

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.11.2018

Delivered on : 27.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.396 of 2018

Mrs.Ayeethal ...Appellant/1st Respondent/Plaintiff

Vs

1.Mrs.Kalyani ...1st Respondent/Appellant/1st Defendant

2.State of Tamil Nadu rep. by the
Assistant Director of Handloom & Textiles,
Bharathi Park II Street, Saibaba Colony,
Coimbatore.

3.State of Tamil Nadu rep. by the
Accountant General, Teynampet,
Chennai. ...Respondents 2 & 3/Respondents
2 & 3/Defendants 2 & 3

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the order passed in A.S.No.33 of 2014 dated 24.10.2017 on the file of the Honourable III Additional District and sessions Judge, Coimbatore reversing the Judgment and decree passed in O.S.No.939 of 2011 dated 06.11.2013 on the file of the Honourable II Additional Subordinate Judge, Coimbatore.

For Appellant : Ms.V.S.Usha Rani

O R D E R

The above Second Appeal is filed by the plaintiff who has been non suited by the Judgment and Decree in O.S.NO.939 of 2011 by the II Additional Subordinate Judge, Coimbatore which Judgment and Decree had been confirmed by the Principal District Judge, Coimbatore whose decree in O.S.No.939 of 2011 by the II Additional Subordinate Judge, Coimbatore has been reversed in A.S.No.33 of 2014 by the III Additional District and sessions Judge, Coimbatore.

2.The parties are referred in the same array as in the suit O.S.No.939 of 2011.

3.The plaintiff had filed the suit in O.S.No.939 of 2011 on the file of the II Additional Subordinate Judge, Coimbatore for partition of her half share in the Gratuity and Provident Fund amounts due to her deceased son K.C.Manickam. It is a case of the plaintiff that the deceased K.C.Manickam who was the son of plaintiff and the husband of first defendant had died intestate on 23.09.2010. Besides K.C.Manickam, the plaintiff had another son namely K.C.Balasubramaniam and daughter K.C.Maragatham. The plaintiff's husband had died intestate on 23.08.2003. The said K.C.Manickam was employed as a Textile Control Officer in the Kovilvali Handloom Weavers Co-operative Society and was working under the control of the Officer of the Assistant Director of Handloom and Textiles, Coimbatore.

4.On his death, the plaintiff and the first defendant as a Class I heirs of the deceased K.C.Manickam were entitled to a half share each in the Gratuity and Provident Fund. It was her case that despite several letters to the second defendant, the second defendant had not paid the Gratuity amount to the plaintiff as also the Provident Fund. She would contend that her Daughter-in-law/1st defendant is manipulating records in order to get the entire benefits exclusively to herself. The plaintiff would further state that she had come to understand that sum of Rs.8,60,314/- was available with the Second defendant as Gratuity and sum of Rs.1,33,176/- as Provident Fund. She was therefore entitled to sum of Rs.4,96,545/-. She would contend that the defendants were all ganging up against her in order to give the entire benefits to her Daughter-in-law/1st defendant. Therefore left with no other alternative, she was constrained to file the present suit.

5.The second defendant had filed her written statement inter alia contending that the plaintiff is living under the care and custody of her daughter at Gopichettipalayam and further the present case was a counter blast to the partition suit filed by the first defendant against the plaintiff in O.S.No.513 of 2001 and the same is pending on the file of the District Court, Coimbatore. The first defendant would contend that she was the only person entitled to the Gratuity and the Provident Fund as per the Rules. She therefore sought for the dismissal of the suit.

6.The 3rd defendant herein had filed a written statement inter alia denying the claim of the appellant by contending that

the pensionary benefit due to K.C.Manickam was governed by the provisions of the Tamil Nadu Pension Rules 1978 and General Provident Fund (Tamil Nadu) Rules . The 3rd defendant had submitted that as per the order of the 2nd defendant the enhanced family pension and normal family pension was paid to the first defendant who is the wife of deceased Government servant. Since the said K.C.Manickam had not made a nomination for the DCRG amount and also General Provident Fund (Tamil Nadu Rules) it was the first defendant who was entitled to the same.

