



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

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C.R.P. (NPD) (MD) No.2156 of 2017
and C.M.P. (MD) No.10630 of 2017Sasikala ... Petitioner/1st respondent/1st Defendant

-Vs-

1. Angammal ... Respondent/Petitioner/Plaintiff

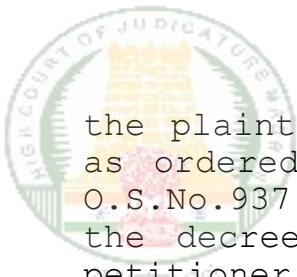
2. Union of India
Rep. by its Secretary,
Ministry of Defence, North Block,
New Delhi.3. Col.A.S.Chand,
Officiating Officer in Charge,
Record Office,
Madras Engineering Group,
Bengaluru-560 004.4. The Commanding Officer,
Headquarters, Depot BW,
Madras Engineering Group and Centre,
Bengaluru-560 042. ... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order passed in E.P.No.6/2017 in O.S.No.937/2014 dated 17.08.2017 by the Hon'ble I Additional Subordinate Judge, Tiruchirappalli and to issue suitable orders or directions to the Hon'ble execution Court.

For Petitioner : M/s.T.Banumathy
For R1 : Mr.P.Arun Jayatram
For R2 to R4 : No Appearance

ORDER

The revision petitioner is the 1st defendant in O.S.No.937 of 2014 on the file of the learned I Additional Subordinate Judge, Tiruchirappalli and in the suit, the plaintiff sought for a direction to the 1st defendant for repayment of half share amount of the plaintiff to the tune of Rs.2,80,387/- of the deceased Sivakumar's total terminal benefits of Rs.5,60,774/- received from the third respondent/defendant. The suit was decreed in favour of the plaintiff on 07.06.2012, thereby directing the 1st defendant to pay the half share with 12% interest from the date of receipt of the amount in her hand till the date of payment by the 1st defendant to



the plaintiff. Since the 1st defendant had not deposited the amount as ordered by the Court, the plaintiff filed E.P.No.6 of 2017 in O.S.No.937 of 2014 for attachment of her salary for realisation of the decree amount. Challenging the said order of attachment, the petitioner is before this Court.

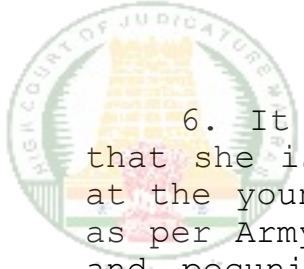
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2. It is the case of the revision petitioner that she is the wife of the deceased Sivakumar and her husband died in harness on 11.12.2001, while he was in Army and the plaintiff is her mother-in-law. As per the Rules of the Army, the wife alone is entitled to receive the benefits of the deceased husband and the applicability of the personal law of Succession does not arise at all. It is the further case of the revision petitioner that suppressing the above facts, the plaintiff claimed half share in the terminal benefits by repeatedly relying upon the provisions of Hindu Law of Succession and filed the suit and the Trial Court, without properly appreciating the same, has simply ordered to attach the salary of the 1st defendant and the said order is against the provisions of law.

3. The revision petitioner states that she has preferred an appeal against the judgment passed in the suit, which is in SR stage for condonation of delay of 12 days and the plaintiff also cast her appearance in the appeal through her counsel. Despite knowing the fact of pendency of appeal, she has filed an Execution Petition for attachment of her salary and the said petition was disposed of speedily in a biased manner. She further states that she was appointed as Junior Assistant in the Local body Administration under the District Collector, Trichy on compassionate ground for the death of her husband. Contending that the order of the Trial Court is per se illegal, it is prayed that the order is liable to be set aside.

4. Learned counsel for the plaintiff has contended that the petitioner / 1st defendant got married to the son of the plaintiff just three months prior to the death of her son and the main intention of the 1st defendant is to swallow the entire terminal benefits without bothering about the order passed in the suit. He has further contended that the 1st defendant is only a nominee, authorized to receive the benefits of her deceased husband for the purpose of sharing it among other legal heirs of the deceased and she is not entitled to withhold the entire money with her without disbursement to other legal heirs. Moreover, there is a delay in preferring appeal by the 1st defendant and the same is pending for condonation of delay. Hence, there is no error in the order of attachment passed by the order of the Trial Court and the petition is liable to be dismissed in limine.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st defendant. There is no representation for R2 to R4. This Court perused the material documents available on record.



6. It is the stand of the revision petitioner / 1st defendant that she is the wife of the deceased Army Man and lost her husband at the young age, as her husband died in harness. According to her, as per Army Rules, the wife is entitled to receive all the monetary and pecuniary benefits applicable to the deceased husband, but, however, she has fairly conceded that the mother of the deceased Army personnel is entitled to share in the pension. Though she had raised such a plea before the Trial Court, there is no discussion with regard to the said contention by the Trial Court in the judgment and it had merely applied the usual laws applicable to laymen, which forced the petitioner / 1st defendant to file appeal against the said judgment, which is admittedly in SR stage with delay of 12 days. It is relevant to point out here that when the appeal is pending, without knowing its fate, attachment of salary of the revision petitioner is detrimental to her interest. Of course, it is true that the plaintiff is an old aged mother of the deceased person and had her son been alive, he would have taken care of his mother both financially and morally. At the same time, the interest of the petitioner/1st defendant, who is a widow cannot be brushed aside, leaving her at lurch without financial support. The only consolation for her is the present job and the income being derived from the employment and attachment of salary will surely cause hardship to the petitioner, as nothing will compensate the loss occurred on account of her husband's death. Therefore, in the considered opinion of this Court and in the interest of justice, the order of the Trial Court is liable to be set aside.

7. In the result,

a) this civil revision petition is allowed and the order passed in E.P.No.6/2017 in O.S.No.937/2014 dated 17.08.2017 by the Hon'ble I Additional Subordinate Judge, Tiruchirappalli, is hereby set aside;

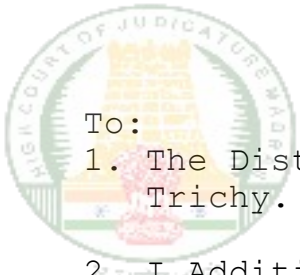
b) learned District Judge, Trichy is directed to pass necessary orders on the pending I.A.No.67 of 2017 filed by the petitioner / 1st defendant for condonation of delay in preferring appeal (pending in ASSR No.5917 of 2016), within a period of two weeks from the date of receipt of a copy of this order, if already not passed.

c) It is made clear that whatever is observed herein-above is only for the purpose of deciding this petition alone and the Trial Court shall proceed with the matter purely on merits and in accordance with law, being uninfluenced by anything stated hereinabove, while deciding the petition for condoning the delay.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/



To:

1. The District Judge,
Trichy.

2. I Additional Subordinate Judge,
Tiruchirappalli.

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+1CC to M/s.T.Banumathy, Advocate, SR.No. 61436

C.R.P. (NPD) (MD) No.2156 of 2017
16.04.2018

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