IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 15.03.2021

JUDGMENT PRONOUNCED ON : 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.2023 of 2001

Sub Post Master,
Perur Branch Post & Telegraph Office,
Perur, Coimbatore 641 010. ...Appellant/Defendant

...Versus...

Iyyammal ...Respondent/Plaintiff

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.50 of 1999 dated 12.08.1999 on the file of the II Additional District Court, Coimbatore, reversing the judgment and decree made in O.S.No.1043 of 1996 dated 13.01.1999 on the file of the II Additonal District Munsif, Coimbatore.

For Appellant :: Mr.K.Subbu Ranga Bharathi

For Respondent :: No appearance

J U D G M E N T

The defeated defendant is the appellant herein.

2. The respondent/plaintiff filed a suit in O.S.No.1043/96 on the file of the II Additional District Munsif, Coimbatore, dated 13.01.1999 seeking a declaration that she is the owner of the lost Indira Vikas Patra IVP (in short IVP) and for Mandatory Injunction directing the defendant Post office to encash the Patra and restraining the defendant from disbursing any amount to any other person in respect of the suit Indira Vikas Patra. The suit was dismissed. On appeal, the learned Additional District Judge has allowed and decreed the suit and hence the appeal by the defendant.

3. The brief facts leading to the filing of the above Second Appeal are as under:-

(i) The respondent herein filed a suit in O.S.No.1043 of 1996, on the file of the II Additional District Munsif Court, Coimbatore, for a declaration to declare that the plaintiff is entitled to the amount payable in respect of the Indira Vikas Patra, bearing Nos.740287, 740288 and for a consequential Injunction to restrain the appellant herein from effecting payment to any other party in respect of the said Indira Vikas Patras. The appellant resisted the said suit by filing a detailed written statement, inter alia contending that the names of the purchaser of the Indira Vikas Patra is neither entered in the records of the defendant nor is entered in the Certificate issued and as such there is no provision to write the name of the holder of the Indira Vikas Patra as per the I.V.P Rules. The defendant therefore, submitted that the claim of the respondent/plaintiff cannot be verified.

(ii) The appellant also placed reliance on the Gazette Notification issued by the Government of India, dated 05.11.1986, and Rule 7(2) of the I.V.P.Rules, 1986, which is as hereunder:

> "Rule 7(2) : A certificate lost, stolen, mutilated, defaced or destroyed beyond recognition will not be replaced by any post office".

The appellant also relied upon Rule 10 of the I.V.P Rule which is as hereunder:-

> "Rule 10 : The Post Office shall not be responsible for any loss caused to a holder by any person obtaining possession of a certificate and fraudulently encashing it."

(iii) The trial Court, after considering the materials placed before it, was pleased to dismiss the suit by a Judgment and decree dated 13.01.1999. Aggrieved by the said Judgment and Decree passed by the trial Court, the respondent herein has preferred an appeal in A.S.No.50 of 1999, on the file of the learned II Additional District Judge, Coimbatore. The Lower Appellate Court, considering the oral and documentary evidence, has reversed the judgment and decree passed by the trial Court. Aggrieved by the judgment and decree passed by the lower Appellate Court, the appellant has preferred the above Second Appeal.

4. The above Second Appeal was admitted on 18.01.2002 on the following Substantial Questions of Law:-

> 1. Whether the Court can overrule Sections 7 and 10 of the Rules of Indira Vikas Patra, 1986? and

2. Whether the fact no person claim money on the date of encashment of Indira Vikas Patra entitles the person for the said sum, who is having only prize coupon issued by Small Savings Department?

5. Heard the learned counsel for the appellant-Post Office and the respondent remained absent and is set ex-parte.

6. The sum and substance of the claim of the respondent/plaintiff is that she had purchased 4 Indira Vikas Patra IVP for the costs of Rs.2,500/- on 29.11.1990 from Perur Post Office with Registration Numbers 740286 to 740289. In respect of two Patras, she had handed over the said Indira Vikas Patras IVP on 29.11.1995 and encashed it for Rs.5,000/- in respect of 740286 and 740289. She deposited and obtained Rs.10,000/-. However in the interagnum period, she lost the IVP being Registration Numbers 740286 and 740288. When she approached the Post Office they refused to give money for the said I.V.P on the ground that original has to be produced and there can be no substitute. Therefore after issuing the notice, the suit has been filed.

7. In the trial, she has pleaded and she had deposed what is stated in the plaint.

8. The specific case of the plaintiff is that Ex.A5 a prize coupon issued a Small Saving Department of the Tamil Nadu for the purchase of the said IVP on the said date namely 29.11.1990. It is a coupon given for those who purchased the IVP. In the said coupon serial found in Ex.A5 principles of the IVPs are mentioned; name is mentioned and D.W.1-Venugopal/the public Relation Officer of the Central Post Office has admitted that at the time of issuance of the I.V.P had purchased of the case value. The State Government in order to pronote the purchase of I.V.P, have announced the Scheme gift coupon and however in view of the rules, unless original is produced there can be no encashment and relied upon the rules. The above two Substantial Questions of Law was framed on 18.01.2012. However the two Substantial Questions of Law is no longer res integra.

