

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2019

PRONOUNCED ON : 03.01.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.222 of 2014

1. Arulmozhi

2. Abhirami

3. Arul Raja

Appellants/Plaintiff

Vs.

1. Tamizharasi

2. Minor.Nesapriya
Rep. By Guardian Mother
First Defendant

3. Villupuram District Co-operative
Milk Producers Union Limited,
Rep. by its Managing Director,
having office at Vazhutharetti,
Villupuram.

4. Life Insurance Corporation of India,
Rep. by its Divisional Manager,
Vellore Divisional carrying on business
at Door No.20, Officers line,
Vellore - 632 001.

5. Branch Manager,
LIC Branch Office,
Near Railway Station,
Pondy Road(East),
Villupuram.

6. Aravindan

7. G.Lakshmi

8. The Oriental Insurance Company Limited,
Having its Branch Office at
No.68, Nungambakkam High Road,
Chennai - 9.

9. The Oriental Insurance Company Limited,
having its Branch Office at
No.719, Easwaran Koil Street,
Pondicherr ... Respondents/Respondents

Prayer:

First Appeal filed under Order 41 Rule 1 of C.P.C., R/w
u/s. 96 of C.P.C., against the judgment and Decree dated
13.08.2013 passed in O.S.No.9 of 2010 on the file of the II
Additional District Court, Tindivanam.

For Appellants : Mr.N.R.R.Arun Natarajan

For RR1 and R2 : Mr.V.Manohar

For R3 : Mr.K.N.Pandian

For RR4 to R9 : No appearance
Set exparte vide Court order dated
13.11.2019.

J U D G M E N T

Aggrieved over the judgment and decree dated 13.08.2013
passed in O.S.No.9 of 2010 on the file of the II Additional
District Court, Tindivanam the plaintiffs have preferred the
First Appeal.

2. For the sake of convenience, the parties are referred to
as per their rankings in the trial court.

3. The suit has been laid by the plaintiffs to have the
movable and immovable properties of the deceased Raja Gopal
administered in the Court and for that purpose, to have proper
directions given and accounts taken.

4. Briefly stated, according to the plaintiffs, Raja Gopal,
S/o, Shanmugam died intestate on 08.07.1998 leaving behind the
first plaintiff, the widow and the plaintiffs 2 and 3, his
children as his legal heirs and the first plaintiff's marriage
with the deceased Raja Gopal was solemnized according to Hindu
rites and customs on 06.07.1981 and out of the lawful wed-lock,
the plaintiffs 2 and 3 were born to them. Thus the plaintiffs

are the legal heirs of the deceased Raja Gopal and entitled to succeed his estate on his demise. The deceased Raja Gopal had insurances covered under two policies and appointed the first plaintiff as his nominee. On his death, the defendants 4 and 5 are bound to pay the amount covered under the abovesaid insurance policies to the plaintiffs, they being the legal heirs of the deceased Raja Gopal. The first defendant was having illegitimate intimacy with Raja Gopal since 1974. The first plaintiff applied for the disbursement of the policy amounts by the defendants 4 and 5, thereupon the fourth defendant informed that the nomination has been effected in favour of the first defendant and in spite of the protest of the plaintiffs, the defendants 4 and 5 with ulterior motive, paid the amount covered under the policies to the first defendant in her capacity as nominee, however the first defendant is not entitled to claim the suit amount. Hence the defendants 1, 4 and 5 are legally bound to deposit the amount received by way of the policies amounting to Rs.3,25,109/- with interest towards the estate of the deceased Raja Gopal. The deceased Raja Gopal was working as a heavy vehicle driver under the third defendant and entitled to retirement benefits and other benefits. On his demise, his legal heirs are entitled to the retirement benefits. However, despite the repeated demands of the plaintiffs, the third defendant has not disbursed the retirement benefits in favour of the plaintiffs. Hence the third defendant should be directed to furnish the details of the benefits and deposit the same into the Court towards the estate of the deceased Raja Gopal. The deceased Raja Gopal died in a motor vehicle accident. The abovesaid accident was caused by the rash and negligent driving of the lorry owned by the 7th defendant. The third defendant's tanker and the 7th defendant's lorry were insured with the defendant's 8 and 9 respectively. The plaintiffs have claimed for compensation with reference to the death of the deceased Raja Gopal before the Motor Accident Claims Tribunal, Kallakurichi in M.C.O.P.No.106 of 1999. The defendants 1 and 2 falsely claiming that they are the legal heirs of the deceased Raja Gopal, they had preferred the compensation case in M.C.O.P.No.2 of 2002 on the file of the Fast Track Court, Kallakurichi. The amount of compensation to be awarded forms part of the estate of the deceased Raja Gopal and the same should be directed to be deposited in the account of the suit. The plaintiffs are each entitled to 1/3 share in the ancestral house belonging to the deceased Raja Gopal. The 6th defendant claims to have advanced the loan of Rs.25,000/- to the deceased Raja Gopal and alleges to have procured a registered mortgage deed dated 17.08.1987 from him. In this connection, the suit in O.S.No.534 of 1970 is pending on the file of the Civil Court, Kallakurichi. If the claim in the abovesaid suit is true, the same should be paid out of the estate of the deceased Raja Gopal and accordingly the plaintiffs have come forward with the suit

seeking the administration of the estate of the deceased Raja Gopal.