7.The 3rd defendant had submitted that as per the Tamil Nadu Pension Rules, in case, if the Government Servant had not made any nomination for the DCRG, the Gratuity would only be payable to the first defendant as per Rule 46(1) of the Tamil Nadu Pension Rules 1978. Since, deceased K.C.Manickam did not make any nomination with his employer. Therefore the defendant had sought for dismissal of the suit. The second defendant had also admitted the very same contentions that had been raised by the third defendant.

8.The learned II Additional Subordinate Judge, Coimbatore, had framed the following issues:

1.Whether the plaintiff is entitled for $\frac{1}{2}$ share in the death benefit of the deceased Manickam?

2.Whether the plaintiff is not entitled to share in the Gratuity?

3. To what other relief?

The learned II Additional Subordinate Judge has answered the issues in favour of the plaintiff by contending that the plaintiff was a Class I heir of the deceased K.C.Manickam and under the Hindu Succession Act, she was entitled to a half share in the benefits that had accrued to her son. The learned Judge has proceeded on the presumptions that the first defendant had been nominated to receive the DCRG of the deceased K.C.Manickam and therefore applying the provisions of the Hindu Succession Act, the plaintiff a being Class I legal heir of the deceased K.C.Manickam was entitled to a share in the suit schedule properties.

9.This Judgment and Decree was taken up on appeal by the first defendant in A.S.No.33 of 2014 on the file of the III Additional District and sessions Judge, Coimbatore. The learned III Additional District and sessions Judge, Coimbatore by his Judgment and Decree dated 24.10.2017, reversed the Judgment and Decree of the II Additional Subordinate Judge, Coimbatore in O.S.No.939 of 2011. The learned District Judge has held that the provisions of the Tamil Nadu Pension Rules would apply and applying the provisions of Order Rule 46(1)(b) , the Gratuity was payable only to the surviving members of the family as described in clause (i), (ii) and (iv) of Sub-Rule 5 of Rule 45.

The learned Judge has clearly made a distinction that the members of the family who have been described in clause (v) to (xi) of Sub-Rule 5 of Rule 45. The learned Judge had taken note of the fact that there was no nomination made by the said K.C.Manickam and therefore applying the provisions of Rule 46(1) (b) the amount was to be disbursed to the first defendant. The plaintiff had contended in her plaint that the amount were disbursed mechanically by the defendant Nos.2 and 3. The Appellate Court has considering this argument and has answered this point against the plaintiff by stating that no proof has been filed on the side of the plaintiff to show that she had made representation to defendant Nos.2 and 3. The Appellate Court, therefore, allowed the appeal and reversed the Judgment and Decree of Trial Court.

10.Challenging this Judgment and Decree, plaintiff is before this Court by way of a Second Appeal.

11.On 15.11.2018, the matter came up for admission. Ms.Usha Rani, learned counsel who argued on behalf of the appellant/plaintiff would contend that the Lower Appellate Court has totally overlooked the provisions of the Payment of Gratuity Act which, according to her, was applicable for disbursement of Gratuity of the deceased K.C.Manickam. She would further argue that the property in question (in the instant case Gratuity and Provident Fund amounts) are retained in trust for all the legal representatives and therefore the first defendant cannot claim exclusive right to the retirement benefits of late K.C.Manickam. She drew the attention of this Court to Section 2 (h) of the Payment of Gratuity Act, 1972, which reads as follows:

"h."family" in relation to employee, shall be deemed to consist of-

i)in the case of male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and the children of his predeceased son, if any,

ii)in the case of female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any"

