

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.No.558 of 2009

and

M.P.No.1 of 2009

1.V.Devaki

2.S.Thulasinathan

3.S.Mangal

4.Vairam

....Appellants/Plaintiffs 2 to 5

vs.

1. The Senior Divisional Manager,
L.I.C.of India,
Arcot Road, Vellore,
Vellore District.

2. The Manager,
L.I.C.of India,
Gudiyattam,
Vellore District.

3.Geetha

4. Minor Naresh,
rep.by mother/guardian GeethaRespondents/Defendants

Second Appeal is filed against the judgement and decree dated 28.11.2008 passed by the Subordinate Judge, Gudiyattam, A.S.No.29 of 2008 reversing the judgement and decree dated 01.04.2008 passed by the District Munsif, Gudiyattam, in O.S.No.350 of 2001.

For appellants :: Mr.N.Manokaran

For Respondents :: Mr.S.S.Swaminathan
for R1 and R2

Mr.T.Dhanyakumar for R3 and R4

JUDGEMENT

This second appeal is focussed by the plaintiffs 2 to 5 in the suit as against the judgement and decree dated 28.11.2008, passed by the Subordinate Judge, Gudiyattam, in A.S.No.29 of 2008, reversing the judgement and decree dated 01.04.2008,

passed by the District Munsif, Gudiyattam, in O.S.No.350 of 2001, which was one for permanent and mandatory injunction.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. The facts of the case in nutshell are as under:

(i) The suit O.S.No.350 of 2001 was filed by the original plaintiff seeking the following reliefs:

"a) to direct the defendants 1 and 2 to pay amounts due under the policies detailed in the schedule hereunder to defendants 3 and 4 by means of a permanent injunction in any manner either by themselves or through their men etc.

b) to direct the defendants to pay 1/3rd share of the benefits at total amounts of the policies detailed in the schedule hereunder to the plaintiff by means of a mandatory injunction.

c) and to direct the defendants to pay the costs of the suit"

(ii) Originally the suit was laid by the mother of the deceased Vasudevan, seeking 1/3 share in the policy amount, payable to the deceased, along with 3rd and 4th defendants, who are none other than the wife and minor child of the deceased.

(iii) The suit was laid as against the official defendants 1 and 2, viz., the Insurance Company and defendants 3 and 4, viz., wife and minor child of the deceased Vasudevan, on the main ground that the said Vasudevan was working in Govindapuram Primary Rural Development Agricultural Bank C 2541, Gandhi Enagar, Gudiyattam Taluk and he died intestate on 18.01.2001, leaving behind his mother-the original plaintiff, defendants 3 and 4, viz., wife and minor son, as his legal heirs. During his life time, he obtained certain policies from the Life Insurance Corporation of India/the first and second defendants. It is the case of the original plaintiff that even if the deceased had mentioned any nominee in the policies, that nominee alone is not entitled to the benefits of the policies, but all legal heirs of the deceased are entitled for the same. As per law, the original plaintiff/mother of the deceased is entitled to 1/3rd share in the policy amount. When the original plaintiff approached the defendants 1 and 2/Insurance Company, she could not get proper answer and hence, she issued legal notice to the defendants claiming her share in the policy amount. Thereafter, she filed a suit seeking the relief as stated supra.

(iv) During the pendency of the trial, the original plaintiff, viz., the mother of the deceased, died and therefore, her legal representatives pursued the litigation on the ground that they succeeded to the estate of the original plaintiff Jagadammal and they are entitled to get the benefits of the said Jagadammal.

(v) The defendants 1 and 2/Insurance Company, resisted the suit raising various pleas.

(vi) Whereupon issues were framed.

(vii) During trial, on the plaintiffs' side one Thulasinathan was examined as P.W.1 and Exs.A1 to A4 were marked. On the defendants' side D.Ws.1 to 3 were examined and Exs.B1 to B13 were marked.

(viii) Ultimately, the trial Court partially decreed the suit as under:

"1.The defendants 1 and 2 are restrained from disbursing Rs.19,170/- to the 3rd defendant for 3 months from this date within which time, the plaintiffs are to proceed legally to get their share and entitlement from the 3rd defendant and in which case the defendants 1 and 2 are at liberty to disburse the amount as per their rules.
2.The suit is dismissed in respect of the mandatory relief."

(ix) As against the judgement and decree of the trial Court, the defendants 3 and 4 have preferred appeal in A.S.No.29 of 2009, before the Subordinate Judge, Gudiyattam, whereupon the first appellate Court, by judgement and decree, dated 28.11.2008, reversed the judgement and decree of the trial Court and allowed the appeal. As against the judgement and decree of the first appellate Court, the present Second Appeal has been filed by the plaintiffs in the suit.

4.The Second Appeal was admitted by this Court, vide order dated 26.06.2009, on the following Substantial Question of Law:

"Whether the lower Appellate Court is correct in ignoring the legal position that the decision taken in the Interlocutory Application with regard to legal heirs would act as resjudicata for the subsequent proceedings in the same case?".