5. The first defendant has resisted the plaintiff's suit contending that the defendants 1 and 2 have received the benefits from the third defendant on the demise of Raja Gopal in the month of February and only certain other amounts are liable to be settled in their favour. It is only the defendants 1 and 2 who are the legal heirs of the deceased Raja Gopal. The third defendant has disbursed the retirement benefits in favour of the defendants 1 and 2 only after conducting proper enquiry and hence furthermore put forth the case that the claim of the plaintiffs' that the first plaintiff and the deceased Raja Gopal got married on 06.07.1981 as per Hindu rites and customs is false and that the plaintiffs 2 and 3 had been born to them is also false. Further disputed that the first defendant is having illegitimate intimacy/relationship with the deceased Raja Gopal since 1974. The first defendant is the lawful wedded wife of the deceased Raja Gopal and in this connection, the certificate has been issued by the Tahsildar recognizing the defendants 1 and 2 as the legal heirs of the deceased Raja Gopal. The plaintiffs have no cause of action to lay the suit. It is only the first defendant who had discharged the debts incurred by the deceased Raja Gopal and hence the plaintiffs' suit is liable to be dismissed.

6. The third defendant has resisted the plaintiff's suit contending that the defendants 1 and 2 had produced the legal heirship certificate that they are the legal heirs of the deceased Raja Gopal and based on the same and after obtaining the legal opinion, the benefits had been disbursed to the defendants 1 and 2 by the 3rd defendant and therefore prayed for the dismissal of the plaintiffs' suit.

7. The defendants 4 and 5 have resisted the plaintiffs' suit contending that the deceased Raja Gopal had duly nominated the first defendant as his nominee with reference to the policies taken by him after cancelling the original nomination and accordingly as the defendants are liable to settle the claim to the nominee as per law, following the prescribed procedures, the defendants have paid the amounts covered under the insurance policies to the first defendant and no amount is due from the defendants 4 and 5. The same had been intimated to the plaintiffs and therefore the defendants 4 and 5 are not necessary parties to the suit and the suit is liable to be dismissed.

8. The 6th defendant resisted the plaintiffs' suit contending that the both the plaintiffs and the defendants 1 and 2 are liable to pay the debts incurred by the deceased Raja

Gopal from the 6th defendant and the suit levied by the 6th defendant in connection with the same is pending and only to deprive the 6th defendant from realising his amount, the suit has been falsely laid by the plaintiff and accordingly prayed for the dismissal of the plaintiffs' suit.

9. On the basis of the abovesaid pleas putforth by the respective parties, the following issues were framed by the trial court for consideration.

i. Whether the 1st plaintiff is the wife of deceased Rajagopal or one Rajendiran?

ii. Whether the suit is bared by resjudicata?

iii. Whether the suit properties are to be administered by court?

iv. Whether the plaintiff is entitled to the relief as prayed for?

v. To what other reliefs the plaintiff is entitled to?

10. In support of the plaintiffs' case, P.Ws.1 to 3 were examined. Exs.A1 to A17 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 to B20 were marked.

11. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiffs' suit. Impugning the same, the present First Appeal has been preferred by the plaintiff.

12. The following points arise for determination in the first appeal:-

i. Whether the plaintiffs are entitled to seek the administrative estate of the deceased Raja Gopal as claimed in the plaint?

ii. To what relief, the plaintiffs/appellants are entitled to?

iii. To what relief, the defendants are entitled to?

Point No.1:

13. The first plaintiff claims to be the legally wedded wife of the deceased Raja Gopal and putforth the case that she had married the deceased Raja Gopal on 06.07.1891 and out of the said wedlock, the plaintiffs 2 and 3 were born to them. Therefore according to the plaintiffs, they are only the legal heirs of the deceased Raja Gopal. Per contra, the defendants 1 and 2 claim to be the legal heirs of the deceased Raja Gopal.

