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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2021
PRONOUNCED ON : 11.02.2021

CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1240 of 2008
and
M.P.No.1 of 2008

1. Child Development Programme Officer,
World Bank Assistant-ICDS, III Project,
Sembanarkoil.

2. State of Tamil Nadu represented by
The District Collector,
Nagapattinam.

...Appellants/Appellants/2 & 3 Defendants

Vs.

1. Seethalakshmi,
W/o, Late Agoram
Erumal Nehru Colony,
No.3, Semangalam Village,
Melapathi Post,
Sirkali Taluk and Munsif.

...1st Respondent/Respondent/Petitioner

2. Vasavan,
S/o, Balusamy,
Olaiyamputhur Village,
Kondathur Post,
Sirkali Taluk and Munsif.

...Respondent/Respondent/1st Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 11.10.2007 made in A.S.No.18 of 2006 on the file of the Additional Sub Court, Mayiladuthurai confirming the judgment and decree dated 28.12.2005 made in O.S.No.239 of 2005 by the Principal District Munsif, Mayiladuthurai.

For Appellants: Mr.N.Manikandan
Government Advocate (CS)
For R1 : Mr.A.Muthukumar
For R2 : Mr. Sounthar



J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 11.10.2007 passed in A.S.No.18 of 2006 on the file of the Additional Subordinate Court, Mayiladuthurai confirming the judgment and decree dated 28.12.2005 passed in O.S.No.239 of 2005 on the file of the Principal District Munsif Court, Mayiladuthurai.

2. For the sake of convenience, the parties are referred to as per the rankings in the trial court. The defendants 2 and 3 in O.S.No.239 of 2005 are the appellants in this second appeal.

3. Suit for declaration and mandatory injunction.

4. Briefly stated according to the case of the plaintiff, she is the second wife of the deceased Agoram who died on 13.11.2004. Agoram's first wife T.Sakunthalai was working as Child Welfare Organiser and she died in harness on 13.10.2003 and Agoram was her only legal heir and therefore Agoram sought for the death benefits and other emoluments due to him on the demise of his wife Sakunthalai. He was directed by the authorities to get the legal heirship certificate issued by a court of law. Despite the production of the legal heir ship certificate, the second defendant informed Agoram that Sakunthalai had nominated her brother's son Vasavan to get the benefits, after deleting the name of her husband in the service records. Hence, Agoram filed the suit in O.S.No.265 of 2004 on the file of the District Munsif Court, Sirkali against Vasavan and the second defendant and in the abovesaid suit, Vasavan, the first defendant herein appeared in person and endorsed no objection in the plaint and thereby submitted to the decree. The second defendant had also not filed any written statement. However, the Court had dismissed the abovesaid suit on the footing that the State of Tamilnadu has not been made as a party. After the demise of Sakunthalai, Agoram married the plaintiff on 19.11.2003. After the demise of Agoram, the plaintiff being the legal heir of her husband Agoram, obtained the death benefits of her husband and for obtaining the death benefits of Sakunthalai, the plaintiff sent a requisition letter to the second defendant to disburse the same to her. The second defendant did not respond to the same. Hence after the statutory notice, according to the plaintiff, she has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The defendants 2 and 3 resisted the plaintiff's suit contending that the plaintiff is not entitled to maintain the suit and admitted that Sakunthalai worked as Child Welfare Organiser in the Panchayath Union and according to them, in the



service records, though she had originally nominated her husband Agoram to receive the benefits as her nominee, subsequently on 16.09.2003, appointed her brother's son Vasavan as the nominee and the relief claimed by Agoram with reference to the entitlement of her death benefits in O.S.No.265 of 2004 has been rejected on 23.11.2004. Sakunthalai was not a permanent employee and not entitled to any death benefits and she was entitled only to the insured sum amounting to Rs.1,00,000/-. No other amount is due on her death. The plaintiff has to establish that she is the legal heir of the deceased Sakunthalai. The plaintiff is not entitled to claim the reliefs prayed for and the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A29 were marked. On the side of the defendants, no oral and documentary evidence has been adduced.

7. The Courts below on an appreciation of the materials placed on record, both oral and documentary and the submissions put forth by the respective parties, was pleased to grant the reliefs in favour of the plaintiff as prayed for. Impugning the judgment and decree of the Courts below, the second appeal has been preferred by the defendants 2 and 3.

8. The first defendant has remained exparte in the Courts below and not contested the plaintiff's case.

9. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(a) Whether an endorsement made in the suit which ended in dismissal can be acted upon by the appellant as found by the Courts below which has become base for decreeing the suit?

(b) Whether the death benefit can be paid to the legal heir by the appellant when there is a specific nomination by the deceased employee?

10. The suit has been laid by the plaintiff to declare that she is the legal heir of the deceased Sakunthalai and entitled to receive all the emoluments, death benefits of the deceased Sakunthalai from the second defendant and mandatory injunction directing the defendants 2 and 3 to pay all the death benefits of Sakunthalai to the plaintiff.