5.The learned counsel appearing for the appellants would submit that the original plaintiff, who laid the suit, being the mother of the deceased, was entitled to 1/3 share of the estate of the deceased, along with the wife and minor child of the deceased. But, before she could receive 1/3 payment of the policy amount, unfortunately, she died and therefore, the legal representatives of the mother were brought on record. Though the trial Court had agreed with the submission of the plaintiffs, however, ultimately did not grant the prayer for grant of 1/3 payment, which the deceased mother was entitled to get, to the legal representatives of the deceased mother and the trial Court has in fact directed the parties to file a separate suit, after assessment of the exact amount due to them, since the original suit laid by the deceased mother did not provide scope for adjudication of the actual payment to be payable to the mother.

6.The learned counsel for the appellants/plaintiffs would also submit that though the trial Court has reserved the right of the plaintiffs to pursue their remedy by filing a separate suit and also injuncted the Insurance Company from disbursing 1/3 amount to the third defendant therein, when the appeal was filed, at the instance of the defendants 3 and 4, viz., the wife and minor son of the deceased, the first appellate Court, unfortunately, has allowed the appeal and set aside the judgement and decree of the trial Court. According to the appellate Court, once the mother of the deceased died, her legal heirs cannot become the legal heirs of the deceased Vasudevan and therefore, they are not entitled to any share in the estate of the deceased. The learned counsel would submit that this conclusion by the appellate Court is completely incorrect and cannot be sustained in law for the simple reason that the suit was originally laid by the mother, who cannot be denied her right in the estate of the deceased as being Class-I legal heir and while the suit was pending, she died and therefore, her share would devolve upon her legal heirs. Unfortunately, the appellate Court, which considered the appeal, at the instance of the defendants 3 and 4 in the suit, had overturned the trial Court's verdict completely and discountenanced the claim of the legal heirs of the deceased mother. The learned counsel for the appellants/plaintiffs would, therefore, submit that the judgement and decree of the appellate Court are liable to be interfered with.

7.According to the learned counsel for the Insurance Company, the respondents 1 and 2/Insurance Company will abide by the judgement to be passed by this Court in this Second Appeal and whatever be the directions issued by this Court, the Insurance Company shall comply with the same.

8. On behalf of the respondents 3 and 4, it is submitted by the learned counsel that the appellate Court is correct in passing the judgement and decree reversing the findings of the trial Court and also the ultimate direction given by the trial Court. Once the mother died, her legal heirs would not become legal heirs of the deceased Vasudevan. Therefore, it is the wife and minor child alone are entitled to the amount payable under the policy to the deceased/policy holder. Therefore, the appellate Court has rightly held in favour of the respondents 3 and 4 herein and the judgement and decree of the appellate Court do not suffer from any legal infirmities and therefore, the Second appeal is liable to be dismissed.

9. Heard the learned counsel Mr.N.Manoharan, appearing for the appellants/plaintiffs and Mr.S.Swaminathan, the learned counsel appearing for respondents 1 & 2/Insurance Company and Mr.T.Dhanyakumar, learned counsel appearing for R3 and R4 and also perused the pleadings and materials placed on record.

10. Considered the submissions made by the learned counsels appearing for the parties. Before the trial Court, the plaintiffs partially succeeded in obtaining an injunction restraining the Insurance Company from disbursing a portion of the amount payable to the deceased/policy holder. In fact, the trial Court had held that the quantum payable to the plaintiffs are not assessed in specific terms and therefore, granted liberty to them to approach the Civil Court by filing a separate suit.

11. This Court, in fact, is unable to appreciate as to how such a direction could be issued to the plaintiffs when the right of the original plaintiff to receive a portion of the policy amount payable to the deceased Policy Holder was not determined at the first instance. In the absence of determination of the share, the ultimate direction issued by the trial Court cannot be countenanced either in law or on facts.

12. As against the direction of the trial Court, an appeal was filed before the appellate Court and the appellate Court has rightly allowed the appeal in toto and set aside the judgement and decree of the trial Court. The appellate Court has correctly held that once mother of the deceased died, her legal heirs could not become legal heirs of the deceased Policy holder. Though it was pleaded that the share of the mother would devolve upon her legal heirs, this Court is unable to accept the said pleading for the simple reason that the share payable to the mother did not crystallise and before her right could be determined by the trial Court, she died. Therefore, in the absence of original plaintiff's right to claim a portion of the Policy amount payable to the deceased Policy holder, the

legal heirs of the mother could not get any share in the estate of the deceased Policy holder.

13. In any event, the total amount which is now payable is only Rs.19,170/-. Moreover, it is also to be seen that on behalf of the plaintiffs, no specific suit has been filed, after ascertaining the exact amount payable to them. In the absence of any separate suit by the plaintiffs, the direction as issued by the trial Court would work itself out and no further relief could be granted to the plaintiffs by the appellate Court, even otherwise. On the whole, this Court finds that the conclusion reached by the appellate Court did not suffer from any factual and legal infirmity and therefore, the judgement and decree passed by the first appellate Court do not call for any interference by this Court. Ultimately, the Substantial Question of Law framed by this Court, while admitting the second appeal, in the opinion of this Court, has to fail and the same is answered as against the appellants herein.

In the result, the Second Appeal fails and the same is dismissed. No costs. Connected miscellaneous petition is dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge, Gudiyattam
2. The District Munsif, Gudiyattam

- +1 CC to Mr.S.S.Swaminathan, Advocate sr 101973.
+1 CC to Mr.N.Manoharan, Advocate sr 102411
+1 CC to Mr.T.Dhanyakumar, Advocate sr 102659.

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RR(CO)
SP(23/07/2020)