



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)No.256 of 2013
and M.P(MD)No.3 of 2013

M.Vellaichamy

... Appellant/3rd Party

Vs.

1.The District Manager,
Virudhunagar District Central Co-operative Bank,
Madurai Road, Virudhunagar,
Virudhunagar District.

2.The Branch Manager,
Virudhunagar District Central Co-operative Bank,
Madurai Road, Virudhunagar,
Virudhunagar District.

... Respondents 1 & 2/
Respondents 1 & 2

3.M.Rajeswari (died)

... 3rd Respondent/Writ Petitioner

4.Kandhammal

5.Minor Ramkumar

... Respondents 4 & 5

(R.5 rep. by R.4)

(R4 & R5 are brought on record as legal representatives
of the deceased R3 vide order dated 12.07.2018
made in M.P(MD)Nos.1 to 3 of 2014 in
W.A(MD)No.256 of 2013)

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent
against the order, dated 11.02.2013 made in W.P(MD)No.16236 of 2012,
on the file of this Court.

Prayer in WP(MD). 16236/ 2012 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court Pleased to issue a Writ of
Mandamus, directing the respondents herein to disburse wht sum of
Rs. 8,50,000/- vide Certificate Nos. 025743, 025735, 005292, 025703,
001242, 025705, 025894, 025960 and 014192 to the petitioner as
nominee of late K.R.Muthusamy together with reasonable rate of
interest after the date of Maturity of each deposit within a
reasonable time and pass such further or other orders as this Hon
ble court may deem fit.



For Appellant : Mr.J.Barathan

For R - 2 : Mr.D.Shanmuga Rajasethupathy

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JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)

This Writ Appeal is preferred by the appellant/third party challenging the order, dated 11.02.2013 passed in W.P(MD)No.16236 of 2012, wherein, this Court had issued a Writ of Mandamus, directing the respondents, who are the District Manager and Branch Manager of Virudhunagar District Central Co-operative Bank, to disburse the sum of Rs.8,50,000/- to the writ petitioner as the nominee of late K.R.Muthusamy together with interest.

2. The appellant is the third party, who had obtained leave of this Court to file this Writ Appeal. The appellant is the only son of the deceased K.R.Muthusamy. Admittedly, there are deposits made by his father in the respondent Bank for a sum of Rs.8,50,000/-. It is also admitted that the writ petitioner-Rajeswari was the nominee. Before the learned Single Judge, it was averred that the writ petitioner in her capacity as nominee had approached the Bank to disburse the amount lying in the fixed deposits and as there was no response, a Writ of Mandamus was sought to be filed.

3. It is settled principle that nominee is only a custodian and the money that may be received by the nominee should be kept for the interest of others, who are otherwise legally entitled to. It is, in fact, to be noted that the Banks and the Insurance Companies get the names of the nominee even at the time of accepting the deposit or issuing the policy.

4. Be that as it may, it appears from the records that there is a civil suit in O.S.No.273 of 2011 on the file of the Principal District Munsif, Srivilliputhur. The said suit is filed by the appellant herein for the relief of declaration that the appellant and his mother are the legal heirs of the deceased Muthusamy and that the suit properties exclusively devolve on them after the death of the said Muthusamy. The said deposits in dispute now, are also shown as item No.4 in the suit schedule properties.

5. The learned counsel appearing for the appellant/third party vehemently contended that the Writ of Mandamus itself ought not to have been issued, when there is no statutory right or statutory duty on the person to receive the direction. It is further alleged that the writ petitioner had not even brought to the knowledge of this Court about the pendency of the suit, though the Writ Petition is filed only in the later point of time. Therefore, it is alleged by



the learned counsel for the appellant/third party that the writ petitioner is guilty of suppressio veri and suggestio falsi.

6. It is to be noted that the nominee being a person authorised to receive the money, would receive it on behalf of other persons, who are otherwise legally entitled and keep in trust on for others. It is also settled proposition that the nominee cannot claim full rights over the money lying in the account, as the relief sought for would not vest any right on the person. In other words, the nominee cannot claim ownership in the money lying in the account. The amounts received by the nominee would form part of the estate of the deceased depositor and it should be distributed as per the Rule of Succession to which the parties are governed.

7. Section 45-ZA of the Banking Regulation Act, 1949, gives power to the nominee to receive the money from the Bank on the death of the depositor. It is also to be noted that the nomination made by the depositor can be varied or cancelled in the prescribed manner at any point of time. The act of furnishing nomination is only to simplify the procedure of the Bank and not to hold the money for longer period, till the dispute, if any, is resolved between the legal heirs.

8. In the instant case, as the appellant had already filed a suit for declaration showing the bank deposits as item No.4 of the suit schedule properties, it is open to him to get the suit decreed in his favour and claim the amount in the manner known to law. It is also now stated that the said nominee is no more and she suffered an unnatural death. It is the request of the learned counsel for the appellant/third party that the reference of the writ petitioner as the daughter of the deceased Muthusamy-depositor in the order passed in the writ petition should not influence the civil suit while deciding the suit.

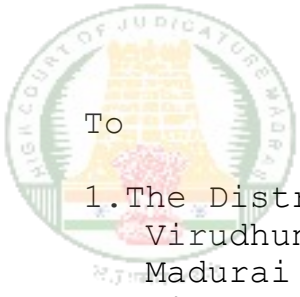
9. Though the learned Single Judge has referred the deceased Muthusamy as father of the writ petitioner only for the purpose of understanding, however, it is made clear that the civil Court while dealing with the case is to try the same uninfluenced by the said reference.

10. In the light of the above discussion and the fact that the civil suit is still pending, it is open to the appellant/third party to get the appropriate remedy before the civil Court by contesting the same. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/



To

1.The District Manager,
Virudhunagar District Central Co-operative Bank,
Madurai Road,
Virudhunagar,
Virudhunagar District.

2.The Branch Manager,
Virudhunagar District Central Co-operative Bank,
Madurai Road,
Virudhunagar,
Virudhunagar District.

+1CC TO MR.D.SHANMUGARAJA SETHUPATHI, ADVOCATE IN SR.NO.79436.
+1CC TO MR.T.R.JEYAPALAM, ADVOCATE IN SR.NO.79169.

PS

DS RP SAR-1 03.10.2018 4P/5C

W.A (MD) No.256 of 2013
20.08.2018