



A.S.(MD)No.794 of 2010

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 23.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.794 of 2010

M.Adaikkalam

... Appellant / Plaintiff

-Vs-

1.A.Chinnammal

2.S.Periakaruppan

3.State of Tamil Nadu,

rep. by Madurai District Collector,
Madurai.

4.The Superintending Engineer,

P.W.D.Madurai Circle, Madurai-2.

5.The Executive Engineer (O & M),

P.W.D., Madurai.

... Respondents / Defendants

PRAYER: Appeal Suit is filed under Section 96 of the Code of Civil Procedure to set aside the decree and judgment made in O.S.No.7 of 1988 dated 30.09.1991 on the file of the II Additional Subordinate Judge, Madurai.



A.S.(MD)No.794 of 2010

WEB COPY

For Appellant : Mr.PTS.Narendravasan

For Respondents : No Appearance

JUDGMENT

The appellant / plaintiff has filed the suit in O.S.No.7 of 1988, seeking declaration and permanent injunction in respect of A schedule property and declaration in respect of B schedule property, wherein the respondents are the defendants.

2.The brief facts of the plaint are as follows:-

The properties originally belonged to one Late.A.Adaikkan, who was working as Lascar in Public Works Department. The plaintiff is the son of the said Adaikkan's brother. The first defendant is the wife of the said Adaikkan. The said Adaikkan had executed his last Will and testamentary on 27.05.1986 in favour of the plaintiff, bequeathing all his movable, immovable properties and also the amounts due from the Chief Minister's Family Benefit Fund, Gratuity, G.P.F., and Pension amounts, which were described as 'A' and 'B' schedule properties. As per the Will, the plaintiff is alone entitled to the suit properties and



A.S.(MD)No.794 of 2010

WEB COPY

the first defendant has no right over the same. The said Adikkan died on 29.12.1986. After his death, the plaintiff sent several applications to the 4th defendant, requesting him to pay the amounts described in the B schedule properties to the plaintiff. The first defendant also appeared before the 5th defendant and has given voluntary statement, admitting the execution of the Will dated 27.05.1986. As the 1st defendant had attempted to receive the amounts from the 5th defendant, the plaintiff has sent a lawyer notice dated 30.01.1987 to the 1st defendant and also to the defendants 4 and 5, requesting them to pay the amounts to the plaintiff. In reply to the notice, the 5th defendant directed the plaintiff to produce a letter of probate of the Will dated 27.05.1986 from the Court of law. Accordingly, the plaintiff has filed an application in O.P.No.112 of 1987 before the learned Principal Sub Judge, Madurai for a letter of administration with the Will dated 27.05.1986. However, the same was dismissed for default on 26.10.1987 for non-payment of probate duty. When the plaintiff was taking steps to restore the same, the 5th defendant sent a notice to the plaintiff, directing him to produce the letter of administration within 15 days, failing which the amounts will be paid to the 1st defendant. Therefore, the suit is filed for declaration and other reliefs.



A.S.(MD)No.794 of 2010

WEB COPY

3.The brief facts of the written statement filed by the 1st defendant are as follows:-

The 1st defendant has denied the execution of the Will. If there is such a Will, either it must have been obtained fraudulently or the signatures of the said Adaikkan must have been obtained, when he was in drunken mode. There was no necessity for him to execute a Will. The B schedule properties are only amounts to be recovered from the Public Works Department. As per the rules, the nominees are only entitled to receive the amounts of a Government Servant, after his / her death. Having once given the offer of nomination in favour of this defendant for the realization of the B schedule properties and was formally accepted by the Government on its part, it had amounted to a contract and the said Adaikkan, was estopped from changing the course of law, administrative rules and codes, by executing the alleged Will dated 27.05.1986. Therefore, even if it is assumed that the Will is true and valid, the clauses relating to the administration of B schedule properties must be deemed to be ultra vires of the Acts, Rules, Notifications and Codes governing the procedures. Therefore, the suit is to be dismissed on this ground with costs.



A.S.(MD)No.794 of 2010

WEB COPY

4.The brief facts of the written statement filed by the 5th defendant, which were adopted by the defendants 3 and 4, are as follows:-

The deceased Adaikkan, who was working as Lascar of this Department, died on 29.12.1986, while in service. When he was alive, he nominated the names of his wife and his daughter Adaikee as nominees for Tamil Nadu Government Servant Family Benefit Fund Scheme as per G.O.Ms.No.1515, dated 03.12.1973 to receive the ex-gratia payment paid from the Government. As per the scheme, the nominee alone is entitled to the amount under the rule. The deceased employee had nominated his wife and the minor daughter. Since the daughter expired, the amount of Rs.20,000/- was paid to the 1st defendant and Family Pension is only claimed by the wife of the deceased Government Servant. The amounts due gratuity etc, on proof of Will and on production of the probate, will be disbursed in accordance with the order of the Court. Hence, the plaintiff is not entitled to any of the reliefs as prayed for.

