THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

CIVIL MISCELLANEOUS APPEAL Nos.293 and 703 of 2010

COMMON JUDGMENT: (Per the Hon'ble Dr.SA,J)

Since the facts of the case, parties to the litigation and the issue involved in both the appeals are one and the same, these appeals are taken up together and are being disposed of by way of this common judgment.

2. Civil Miscellaneous Appeal No.293 of 2010, under Section 384 of Indian Succession Act, 1925 (for short "the Act"), is filed by the appellants/respondent Nos.1 and 2-parents of the deceased-Mettapally Eshwara Chandra Vidyasagar, whereas Civil Miscellaneous Appeal No.703 of 2010, under Section 384 of the Act, is filed by the appellant/respondent No.3-Life Insurance Corporation of India (for short "Insurance Company"), challenging the impugned order dated 23.01.2010 passed in S.O.P.No.591 of 2006 by the learned III Additional District Judge, Warangal, wherein the subject S.O.P filed by the respondent No.1 herein-wife of the deceased, under Sections 370 and 372 of the Act, to grant succession certificate in her favour authorizing her to withdraw the amount of Rs.5,20,000/- lying with the respondent No.3 therein-Insurance Company, as mentioned in the petition schedule, was allowed subject to the respondent No.1/wife of the deceased paying requisite amount for issuance of succession certificate as per rules. Each party was directed to bear their own costs.

3. We have heard the submissions of Pitta Srinivasa Reddy, learned counsel for the appellants in CMA No.293 of 2010 and respondent Nos.2 and 3 in CMA No.703 of 2010, Smt.S.A.V. Ratnam, learned counsel for the respondent No.1 in both CMA Nos.293 and 703 of 2010, Sri Bathula Raj Kiran, learned Standing Counsel for LIC, appearing for the appellant in CMA No.703 of 2010 and respondent No.2 in CMA No.293 of 2010 and perused the record.

4. The respondent No.1 in both CMA Nos.293 and 703 of 2010 is the petitioner in S.O.P.No.591 of 2006 before the Court below; the appellants in CMA No.293 of 2010/respondent Nos.2 and 3 in CMA No.703 of 2010 are the respondent Nos.1 and 2 in the subject S.O.P; the appellant in CMA No.703 of 2010/respondent No.2 in CMA No.293 of 2010 is the respondent No.3 in the subject S.O.P; respondent No.3 in CMA No.293 of 2010/respondent No.4 in CMA No.703 of 2010 is the respondent No.4 in the subject

S.O.P. For convenience sake, hereinafter, the parties are referred as they were arrayed in the subject S.O.P before the Court below.

5. Sri Bathula Raj Kiran, learned Standing Counsel for the Insurance Company appearing for the appellant in CMA No.703 of 2010/respondent No.2 in CMA No.293 of 2010 (respondent No.3 in the subject S.O.P), would contend that the total amount payable under three policies bearing Nos.681973708, 681743501 and 687007663 taken by the deceased-Mettapally Eshwara Chandra Vidyasagar, is only Rs.2,41,686/- but the Court below without there being any evidence, erroneously granted succession certificate in favour of petitioner for a sum of Rs.5,20,000/-, which is more than the insured amount. It is further contended that petitioner is not entitled for the said amount and ultimately, prayed to allow the CMA No.703 of 2010 and set aside the impugned order dated 23.01.2010 passed by the Court below and dismiss the CMA No.293 of 2010 filed by the respondent Nos.1 and 2.

6. The learned counsel for the appellants in CMA No.293 of 2010/respondent Nos.2 and 3 in CMA No.703 of 2010 (respondent Nos.1 and 2 in the subject S.O.P) would contend that the respondent No.1-mother, being, Class-I heir as mentioned in the schedule of the Hindu Succession Act, 1956, is also one of the co-sharer of the amount lying with the L.I.C. Both the respondent No.1/mother of the deceased and petitioner/wife of the deceased are entitled for equal share in the amount payable by the Insurance Company but the Court below erroneously granted succession certificate in favour of the petitioner alone and ultimately, prayed to allow CMA No.293 of 2010 and modify the order dated 23.01.2010 passed by the Court below and dismiss the CMA No.703 of 2010 filed by the Insurance Company.

7. The learned counsel for the respondent No.1 in both the CMAs (petitioner in the subject S.O.P) conceded that respondent No.1/mother of the deceased is also a Class-I heir and the amounts payable by the Insurance Company in respect of the policies taken by the deceased are required to be shared equally by the petitioner and the respondent No.1.

8. There is no much quarrel in relation to three policies obtained by the deceased during his lifetime. As per the submission made by the learned Standing Council for LIC, in total, the amount payable on account of the death of the deceased is only Rs.2,41,686/-. Admittedly, there is no single document to show that petitioner/wife of the deceased and respondent No.1/

mother of the deceased, are entitled for a sum of Rs.5,20,000/- in respect of policies obtained by the deceased during his lifetime.