11. From the materials placed on record, it is found that the plaintiff is the wife of the deceased Agoram. Further, it is also found that Agoram is the husband of Sakunthalai. It is not in dispute that T.Sakunthalai worked as Child Welfare



Organiser in the Panchayat Union and Agoram died on 13.11.2004. From the materials available on record, it is found that Sakunthalai had originally nominated her husband as the nominee and subsequently had appointed her brother's son Vasavan as her nominee to receive the benefits in the event of her death. It is further noted that Agoram had moved the authorities concerned for handing over the death benefits of his wife Sakunthalai and also produced the legal heirship certificate issued by the Tahsildar. However, his claim having been not accepted on the footing that the deceased Sakunthalai had nominated her brother's son Vasavan as her nominee, it is seen that Agoram had laid the suit in O.S.No.265 of 2004 against Vasavan and the second defendant. In the abovesaid suit, particularly, from the copy of the judgment of the abovesaid suit, marked as Ex.A6, it is seen that Vasavan had made an endorsement in the plaint putting forth no objection in granting the decree in favour of Agoram in the abovesaid suit. That apart, the second defendant had also not filed any written statement in the said suit. However the said suit had come to be dismissed on the footing that the State of Tamil Nadu has not been made as a party. It is found that the abovesaid suit has not been disposed of on merits, but only on technical reasons. Be that as it may, it is found that after death of Sakunthalai, Agoram had married the plaintiff as his second wife on 19.11.2003. That the plaintiff is the legal heir of Agoram has been substantiated which could be evidenced from Ex.A9. It is the case of the plaintiff that it is she who had received the death benefits of Agoram and the same had not been controverted by the contesting defendants.

12. Now according to the plaintiff, after the demise of Agoram, she being the legal heir of the deceased Sakunthalai, she is entitled to get the death benefits of Sakunthalai and as the same had not been given to her despite requisition, according to the plaintiff, she has been necessitated to institute the suit against the defendants.

13. The first defendant Vasavan is the alleged nominee appointed by the deceased Sakunthalai and it is found that the first defendant had not chosen to contest the plaintiff's suit and has remained exparte and it is only the defendants 2 and 3 who are contesting the plaintiff's suit.

14. The main defence putforth by the defendants 2 and 3 is the suit laid by the plaintiff is barred on resjudicata on account of dismissal of the suit laid by Agoram in O.S.No.265 of 2004. As above pointed out, in O.S.No.265 of 2004, the first defendant has made an endorsement submitting to the decree and the second defendant has not field any written statement. From Ex.A6, it is evident that the abovesaid suit has been dismissed for the reason that the State of Tamil Nadu has not been added



as a party. Therefore, in the abovesaid suit, it has not been held that Agoram is not the legal heir of the deceased Sakunthalai and not entitled to obtain her death benefits. Inasmuch as, it is seen that Agoram had married the plaintiff as the second wife on 19.11.2003 and subsequently he had died on 13.11.2004, in such view of the matter, it is found that the plaintiff is the legal heir of the deceased T.Sakunthalai as per law. The counsel for the first defendant in the second appeal would contend that the plaintiff cannot be declared as the legal heir of the deceased Sakunthalai. The suit has been laid by the plaintiff seeking the death benefits of Sakunthalai on the footing that she is the legal heir of her husband Agoram and her husband Agoram was the legal heir of the deceased Sakunthalai. The death benefits of the deceased Sakunthalai being her separate property as per the devolution contemplated under section 15 of the Hindu Succession Act, it is found that following the demise of Agoram, his legally wedded wife namely the plaintiff would be entitled to the said estate. Thus, it is found that Courts below are justified in declaring that the plaintiff is the legal heir of the deceased Sakunthalai and entitled to receive the death benefits and other emoluments following her death.

15. Even though O.S.No.265 of 2004 laid by Agoram has been dismissed, as rightly contended by the plaintiff's counsel, the same having been dismissed on a technical ground but not on the merits of the case and meanwhile Agoram having married the plaintiff and subsequently having died, it is seen that the plaintiff would be entitled to seek the death benefits of Sakunthalai. In such view of the matter, the dismissal of O.S.No.265 of 2004 would not be a bar on the part of the plaintiff to get the benefits of the deceased Sakunthalai as her legal heir.

16. When the defendants in the written statement have admitted that a sum of Rs.1,00,000/- is due to be paid towards the insurance amount on the death of Sakunthalai, as rightly contended by the plaintiff's counsel, the plaintiff would be entitled to receive the same as well as other benefits, if any due, on the death of the deceased Sakunthalai. Merely because, the first defendant has been named as the nominee, as rightly contended by the plaintiff's counsel, the first defendant would not be entitled to get the entire benefits excluding the legal heir of the deceased. When as per law, it is noted that the plaintiff is the only legal heir and not the first defendant and as above pointed out, the first defendant having also remained exparte before the Courts below and also having admitted/submitted to the decree in O.S.No.265 of 2004, all put together, the Courts below are found to be justified in directing the defendants 2 and 3 to pay the amount to the



plaintiff ie., all the benefits due to be paid on the demise of Sakunthalai.

17. The reasonings and conclusions of the Courts below for upholding the plaintiff's case are found to be based on the proper appreciation of the materials available on record both on factual matrix and on the points of law and I do not find any valid reason to interfere with the same. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

18. In conclusion, the judgment and decree dated 11.10.2007 passed in A.S.No.18 of 2006 on the file of the Additional Subordinate Court, Mayiladuthurai confirming the judgment and decree dated 28.12.2005 passed in O.S.No.239 of 2005 on the file of the Principal District Munsif Court, Mayiladuthurai are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

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To

1. The Additional Subordinate Judge,
Additional Sub Court, Mayiladuthurai.
2. The Principal District Munsif,
Principal District Munsif Court,
Mayiladuthurai.

Copy to

The Section Officer,
VR Section,
High Court.

- +1 CC to Mr.A.Muthukumar, Advocate sr 7630.
- +1 CC to Mr.S. Sounthar, advocate sr 8111.
- +1 CC to The Special Government Pleader sr 8309

S.A.No.1240 of 2008
and
M.P.No.1 of 2008

RP(CO)
SP(08/09/2021)