IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.1116 of 2013
and M.P.No.1 of 2013

Malliga ...Appellant/1st Respondent/Plaintiff

Vs.

1.Subramani ...1st Respondent/Appellant/3rd Defendant

2.Life Insurance Corporation of India,
Salem East, by its Branch Manager,
Meyyanur Road,
5 Road, Salem,
Salem Taluk and District.

3.Life Insurance Corporation of India,
Namakkal, by its Branch Manager,
Dr.Sangaran Road,
Namakkal Taluk and District.
...2nd & 3rd Respondents/2nd & 3rd Respondents/ 1st & 2nd Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 27.06.2013 made in A.S.No.8 of 2012 on the file of Sub Court, Namakkal reversing the judgment and decree dated 06.01.2012 made in O.S.No.573 of 2010 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr.T.Dhanyakumar

For Respondents : Mr.K.A.Ravichandran for R1

Mr.C.Umapathy for R2 & R3

JUDGMENT

The plaintiff is the appellant in the present Second Appeal.

2.The case of the plaintiff is that she was married to the 3rd defendant and there was one son born out of the said wedlock and he was named as Ramesh. The said Ramesh had taken policies in the 1st and 2nd defendants Insurance Companies. In these policies, he appointed the 3rd defendant as the nominee.

3.The further case of the plaintiff is that her son Ramesh died in an accident on 06.09.2010. In the mean time, there was a serious misunderstanding between the plaintiff and the 3rd defendant and their marriage was dissolved in HMOP No.94 of 1991 by an order dated 14.01.1992.

4.After the demise of the above above said Ramesh, the 3rd defendant, as the nominee was taking steps to get the policy amount. Aggrieved by the same, the plaintiff filed the suit seeking for the relief of declaration to declare that the plaintiff is the legal heir of the deceased Ramesh and consequently for permanent injunction restraining the 1st and 2nd defendants from handing over the policy amount to the 3rd defendant.

5.Both the Courts below concurrently found that the plaintiff is the Class I heir of the deceased Ramesh and restrained the Insurance Companies from making the payment to the 3rd defendant. However, while holding so, the Appellate Court directed the plaintiff to file a petition claiming for Succession Certificate under the Indian Succession Act and consequently, held the suit to be not maintainable. Aggrieved by the same, the Second Appeal has been filed by the plaintiff.

6.The following substantial question of law was framed by this Court:

> Whether the lower Appellate Court was right in redirecting the plaintiff to file a petition for Succession Certificate to get the policy amount, even after finding that the plaintiff is the Class I legal heir of the deceased Ramesh?

7.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

8.In the considered view of this Court, the status of the plaintiff as the Class I legal heir of the deceased Ramesh has been declared by both the Courts below and therefore, there is no requirement to once again initiate proceedings for Succession Certificate. The Insurance Company will be bound by the declaration made by the competent civil court. By redirecting the plaintiff to file a petition for Succession Certificate, the lower Appellate Court unnecessarily paved way for multiplicity of the proceedings which is uncalled for. Therefore, the findings of the lower Appellate Court is liable to be interfered by this Court. The substantial question of law is answered accordingly in favour of the appellant.

9.In the present case, the appellant who is the mother of the deceased is a Class I legal heir. The 3rd respondent who is the father of the deceased is the Class II legal heir. The dissolution of marriage between the plaintiff and the 3rd respondent will have nothing to do with the status of the appellant and the 3rd respondent qua the deceased Ramesh.

10.Under the Hindu Succession Act, the Class I legal heir will get the entire share to the exclusion of the Class II legal heirs. Therefore, the appellant will get the entire share to the exclusion of the 3rd defendant.

11.The learned counsel for the 3rd defendant submitted that a legal notice was issued by the appellant on 12.10.2010 and this was marked as Ex. A1. In this pre-suit notice, the appellant had sought for half share in the policy amount. Therefore, the learned counsel submitted that the pre-suit notice can be taken in to consideration and the plaintiff can be allotted half share and the 3rd defendant can be allotted the other half share.

12.The learned counsel for the 3rd defendant further submitted that the equities can be balanced and half share each can be allotted to the plaintiff and the 3rd defendant. To substantiate his submission, the learned counsel relied upon the judgment of this Court in S.Sandhya and anothers vs. The Chief General Manager, BSNL, T&D Circle, Sanchar Vikas Bhavan, Residency Road, Jabalpur, Madhyapradesh and anothers reported in 2012 3 LW 41. The relevant portions in the judgment are extracted hereunder:

> 50. Placing reliance on Sarbati Devi's case (cited supra), Vishin N.Khanchandani Vs. Vidya Lachmandas Khanchandani, reported in 2000 (6) SCC 724

and Ashok Chand Aggarwala Vs. Delhi Admn, reported in (1998) 7 AD 639 (Del), before the Supreme Court, the appellant/widow has contended that a mere nomination does not have the effect of conferring on the nominee any beneficial interest in the property, after the death of the employee. She has also contended that the nomination only indicates the person who is authorised to receive the amount or manage the property or the amount, as the case may be, and that the same would succeed only in accordance with law of succession governing the deceased. Considering the rival submissions and the issues stated supra, at paragraphs 17 and 18, the Supreme Court held as follows:-

> 17. The controversy involved in the instant case is no longer res integra. The nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession. In terms of the factual foundation laid in this case, the deceased died on 8.11.1990 leaving behind his mother and widow as his only heirs and legal representatives entitled to succeed. Therefore, on the day when the right of succession opened, the appellant, his widow became entitled to one half of the amount of the general provident fund, the other half going to the mother and on her death, the other surviving son getting the same.
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> 18. In view of the clear legal position, it is made abundantly clear that the amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case amounts so received are to be distributed according to the Hindu Succession Act, 1956.