5.Based on the above said pleadings and also the documents annexed with the pleadings, the trial Court framed the following issues:-

“1.Whether the Will dated 27.05.1986 is true and binding on



A.S.(MD)No.794 of 2010

WEB COPY *the parties?*

2. Whether the suit is maintainable under the law?

3. Whether the plaintiff is entitled to the relief as prayed for in the plaint?

4. what other reliefs are the plaintiff entitled to?

6. In order to substantiate the case, during the trial on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and 20 documents were marked as Exs.A.1 to A.20. However, on the side of the defendants, they neither examined any witness nor marked any documents.

7. On conclusion of the trial, after hearing the arguments advanced on either side, the trial Court has granted decree in respect of A schedule properties only, however, dismissed the suit in respect of B schedule properties.

8. Challenging the same, the plaintiff in the suit has filed the present Appeal Suit before this Court.

9. The learned counsel for the appellant would submit that one Adaikkan executed a Will in favour of the appellant herein in respect of the suit properties.



A.S.(MD)No.794 of 2010

Though the trial Court has rightly stated that the Will is genuine one and as per the Will, the appellant is entitled to get the benefit in respect of A schedule property, it has wrongly interpreted the legal provisions and rejected the claim in respect of B schedule property. Therefore, the appeal should be allowed and the judgment and decree passed by the trial Court in respect of B schedule property have to be set aside.

10.Though the appeal is pending from the year 2010, despite giving several opportunities, none appeared on behalf of the respondents. Therefore, this Court heard the arguments advanced on the side of the appellant and perused the materials available on record.

11.Admittedly, the suit is for declaration and permanent injunction in respect of A schedule property and declaration in respect of B schedule property. The appellant requested the respondents 3 to 5 to pay retirement benefits of the deceased Adaikkan to the appellant. As already contended by the learned counsel for the appellant, though the trial Court has believed that the Will is genuine and decreed the suit in respect of A schedule property, rejected the claim in respect of



A.S.(MD)No.794 of 2010

WEB COPY

B schedule property only on the ground that while Adaikkan was in service, he nominated the 1st respondent and his daughter as nominees in his Service Register, therefore, after the death of a public servant, the nominee is entitled to receive the money. The trial Court has also observed that though as per the Will, the appellant is entitled to get all the retirement benefits after the death of Adaikkan, Service Register will prevail over the testamentary succession and therefore, the appellant is not entitled to get money as per the Will.

12.It is pertinent to note that though the deceased Adaikkan executed a Will in favour of the appellant and the trial Court observed that the Will is genuine, the 1st respondent has not challenged the decree and judgment passed by the trial Court in respect of A schedule property, granting declaration and injunction. However, the appellant filed this appeal, challenging the dismissal of the suit in respect of B schedule property.

13.It is settled principle of law that if the nominee happened to be the legal heir of a Government Servant, he / she is entitled to receive money as per nomination and absolute right to enjoy the same as per succession. Whereas in



A.S.(MD)No.794 of 2010

WEB COPY

this case, the deceased Adaikkan executed a Will in respect of property as well as retirement benefits. If the testator executed a Will, which is last Will and during the life time of the testator, if he has not cancelled the Will or modified the Will, as per testamentary succession, the beneficiary is entitled to get the money mentioned in the Will. Admittedly, the trial Court believed the Will and granted relief in respect of A schedule property in favour of the appellant, however, rejected the claim in respect of B schedule property only on the ground that the 1st respondent and minor daughter have been nominated as nominees in the Service Register and therefore, they are entitled to receive the money.

14.It is settled principle of law that if a person died intestate, the legal heirs / representatives are entitled to the estate of the deceased person and when the deceased died left with testamentary succession like will and the Will is proved as genuine, then the beneficiary is entitled to get the benefit through the said Will.

15.In fact, the nominee may not be legally entitled to money received from the department. He is only authorized to receive the said money from the



A.S.(MD)No.794 of 2010

department. Hence, on receipt of the said money, the nominee should account for it to the legal heirs / legal representatives. When a nominee receives the money from the department, after the Government servant dies, the department gets a good discharge. Therefore, in this case, as per the Will, the appellant is entitled to receive the said money from the nominees and the trial Court misconstrued the legal provisions and wrongly rejected the claim. Hence, the judgment and decree passed by the trial Court in respect of B schedule property are set aside. Hence, this Appeal Suit is allowed and the 1st respondent is directed to pay the amount received from the respondents 3 to 5 from the account of the deceased Adaikkan to the appellant. No costs.

23.06.2022

Index : Yes / No

Internet : Yes / No

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To

1.The II Additional Subordinate Judge,
Madurai.



WEB COPY



A.S.(MD)No.794 of 2010

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD)No.794 of 2010

P.VELMURUGAN, J.

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A.S.(MD)No.794 of 2010

23.06.2022