

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.936 of 2016

Kasiammal

.. Appellant / Apellant
Plaintiff

Versus

1. The Commissioner,
Kammapuram Panchayat Union,
Kammapuram village,
Virudhachalam Taluk.
 2. The Collector,
Cuddalore District, Cuddalore.
 3. Marimuthu,
S/o.Kuppsamy Padayachi
Southkrishnapuram Village, Chidambaram Taluk,
(Working as Night Watchman Co-operative Bank)
 4. Arumugham,
S/o.Nallu Padayachi,
Poondiyankuppam Village,
Virudhachalam Taluk
- .. Respondents/ Respondents
/ Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Decree and Judgement dated 09.02.2009 made in A.S.No.17 of 2008 on the file of Additional District Judge (FTC-III), virudhachalam, confirming the judgment and decree dated 27.07.2005 made in O.S.No.516 of 2000 on the file of Principal District Munsif Court, Virudhachalam.

For Appellant : Mr.D.Baskar

For R1 : Mrs.V.Bhavani Subbaroyan

For R3 : Expired

For R4 : Mr.V.Anand

JUDGMENT

The plaintiff in O.S.No.516 of 2000 on the file of the Court of Principle District Munsif, Virudhachalam, who had lost before the Trial Court and on appeal in A.S.No.17 of 2008 filed before the Court of Additional District Judge, Fast Track Court - III, Virudhachalam, had challenged the concurrent findings rendered by the Courts below in the form of impugned judgments and filed this second appeal.

2. The facts leading to the filing of this Second Appeal, briefly narrated, are as follows:-

[a] The appellant / plaintiff would aver that one Mrs.Chinnammal was employed as a cook in the school in Poondiyankuppam Village, Virudhachalam Taluk and she died on 28.02.2000 and she has no direct legal heir. The husband of late Chinnammal viz., Thiru.Nalla Thambi, predeceased her and after his demise, she was under the care and custody of the appellant/ plaintiff.

[b] The appellant/plaintiff would aver that while she alive, in the Group Insurance Policy, she has nominated the appellant / plaintiff and as such, she is entitled to receive the benefits. The appellant / plaintiff would further state that immediately after the demise of Chinnammal, she approached the first defendant and she was informed that since there is no direct legal heir of chinnammal, she has to get the orders from the Court. It is also stated by the appellant / plaintiff that the defendants 3 and 4 who are not the direct legal heirs of late Chinnammal, started making false claim and also filed suit in O.S.No.540 of 2000 on the file of the very same Court, praying for declaration that they are the legal heirs of late Chinnammal and as such, they are entitled to receive the benefits and also praying for permanent injunction restraining them from disbursing the said benefit in favour of the 2nd defendant/appellant herein and in the light of the rival claim, the plaintiff/appellant herein came forward to file the suit to declare that she is the nominee of late Chinnammal and as such, she is entitled to the benefits due and payable on account of her death and also for permanent injunction restraining the 1st defendant from disbursing the said benefit in favour of anybody and also for costs.

[c] The first defendant has filed the written statement, denying the averments and would contend that the late Chinnammal was employed as a noon meal cook in Poondiyankuppam school from 15.07.1982 and she died on 28.02.2000 and in the nomination she has shown the appellant / plaintiff as the nominee - daughter of her sister and the

defendants 3 and 4 had filed O.S.No.540/2000 on the file of the Principle District Munsif at Virudhachalam and depending upon the result of the suits, to disburse the amount. The defendants 3 and 4 had also filed the written statement refuting the averments made in the plaint and they would contend that plaintiff is not the legal heir of late Chinnammal and she had executed a Will on her own dated 25.02.2000 (Ex.B2) and as such, they are entitled to receive benefits. It is further contended by the them that the 3rd defendant is the elder brother of late Chinnammal and 4th defendant is the son of her brother-in-law and as such, they are the legal heirs to receive the benefits and prays for dismissal of the suit.

[d] By consent of parties, a joint trial in O.S.No.516 of 2000 filed by the appellant / plaintiff as well as in O.S.No.540 of 2000 by defendants 3 and 4 on the file of Principle District Munsif at Virudhachalam has been taken up.

[e] The Trial Court, on a consideration of the pleadings, had framed the following issues:-

- Whether the plaintiff is entitled to decree for declaration and permanent injunction?
- Whether the plaintiff is entitled to the benefits due and payable on account of demise of late Chinnammal?
- To what other reliefs the plaintiff is entitled to?
-

In O.S.No.540 of 2000 filed by the defendants 3 and 4, the following issues were framed:-

- Whether the plaintiffs are entitled to decree for declaration and permanent injunction?
- Whether the plaintiffs are entitled to the benefits due and payable on account of demise of late Chinnammal?
- Whether the Will dated 25.02.2000 is genuine and valid?
- Whether the 3rd defendant is entitled to get the benefit on account of demise of late Chinnammal?
- To what other reliefs the plaintiff is entitled to?

[f] The Trial Court based on the memo filed by the parties, took the evidence in O.S.No.516 of 2000 and treated as evidence in O.S.No.540 of 2000.