9. In view of the decision reported in 2006 4 SCC 275 [Central Government of India and others Vs.Krishnaji Parvetesh Kulkarni] followed in 2020 (3) CTC 870 [The Superintendent of Post Office, Bolangir Division, Bolangir, Odisha Vs.Jambu Kumar Jain and Ors] wherein, their Lordships the Hon'ble Supreme Court has stated by Paragraphs 10, 13 and 14 as extracted below:-

10. Before we consider the matter, we must set-out the relevant Rules. The Rules were issued vide Minsitry of Finance (DEA) Notification No.G.S.R 1183(E):MANU/CNBN/1379/1986 dated 05.11.1986. Rules 5, 6 and 7 of the Rules, as amended from time to time, are as under:

"5. Procedure for purchase of certificates: (1) A certificate may be purchased at a Post Office on payment of any one of the following modes, namely:

(i) by cash; or

(ii) by locally executed cheque, pay order or demand draft drawn in favour of the postmaster; or

(iii) by presenting a duly signed withdrawal form or cheque with the Pass Book for withdrawal from Post Office Savings Account standing in the credit of the purchaser at the same Post Office."

2. No formal application is necessary for purchase of a certificate.

6. Issue of Certificate: (1) On payment being made by cash, a certificate shall be issued immediately and date of such certificate shall be the date of payment.

(2) Where payment for purchase of a certificate is made by locally executed cheque, pay order or demand draft, the certificate shall not be issued before the proceeds of the cheque, pay order or demand draft, as the case may be, are realised and the date of such certificate shall be the date of encashment of the cheque, pay order or demand draft, as the case may be.

(3) If, for any reason, a certificate cannot be issued immediately, a provisional receipt shall be given to the purchaser which may later be exchanged for a certificate and the date of such certificate shall be as specified in Sub-rule (1) or Sub-rule (2), as the case may be.

(4) A certificate issued under this Rule is transferable.

7. Replacement of certificate: (1) If a certificate is mutilated or defaced, the bearer

is entitled for replacement form the Post Office of issue on payment fee of rupee one.

(2) A certificate lost, stolen, mutilated, defaced or destroyed beyond recognition, will not be replaced by any Post Office.

"13. The matter has to be considered purely from the perspective of the governing Rules. If in case the IVPs are lost/stolen or mutilated or defaced beyond recognition, the Rules are clear that they shall not be replaced by the Post Office. In the face of such statutory provision, the refusal on the part of the Department to entertain any request for maturity sum was absolutely right and justified. It can never be said that there was deficiency on the part of the Department in rendering any service expected of them."

If the Department had refused to encash the Certificates upon presentation or even after encashment had refused to make the payment or had made short payment, there could still be a grievance about deficiency in service but if the Certificates themselves are lost and the identity of the initial holder could never be established through the record, the Department was well within its rights not to accept the prayer for return of the maturity sum.

"14. In Central Government of India and Ors. v. Krishnaji Parvetesh Kulkarni MANU/SC/1843/2006 : (2006) 4 SCC 275, similar prayer made through a writ petition, was rejected by this Court with following observations:

An IVP is akin to an ordinary currency note. It bears no name of the holder. Just as a lost currency note cannot be replaced, similarly the question of replacing a lost IVP does not arise. Rule 7(2) makes the position clear that a certificate lost, stolen, mutilated, defaced or destroyed beyond recognition will not be replaced by any Post Office. Similar is the position as regards the certificate which is either lost or stolen. Undisputedly there was no challenge to the legality of the Rule 7(2). In the absence of a challenge to the provision, any direction should not really have been given. It is fundamental that no direction which is contrary to law can be given."

10. Hence, in view of the law settled by the Hon'ble Supreme Court, both the Substantial Questions of Law are answered in affirmation and accordingly, this Court has no other option but allow the Second Appeal.

11. In the result,

(i) This Second Appeal is allowed.

(ii) The judgments and decrees of the First Appellate Court rendered in A.S.No.50 of 1999 on the file of the learned Additional District Judge, Coimbatore is hereby set aside.

(iii) The judgment and decree granted in O.S.No.1043 of 1996 on the file of the learned II Additional District Munsif, Coimbatore is hereby restored.

(iv) There shall be no order as to costs.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
   Coimbatore

2. The II Additional District Munsif,
   Coimbatore.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.18161
+1cc to Mr.K.Subbu Ranga Bharathi, Advocate, S.R.No. 19001

S.A.No.2023 of 2001

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NSK 26/11/2021