14. The plaintiffs in support of their case has marked the birth certificate of the second plaintiff as Ex.A5 and in Ex.A5

she has been described as the daughter of the deceased Raja Gopal. The birth certificate of the third plaintiff has been marked as Ex.A6 and the third plaintiff has been described as the son of the deceased Raja Gopal in the same. No doubt, certain objections has been putforth by the defendants with reference to the marking of Ex.A6 certificate. However the same has been rightly appreciated and considered by the trial court and the objection putforth by the defendants with reference to the same has been overruled. Furthermore, the plaintiffs have examined the brother of the deceased Raja Gopal as P.W.2 and P.W.2 Arunachalam has clearly deposed about the factum of the first plaintiff being the wife of the deceased Raja Gopal and the birth of the plaintiffs 2 and 3 out of the lawful wedlock and further would depose that the funeral rites of the deceased Raja Gopal has been performed only by the third plaintiff Arul Raja. Considering the evidence of P.W.2, a family member of the deceased Raja Gopal, finding that he is the competent witness to depose about the relationship of the parties, accordingly the trial Court had come to the conclusion that it is only the first plaintiff who is the wife of the deceased Raja Gopal and the plaintiffs 2 and 3 are born to them out of the lawful wedlock.

15. Though the defendants 1 and 2 contended that the first plaintiff married only Rajendran, however when the documents pressed into service by the defendants 1 and 2 with reference to the same marked as Exs.B13 and B14 are not shown to be related to the first plaintiff as such, the trial court has rightly held that the abovesaid documents would not be the basis for holding that the first plaintiff is the wife of Rajendran as putforth by the defendants 1 and 2. Telephone bills and the LIC documents projected by the defendants would not be adequate and convince for holding that the first defendant is the legally wedded wife of the deceased Raja Gopal. Those documents, as rightly held by the trial court, would only point out the intimacy between the deceased Raja Gopal and the first defendant and nothing more than that.

16. As rightly held by the trial court, neither the plaintiffs nor the defendants 1 and 2 have come forward with the relief of any declaration to accord their status as the legal heirs of the deceased Raja Gopal. Thus, there is nothing further to be dealt with reference to the same, particularly, considering the nature of the relief sought for by the plaintiffs.

17. As regards the plea of resjudicata raised by the defendants qua the present suit laid by the plaintiffs, no doubt the plaintiffs had earlier filed the suit in O.S.No.39 of 1999 on the file of the Subordinate Court, Kallakurichi. However

after the withdrawal of the said suit, the plaintiffs have preferred the present suit for a comprehensive relief. Therefore, when the earlier suit has not been disposed of on merits, in such view of the matter, the trial court has rightly determined that the present suit laid by the plaintiffs is not barred by resjudicata.

18. As regards the insurance policies taken by the deceased Raja Gopal from the defendants 4 and 5, it is found that the same had been already disbursed to the first defendant by the defendants 4 and 5 on the footing that it is only the first defendant who had been nominated

as the nominee by the deceased Raja Gopal. However as held by the trial court, the nominee is entitled to receive the benefits on behalf of the legal heirs and disburse the same to the legal heirs as per law. As regards the claim of retirement benefits on the demise of Raja Gopal, it is seen that both the plaintiffs and the defendants 1 and 2 had been approaching the third defendant with reference to the same and it is further found that a part of the benefits has been disbursed to the defendants 1 and 2 by the third defendant. As regards the pension benefits, as rightly determined by the trial court, the parties have to approach the authorities and get the reliefs as prayed for.

19. Considering the nature of the relief sought for by the plaintiffs and the plaintiffs had only sought for the relief of the administration of the estate of the deceased Raja Gopal and when it is seen that the properties with reference to which the plaintiffs seek the administration are the insurance amount, retirement benefits and partition of the ancestral properties belonging to the deceased Raja Gopal and when the abovesaid amounts are not required to be administered by the Court and the plaintiffs have to work out their remedies with reference to the same from the appropriate authorities concerned as per law, therefore as rightly determined by the trial court, the question of the administration of the estate of the deceased Raja Gopal with reference to the amounts described in the plaint or the properties described in the plaint does not merit acceptance and in such view of the matter, the trial court is found to be justified in holding that the plaintiffs are not entitled to obtain the relief of the administration of the estate of the deceased Raja Gopal as claimed by them on the terms that they are the legal heirs of the deceased Raja Gopal. As determined by the trial court, the plaintiffs have to work out the remedy by filing appropriate actions as per law. Therefore the trial court is justified in declining the relief sought for by the plaintiffs and no interference is warranted with reference to the same. In the light of the abovesaid

discussions, I hold that the plaintiffs are not entitled to seek the administration of the estate of the deceased Raja Gopal as putforth in the plaint. Accordingly, the Point No.1 is answered.

Point Nos.2 and 3:

20.In the light of the abovesaid discussions, the judgment and decree dated 13.08.2013 passed in O.S.No.9 of 2010 on the file of the II Additional District Court, Tindivanam are confirmed and resultantly the First Appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mfa

To

The II Additional District Judge,
II Additional District Court,
Tindivanam.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.V.Manohar, Advocate SR.No.1279

+1cc to Mr.K.N.Pandian, Advocate SR.No.1838

+1cc to Mr.N.R.R.Arun Natarajan, Advocate SR.No.703

A.S.No.222 of 2014

GMV (09/03/2020)