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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2821 of 2013 &
M.P.No.1 of 2013

V. Govindasamy ...Appellant/1st Defendant
vs.
1. Bairamma
2. Ramasamy ... Respondents1 &2/ Plaintiffs
3. The Project Officer,
Integrated Child Development Scheme,
Veppanapalli,
Krishnagiri Taluk.
4. The Integrated Child Development Scheme Officer,
Integrated Child Development Scheme,
Dharmapuri.
5. The Tahsildar,
Tahsildar Office,
Krishnagiri Taluk & District.
6. The District Collector,
Collector Office,
Chennai Road,
Krishnagiri Post & Taluk ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (u) of Code of Civil Procedure aggrieved by the Judgment and Decree dated 12.01.2011 made in A.S.No.22 of 2008 on the file of the Principal Sub-Court, Krishnagiri District reversing the Judgment and decree Dt.04.04.2008 made in O.S.No.651 of 2004 on the file of the District Munsif Court, Krishnagiri.

For Appellant : Mukund R. Pandian

For Respondents 1 & 2 : Ms. Mitraneshaa
for Mr. V Raghavachari

For Respondents 3 to 6 : Dr. S. Suriya
Government Advocate



JUDGMENT

(This case was heard through Video Conferencing)

This Appeal has been filed by the first defendant in the suit O.S. No.651 of 2004 on the file of the District Munsif Court, Krishnagiri and the first and second respondents are the plaintiffs in the said suit. The remaining respondents are the Government Authorities dealing with the pension belonging to Rathinammal, the alleged wife of the Appellant.

2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The suit was filed by the plaintiffs seeking for a declaration that the plaintiffs and the first defendant are the legal heirs of the deceased Rathinammal and for permanent injunction restraining the fourth defendant from not issuing any certificate in favour of the first defendant alone for the disbursement of any amount belonging to the deceased Rathinammal.

4. According to the plaintiffs, the marriage between Rathinammal and the first defendant ended in a divorce before the Panchayat and thereafter, Rathinammal obtained a certificate from the fourth defendant office that she is a deserted wife and on that ground, she got a job and she was working for nearly 23 years till her death i.e., on 22.08.2004. After the death of Rathinammal, the plaintiffs convened the Panchayat and Muchalika was drafted to receive the death benefit of late Rathinammal as 1/3rd share to each among the plaintiffs and the first defendant. According to the plaintiffs, on 13.12.2004, the first plaintiff sent a letter to the District Collector in terms of the Muchalika entered into between the parties before the Panchayat. Since the first defendant wanted to get the pensionary benefits for all himself, the plaintiffs were constrained to file a suit.

5. It is the case of the first defendant, as seen from the written statement that he has been living with Rathinammal till her death and he never agreed for sharing of her retirement benefits with the plaintiffs. According to him, the deceased Rathinammal has nominated him as her nominee for receiving the retirement benefits. He has disputed the Muchalika alleged by the plaintiffs in his written statement.

6. By Judgment and Decree dated 04.04.2008, the trial court dismissed the suit filed by the plaintiffs. Aggrieved by the same, they preferred a regular appeal before the Subordinate Court, Krishnagiri in A.S.No.22 of 2008. By Judgment and Decree dated 12.01.2011 in A.S.No.22 of 2008, the lower appellate court



remanded the matter back to the trial court for fresh consideration for the following reasons:

(a) The first defendant has not specifically denied Ex.A2 (Panchayat Muchalika);

(b) He has also not denied that he has not signed Ex.A2;

(c) Even though, the first defendant has stated in his deposition that in the service register, he has been appointed as a nominee by Rathinammal, the said service register was not produced before the trial court by him and hence, an opportunity should be granted to the plaintiffs as well as the first defendant to let in evidence on that aspect.

7. Aggrieved by the Judgment and Decree dated 12.01.2011 passed in A.S.No.22 of 2008 remanding the matter back to the trial court, this appeal has been filed by the first defendant in the suit.

8. Heard Mr.Mukund R. Pandian, learned counsel for the Appellant, Ms.Mitruneshaa learned counsel representing Mr.V.Raghavachari, learned counsel for the respondents 1 & 2 and Dr.S.Suriya, learned Government Advocate appearing for the respondents 3 to 6.

Discussion:

9. The first defendant claims that he is the only legal heir of the deceased Rathinammal who was working with the third respondent. Admittedly, he is entitled for retirement and pensionary benefits. The plaintiffs claim that Rathinammal was deserted by her husband, the first defendant for more than 23 years and there was a Muchalika entered into between the plaintiffs and the first defendant as per Ex.A2 which has been disputed by the first defendant before the trial court as well as the lower appellate court. The plaintiffs also claim that there was an agreement reached with the first defendant by which the plaintiffs and the first defendant agreed to share the retirement /pensionary benefits.

10. However it is the case of the first defendant that as per the service register maintained by the third respondent, he is a nominee appointed by Rathinammal to receive the retirement/pensionary benefits. Admittedly before the trial court, neither the legal heirship certificate of the deceased Rathinammal nor the service register was marked as an exhibit to prove that the first defendant was the only legal heir of the deceased Rathinammal.

11. Only under those circumstances, as seen from the



impugned judgment and decree dated 12.01.2011 passed in A.S.No.22 of 2008, the learned Principal Subordinate Judge, Krishnagiri has remanded the matter for fresh consideration to enable them to adduce evidence in support of their respective contentions. This Court does not find any infirmity in the findings of the Subordinate Judge, Krishnagiri in A.S.No.22 of 2008. However, in view of the fact that the suit is of the year 2004 and the present appeal is of the year 2011, this Court is of the considered view that a direction will have to be issued to the trial court for disposal of the suit within a time frame to be fixed by this court.

12. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is dismissed. However, a direction is issued to the trial court namely, the District Munsif Court, Krishnagiri to dispose of the suit within a period of six months from the date of receipt of a copy of this Judgment, after affording sufficient opportunity to the plaintiffs as well as the first defendant to adduce evidence both oral and documentary. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub-Court, Krishnagiri District
2. The District Munsif Court, Krishnagiri.

COPY TO

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr. V Raghavachari, Advocate, S.R.No.47990
+1cc to the Government Pleader, S.R.No.49147

C.M.A.No.2821 of 2013

PL(CO)
CT 30/12/2021



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