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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.02.2020	04.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.4026 of 2019
and C.M.P.No.22738 of 2019

1. Sarojini
2. Murugan ...Appellants/ Respondents 1 & 3

-vs-

1. Devasundari
2. Senthilkumaran ... Respondents 1 & 2/Petitioners

3. The Union of India
Rep. by the Chief Secretary
U.T. of Puducherry

- 4.The Executive Engineer
Division & Electricity Department
Govt. of Puducherry,
Puducherry.

- 5.The Regional Provident Fund,
Commissioner,
Puducherry.

... Respondents 3 to
5/Respondents 4 to 6

- 6.Gowri ... 6th Respondent/2nd Respondent
PRAYER: Appeal filed under Order 43 Rule 1 of CPC r/w Section
372 of Indian Succession Act to set aside the Order dated
14.08.2018 passed in S.O.P.No.52 of 2011 on the file of the
Principal District Court, Pondicherry.

For Appellant	: Ms.R.Meenal
For R1, R2 & R6	: No Appearance
For R3 & R4	: Ms.G.Djearany Govt. Pleader (Pondy)
For R5	: Ms.V.J.Latha

J U D G M E N T

This Appeal has been filed to set aside the Order dated 14.08.2018 passed in S.O.P.No.52 of 2011 by the Principal District Court, Pondicherry, holding that Appellants, 2nd and 6th respondents herein are entitled to death benefits of the deceased Sivakumar and declaring that they are the legal heirs of the deceased Sivakumar.



2. Heard the learned counsel for the Appellants, learned Government Pleader (Pondy) for R3 & R4 and the learned counsel for R5. There is no representation on behalf of R1, R2 and R6, despite their names being printed in the cause list. For the sake of brevity, the parties are referred to by their nomenclature as found mentioned in this appeal.

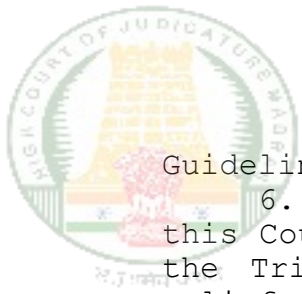
Brief Facts:

3. The deceased Sivakumar had worked in the Electricity Department of Puducherry Government as Record Clerk. According to the 1st respondent, she was married to the deceased Sivakumar on 06.05.1978 and out of the wedlock, the 2nd respondent was born to them. However, the 1st Appellant had stated that the marriage between her and the deceased Sivakumar had taken place as early as on 08.12.1975 and also filed supporting documents in proof of her marriage.

3.1. The Trial Court, after analyzing the oral and documentary evidence, held that there was no evidence with regard to the marriage of the 1st respondent, as her marriage with the deceased had taken place subsequently and the second marriage is void, when the marriage of the 1st wife is in subsistence. Since the name of the child born to the 1st respondent was included as one of the family members of the deceased Sivakumar in the Ration Card (Ex.P1), it was finally concluded by the Trial Court that the Appellants, 2nd and 6th respondents herein are the legal heirs of the deceased Sivakumar and are entitled to the death benefits of the deceased Sivakumar. It was further held that the 1st respondent is not entitled to any share over the estate of the deceased Sivakumar. Aggrieved by the inclusion of 2nd respondent (born through the 1st respondent), as a legal heir of the deceased, the appellants are before this Court.

4. Learned counsel for the Appellants has submitted that when there was no conclusive evidence with regard to the marriage of the 1st respondent with the deceased Sivakumar, the interference drawn by the Trial Court on the basis of interested witnesses that the 1st respondent is the 2nd wife of the deceased Sivakumar, is highly unsustainable. It was further submitted that the deceased Sivakumar had nominated the 1st Appellant as his legally wedded wife, based on which, a part of death benefits was also disbursed to her. Thus, it was prayed that the 2nd respondent is not entitled to any share of the deceased Sivakumar and the particular portion of the order of the Trial Court needs to be set aside.

5. Learned Government Pleader (Pondy) appearing for Electricity Department has stated that the name of the 2nd Appellant / Murugan has been mentioned in Form-30 as a legal heir and the Electricity Department has no objection to provide compassionate appointment to the said Murugan, provided he fulfils all the eligibility criteria in terms of the Rules and



Guidelines in force.

6. Considering the facts and circumstances of the case, this Court is of the view that there is no error in the order of the Trial Court and the Court below has rightly granted the relief to the parties. Therefore, while upholding the order of the Principal District Court, Pondicherry dated 14.08.2018 passed in S.O.P.No.52 of 2011, this Civil Miscellaneous Appeal is disposed of with the following slight modification of the order of the Trial Court:

i) The death-cum-monetary benefits of the deceased Sivakumar shall be equally disbursed to the Appellants, 2nd and 6th respondents herein;

ii) Insofar as the claim of compassionate appointment is concerned, if the 2nd Appellant herein, namely, Murugan is eligible, he shall be given preference and in case the 2nd Appellant herein is not found eligible, the request of the 2nd respondent herein shall be considered for the compassionate employment. However, the 2nd respondent, as a matter of right, cannot demand the grant of such employment to him, superseding the 2nd Appellant herein.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III-MDU)

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Sub Assistant Registrar

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To:

- 1.The Principal District Judge,
Pondicherry
- 2.The Chief Secretary
The Union of India
U.T. of Puducherry
- 3.The Executive Engineer
Division & Electricity Department
Govt. of Puducherry,
Puducherry.
- 4.The Commissioner,
Regional Provident Fund,
Puducherry.

Civil Miscellaneous Appeal No.4026 of 2019

MP (CO)

GMV (10/07/2020)

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