9. Here, it is pertinent to state that a Division Bench of the erstwhile High Court of Andhra Pradesh, Hyderabad, *vide* order dated 08.04.2010 in C.M.A.M.P.No.824 of 2010 in C.M.A.No.293 of 2010, passed the following order:

> ***"The petitioners herein are the parents of late Mettappalli Eshwara Chandra Vidyasagar and the 1st respondent is his wife. The 1st respondent filed S.O.P.No.591 of 2006 under Section 370 of the Indian Succession Act, for issuance of Succession Certificate, and the learned III Additional District Judge, Warangal, by order dated 23-1-2010, allowed the petition ordering issuance of Succession Certificate in favour of the 1st respondent authorizing her to withdraw an amount of Rs.5,20,000/- lying with the 2nd respondent herein-LIC, represented by its Branch Manager. Challenging the same, the petitioners have preferred CMA. (SR) No.12262 of 2000.***
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> ***It is stated that the mother, being, Class-I heir as mentioned in the schedule of the Hindu Succession Act, 1956, she is also one of the co-sharers of the amount lying with the L.I.C.***
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> ***In view of the above provision of law, there shall be interim stay of all further proceedings including issuance of Succession Certificate in favour of the 1st respondent. However, having regard to the facts and circumstances of the case, the 1st respondent herein is permitted to withdraw half of the amount of Rs.5,20,000/- which comes to Rs. 2,60,000/- (Rupees Two lakhs Sixty Thousand only) lying with the 2nd respondent i.e L.I.C of India. The 2nd respondent shall pay the said amount in favour of the 1st respondent without insisting her on producing Succession Certificate, and the withdrawal of the amount shall be subject to the result in the appeal.***
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> ***Accordingly, this application ordered."***

10. Thereafter, the Insurance Company filed vacate stay petition vide CMA MP No.1618 of 2010 in CMA MP No.824 of 2010 in CMA No.293 of 2010, wherein *vide* order dated 18.08.2010, the following order was passed:

> ***"The present application is filed by the Life Insurance Corporation of India seeking to vacate the interim order dated 8.4.2010 passed in CMP.No.824 of 2010 in the above appeal.***
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> ***It is a case where there is a controversy with regard to the entitlement of the policy amount of the deceased. According to the petitioner herein, the first respondent herein who is mother of the deceased is the nominee while the third respondent herein who is widow of the deceased is also claiming the amounts. While so, a Division Bench of this Court, by the order which is now sought to be vacated, has permitted the third respondent herein – widow (first respondent in CMP No. 824 of 2010) to withdraw half of the amount of Rs. 5,20,000/- which comes to Rs. 2,60,000/- lying with the petitioner herein i.e. LIC of India.***
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> ***In view of the controversy with reference to the entitlement of the policy amount, we are of the opinion that order dated 8.4.2010 can be modified to the extent that the neither of the parties shall be entitled to withdraw the policy amount till disposal of the appeal.***
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> ***With the above modification, the vacate petition is ordered.***
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> ***Post the appeal for final hearing on 2.11.2010."***

11. In view of the aforesaid order dated 18.08.2010, neither the respondent No.1/mother of the deceased nor the petitioner/wife of the deceased could able to receive any amount from the Insurance Company. Admittedly, the deceased-Mettapally Eshwara Chandra Vidyasagar, died on 24.02.2006. There is a disputed will deed dated 04.12.2005 (Ex.B.6) said to have been executed by the deceased in favour of respondent No.1/mother of the deceased. The Court below examined the genuineness of the Ex.B.6-will deed dated 04.12.2005 and ultimately, disbelieved it on the ground that no attestors of to the said will were examined to prove its legal validity. The requisite condition to prove the will deed is to examine atleast one of the attestors of the will deed. So the view taken by the Court below is sustainable. Moreover, no emphasis is being placed on the said will deed by the learned counsel for the respondent No.1 in both CMAs/petitioner in subject S.O.P. It is pertinent to state that on the death of the deceased, the respondent No.1/mother of the deceased and petitioner/wife of the deceased are entitled to receive the amount payable by the Insurance Company in respect of the policies taken by the deceased, equally, subject to the their obtaining Succession Certificate from the competent authority and filing the same before the Insurance Company.

12. Sofaras respondent No.2 is concerned, he being the father of the deceased is not a Class-I heir and therefore, he is not entitled for any share in the amount payable by the Insurance Company.

13. In view of the order dated 18.08.2010 obtained by the Insurance Company, the policy amounts were neither paid to the petitioner nor to the respondent No.1. The Insurance Company ought to have enabled both the respondent No.1 and the petitioner to receive the admitted amount of Rs.2,41,686/- during the pendency of appeal in CMA No.293 of 2010. For no fault of theirs, the respondent No.1 and the petitioner were denied the insurance benefits of the deceased. In view of these circumstances, to meet the ends of justice, the Insurance Company is liable to pay interest @ 9% per annum over the amount due from the date of impugned order i.e, 23.01.2010 to till the date of realization.

14. Under these circumstances, the impugned order dated 23.01.2010 passed in S.O.P.No.591 of 2006 by the Court below is modified and ordered as follows:

i) The appellant in CMA No.703 of 2010/respondent No.2 in CMA No.293 of 2010 (respondent No.3 in the subject S.O.P) is directed to pay the admitted policy amount of Rs.2,41,686/- along with interest @ 9% per annum from the date of impugned order i.e, 23.01.2010 to till the date of realization, to the petitioner/wife of the deceased and respondent No.1/mother of the deceased equally.

ii) The Court below is directed to issue succession certificate as indicated above in favour of the petitioner-wife of the deceased and respondent No.1-mother of the deceased, enabling them to receive the amounts payable by the Insurance Company.

15. Accordingly, both the appeals are disposed of. No order as to costs.

Miscellaneous petitions, if any, pending in these appeals shall stand closed.

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Dr. SHAMEEM AKTHER, J

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NAGESH BHEEMPAKA, J

Date: 08.12.2022
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