She also relied upon the following Judgments in support of a case:

i)Gangubai Bhagwan Salawade and others Vs. Chimanabai Suryabhan and Others reported in CDJ 2005 BHC 310

ii)Lakshmi Priyadarshini Vs. Kamalamma and Another reported in CDJ 2014 Kar HC 260

iii)Lakhan Bai Vs. Rambai and Others reported in CDJ 2015 Ch HC 086

12. Heard the counsel and perused the records. The entire fulcrum of the argument of the appellant rests on the fact that Section 2(f) of the Payment and Gratuity Act, 1972, which describes the family includes the appellant as a class I heir on par with the wife and children. It is an admitted fact that the late K.C.Manickam was State Government employee. A reading of Section 2(c) of the Payment of Gratuity Act, would indicate that a person holding the post under the Central Government or State Government and governed by any other Act or any other Rules are left out from the definition of employee as found in the Payment of Gratuity Act. Therefore, the Payment of Gratuity Act, 1972 would not apply to the case of K.C.Manickam. Therefore the Appellate Court was correct in law in applying provisions of the Rule 46 (1) (b) read with Rule 45 of the Tamil Nadu Pension Rules for excluding the appellant. The provisions have been extracted in the Judgment of the Court below and there is no necessity for repeating the same. Suffice it to say that in view of the provision of Rule 46(1)(b) read with Rule 45 of the Tamil Nadu Pension Rules, there is no infirmity in the Judgment and Decree passed by the III Additional District and sessions Judge, Coimbatore.

In the result, this Second Appeal is dismissed and the order passed in A.S.No.33 of 2014 by the III Additional District and sessions Judge, Coimbatore is confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

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सत्यमेव जयते Sub Assistant Registrar

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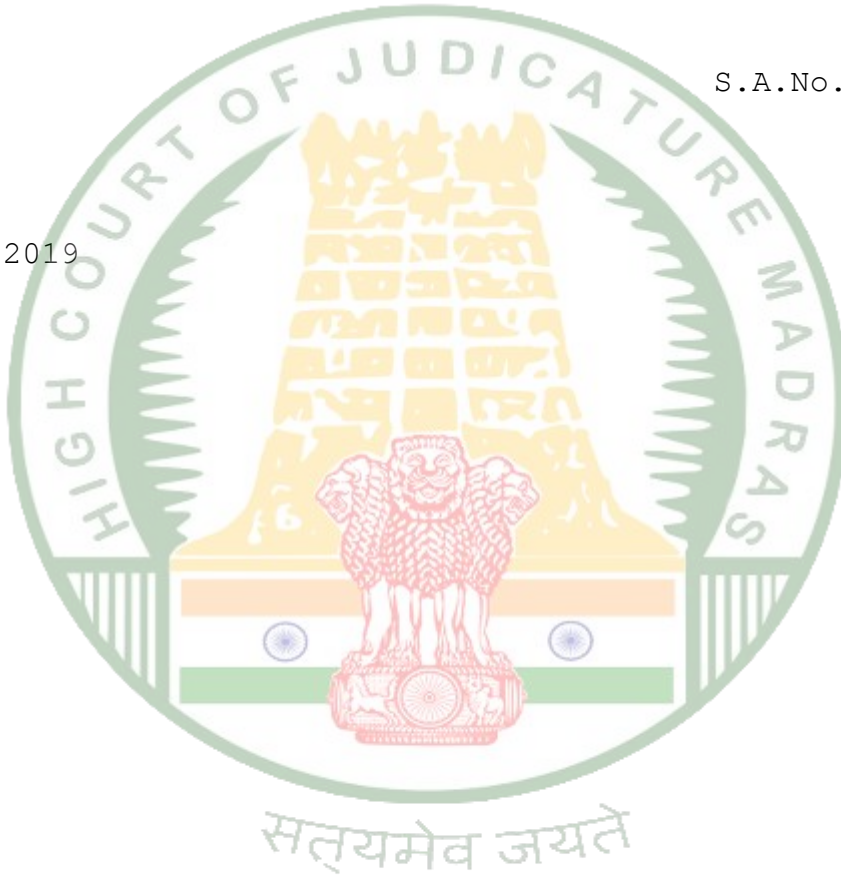
- 1.The III Additional District and sessions Judge,
Coimbatore.
- 2.The II Additional Subordinate Judge,
Coimbatore.

3.The Section Officer,
VR Section, High Court, Madras-104.

+lcc to M/S.V.S.Usha Rani, Advocate Sr.80785

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