51. As discussed in the foregoing paragraphs, this Court after referring to the relevant provisions relating to General Provident Fund, Gratuity, Leave Encashment Salary and Insurance Scheme, has noticed

the specific exclusion of the brother of the deceased who had attained the age of 18 years and above, from inclusion in the definition 'family', as one of the nominees, entitled to the beneficial interest, in the property, after the death of the person concerned. Therefore, when the statutory provisions relating to GPF, Family Pension, Gratuity, or the Group Insurance Scheme, 1980, do not contemplate nomination of the brother of the deceased who had attained the age of 18 years and above, the intention of the framers to restrict the beneficial interest in the property only to the members of the family, in the respective rules, is clear and in such circumstances, the very nomination made in favour of the brother of the deceased 4th respondent herein, is questionable and therefore, his contention that on the basis of the nomination made by his deceased brother, he alone is entitled to receive the retiral benefits and the lump sum amount under the Group Insurance Scheme, 1980, cannot be countenanced. Material on record discloses that the marriage between the petitioners' parents had been dissolved and for some reasons, best known to him, during the life time, father of the petitioners had nominated his brother, 4th respondent herein, to receive the terminal benefits.

52. In view of the settled pronouncement of law in Shipra Sengupta's case (cited supra) of the nominee is only an authorised person or a trustee to receive the amount or manage the property. If there is any claim by the heirs of the deceased, to the beneficial interest in the property, the same should devolve only upon the legal heirs of the deceased, in accordance with the law of succession, governing them.

53. In the light of the decision of the Supreme Court, the petitioners, daughters of the deceased alone are entitled to the beneficial interest and to receive the payments under the heads.

54. As stated supra, retiral benefits have already been deposited in Indian Bank, High Court, Madras. As this Court has held that the petitioners/daughters, the surviving legal heirs, as per the law of succession, alone are entitled to receive the terminal benefits, there shall be a direction to the Manager, Indian Bank, High Court

Branch, Madras to disburse the entire amounts deposited to the credit of W.P.No.29894 of 2002 on 24.01.2012 and 24.03.2012 to the petitioners. Mr.P.V.Balasubramanian, learned counsel for the petitioners also submitted that if there is any amount due and payable to BSNL, the petitioners would execute an undertaking to pay the same and that they also undertake for any recovery taken, in the manner known to law.

55. Before parting with this case, this Court would like to make an observation. Though a positive direction cannot be granted for apportionment of any amount to the fourth respondent, but, considering the fact that after divorce, the employee continued to live with his brother, till his death and that it was only the fourth respondent-brother, nominee, who shared the food and shelter, joy and sorrow, pleasure and pain and remained as a bachelor till the demise of his brother, this Court is of the view that it is for the petitioners-daughters to take a pragmatic approach and apportion some amount to the fourth respondent, their uncle, if they so desire, considering the fact that the brothers were together, until they were separated, by death, which is inevitable. Sometimes law cannot extend its helping hand even in deserving cases. But equity, good conscience and justice, can always be considered by the daughters, while taking a decision in this regard. With the above directions and observations, the Writ Petition is allowed. No costs.

13.The above judgment cited by the learned counsel for the 3rd defendant does not really help the claim made by the 3rd defendant. Even in the above judgment, this Court held that sometimes law cannot extend its helping hand even in deserving cases. Therefore, this Court directed the parties to act according to their good conscience.

14.In the present case, even though the deceased son is said to have been brought up by the father for quite some time and morally the father may be justified in claiming for a share, the law is not in favour of the father. This Court is also bound by the Succession Act and this Court cannot issue directions only based on equity which does not have the backing of law.

15.In view of the above, this Court holds that the appellant being the Class I legal heir of the deceased son is entitled to receive the entire policy amount from the 1st and 2nd defendant Insurance Company. It is left to the good conscience of the appellant to give a small share to the 3rd respondent, considering the fact that he is also the father of the deceased Ramesh and he also played a part in bringing up his son. The finding of the lower Appellate Court to the effect that the appellant must only file a petition for a Succession Certificate and the suit is not maintainable, is hereby set aside.

16.The Second Appeal is accordingly allowed. Considering the facts and circumstances of the case, parties shall bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

ssr

To

1.The Principal District Munsif, Namakkal.

2.The Subordinate Judge, Namakkal.

3.The Section Officer,
V.R.Section, High Court,
Madras-104.

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and M.P.No.1 of 2013

GMR(CO)
CB(23/03/2022)