased brother lying in the hands of the Second Respondent/Society.



11.Considering the fact that the dispute arising between the parties in the case on hand revolves on the aspect of nominee, at this stage, this Court, without going into the merits of the representation of the Petitioner, dated 12.3.2016 and also not expressing any opinion one way or other, simpliciter, directs the Petitioner to take necessary action in the manner known to Law and in accordance with Law either for obtaining the Succession Certificate under the Indian Succession Act or to file a suit before the competent civil forum impleading the Second Respondent/society as one of the parties to the suit and to seek appropriate remedy, if he so desires/advised. Suffice it for this Court to clearly point out that the Society is only acting based on good faith and indeed, had given a reply dated 4.3.2016 through their Counsel to the Petitioner's counsel (by marking a copy to one Peter Johnson). In view of the above, the Petitioner is directed to take resort to, by approaching the Court concerned either to obtain Succession Certificate under the Indian Succession Act or to approach the competent Civil Court arraying necessary parties as defendants to the suit and to seek appropriate remedy by paying necessary court fee under the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

12.With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs.

Sd/
Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To

The Registrar of Co-operative Societies,
No.170. N.B.Nadarajan Maligai,
Poonthamali High Road, Kilpauk, Chennai-10

+1CC TO MR.D.CHRISTENSON JUGUNU, ADVOCATE IN SR.NO.37559
+1CC TO SPECIAL GOVERNMENT PLEADER IN SR.NO.37268

SDR/SKS-RR/25.07.2016/4P/4C

W.P (MD) No.12509 of 2016

18.07.2016