[g] During the course of trial, the appellant / plaintiff examined herself as PW1 and examined her son as PW2 and also examined one Ganesan as PW3 and marked exhibits A1 to A3. One Kannan was examined as DW1 and the 3rd defendant examined himself as DW2 and DW3 viz., Solaimuthu and DW4 viz., Narayanasamy were examined and they marked Ex.B1 to B8.

[h] The Trial Court, on a consideration of the pleadings and appreciation of the oral and documentary evidence, dismissed the suit O.S.No.516 of 2000 filed by the appellant / plaintiff. In so far as in O.S.No.540 of 2000, the Trial Court, though held that the Will projected by the defendants 3 and 4 marked as Ex.B3 has not been proved, decreed the suit as prayed for. The appellant / plaintiff aggrieved by the dismissal of the suit filed A.S.No.17 of 2008 and A.S.No.9 of 2008 respectively on the file of the Additional District Judge, Fast tract Court III, Virudhachalam.

[i] The Lower Appellate Court, on consideration of the Memorandum of Grounds and materials placed before it, had formulated the following point for determination:-

- Whether both the appeals are to be allowed and as a consequence the judgment and decree passed by the Courts below are liable to be set aside?

[j] The Lower Appellate Court found that the Will projected by the defendants 3 and 4 marked as Ex.B3 has not been proved ; but at the same time it is taken into consideration the impact of Sections 8, 15 & 16 of the Hindu Succession Act, 1956 and found that as per the legal position, the defendants 3 and 4 who are the heirs of late Chinnammal's husband, are entitled to succeed and therefore, citing the said reasons had dismissed both the appeals filed by the appellant / plaintiff. Challenging the legality of the Judgment and decree passed in A.S.No.17 of 2008 on the file of the Lower Appellate Court, the present appeal is filed.

3. The learned counsel appearing for the appellant/plaintiff would submit that insofar as the second appeal filed in A.S.No.9 of 2008 is concerned, it is yet to be numbered as it is in the condone delay stage.

4. In the Memorandum of Grounds in the Second Appeal, the following Substantial Questions of law are raised for consideration:-

"a. Whether the 1st appellate court was right in granting relief to the 4th respondent by declaring him as legal heir of deceased Chinnammal as per Sections 15 & 16 of The Hindu Succession Act, 1956 , when it is not at all their case pleaded or evidence adduced?

b. Whether the 1st appellate Court was right in having rejected the genuineness of Ex.B.3 the Will dated 25.02.2000, to grant relief to the 4th respondent when no issue has been raised?

c. Is not the 1st appellate Court wrong in coming to its own conclusion that the 4th respondent is the only legal heir of husband of Chinnammal and hence he is entitled to the death benefits of deceased Chinnammal?

d. Is not the 1st appellate Court wrong in granting relief on its own and on presumptions of facts, when burden to prove such facts lies on the propondering party?"

5. The learned counsel appearing for appellant / plaintiff would contend that in the light of the nomination made by the deceased Chinnammal in favour of the appellant/plaintiff marked as Ex.B2 dated 15.07.1997, there cannot be any impediment on the part of the defendants 1 and 2 to settle the benefits payable on account of demise of late chinnammal and without properly appreciating the factual aspects and legal position, had erroneously rejected the claim and prays for setting aside the judgment and decree passed by the Lower Appellate Court.

6. Per contra, the respective learned counsel appearing for respondents 1 and 2 would contend that the Lower Appellate Court on correct application of mind found that merely because the appellant/plaintiff is shown as nominee, she is not automatically entitled to get the benefits by way of the provisions under sections 8, 15 and 16 of the Hindu Succession Act, 1956 and the Lower Appellate Court has rightly reached the conclusion to reject her claim and since the finding rendered by the Courts below are concurrent in nature, this Court, in exercise of jurisdiction under section 100 of the Civil Procedure Code, 1908, may not interfere with the same.

7. This Court has considered the rival submissions and also perused the materials placed before it.

8. Section 39 of the Insurance Act, 1938, enables the holder of the policy, while effecting the same, to nominate a person to whom, the money secured by the policy shall be paid in the event of his/her death and the effect of such nomination has been considered by the Honourable Supreme Court of India in the decision reported in the case of Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani [(2000) 6 scc 724] , wherein, in paragraph NO.10, it has been held thus:-

''...

10..The nomination only indicated the hand which was authorised to receive the amount on the payment of which the insurer got a valid discharge of its liability under the policy during his lifetime and the nominee acquired no sort of interest in the policy during the lifetime of the policy-holder. On the death of the policy-holder, the amount payable under the policy became part of his estate which was governed by the law of succession applicable to him. Such succession may be testamentary or intestate. Section 39 did not operate as a third kind of succession which could be styled as a statutory testament. A nominee could not be treated as being equivalent to an heir or legatee. The amount of interest under the policy could, therefore, be claimed by the heir or legatee. The amount of interest under the policy could, therefore, be claimed by the heirs of the assured in accordance with the law of succession governing them". Similar view has been taken by the Delhi High Court in S.Fauza singh v. Kuldip Singh and Uma Sehgal [AIR 1978 Del 276] v. Dwarka Dass Sehgal [AIR 1982 Del 36] said judgment laid down the proposition that nominee under section 39 of the Insurance Act, 1938 is nothing more than an agent to receive the money due under a Life Insurance Policy. In the circumstances, similar to those in the present case and the money remains the property of the assured during his life time and on the demise forms part of subject to the law of succession applicable to him. In the light of the settled legal position, the appellant/plaintiff has been nominated by the deceased under Ex.B2 is not entitled to proceed the benefits automatically and it is subject to law of succession."

9. In the light of the said legal position, the question of Law No.[c] raised by the appellant is answered in negative and insofar as the substantial question of law No.[a] is concerned, the 3rd respondent / 3rd defendant elder brother of deceased Chinnammal and 4th respondent is the son of Chinnammal's brother-in-law. The relevant legal position under section 8,15 and 16 of the Hindu Succession Act, 1956, have been considered by the Lower Appellate Court and found in the light of the law of succession, they are entitled to receive the benefits. It is also to be pointed out at this juncture that

though the Trial Court has held the validity of the Will (Ex.B3) dated 25.02.2000, projected by the respondents 3 and 4, before the Lower Appellate Court, the alleged Will has not been proved and however granted the relief in their favour, in the light of the law of succession as per the above said provisions of the Hindu Succession Act,1956. Therefore, substantial questions of law [a] and [b] are also answered in negative against the appellant/plaintiff.

10. The respondents 3 and 4, through the testimony of independent witnesses had probablised their case that they are the legal heirs of late Chinnammal's husband and therefore substantial question of law No.[b] answered negative against the appellant/plaintiff.

(s) This Court, on an independent application of mind and also perusing the entire materials placed before it is of the considered view tht the Lower Appellate Court, on proper appreciation of facts and on correct application of law, had rightly reached the conclusion and dismissed the appeal filed by the appellant/plaintiff. In so far as the non entitlement of the appellant/plaintiff as to the death benefits of the late Chinnammal, findings rendered by the Courts below are concurrent in nature. In the considered opinion of the Court, there is no merit in the Second Appeal.

13. In the result, the Second Appeal is dismissed, confirming the judgments and decrees passed by the Courts below. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sk/rka

To

1. The Additional District Judge (FTC-III),
Virdhachalam,
2. The Principal District Munsif,
Vridhachalam.

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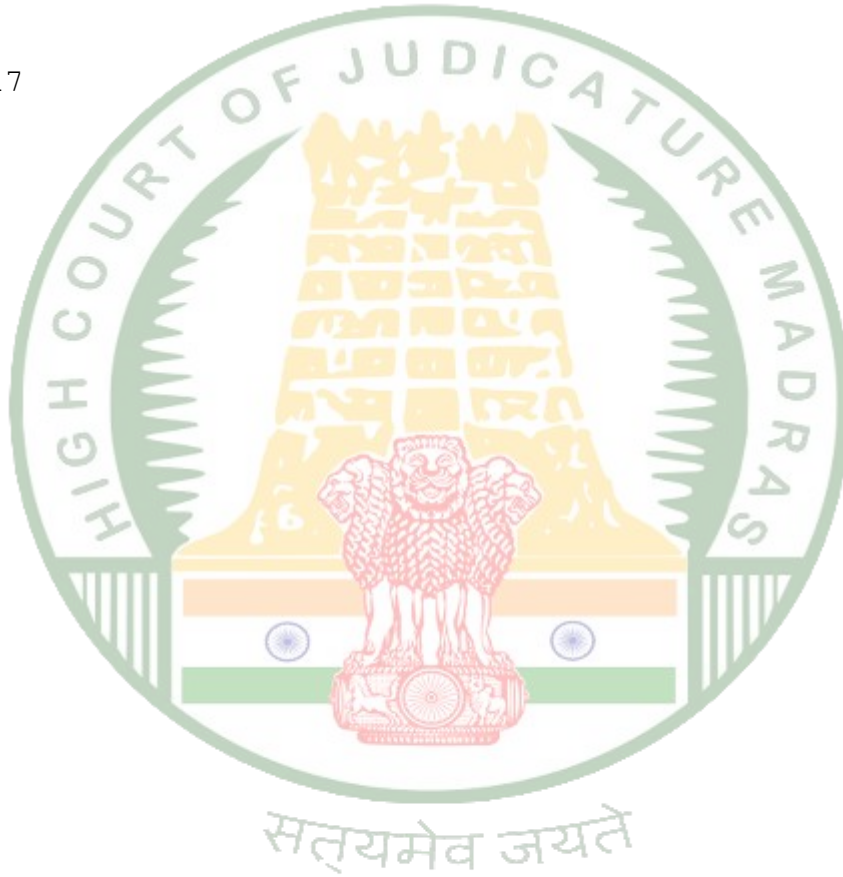
The Section Officer
VR Section, High Court,
Madras.

+1cc to Mr.D.Baskar, Advocate, S.R.No.26122

+1cc to Mr.V.Anand, Advocate, S.R.No.25846

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PPA(CO)
CS/21/07/17



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