



C.M.S.A.No.20 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2023

Coram :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.S.A. No. 20 of 2015

Lakshmi Ammal (died)

1. Ravi
2. Baby
(Appellants 1 and 2 brought on record as
LRs of the deceased viz., Lakshmi Ammal
vide Court order dated 23.08.2021 made in
C.M.P.No.9808, 9811, 9799 and 9816 of 2021)

.. Appellants

Versus

Ammayee Ammal (Died)

1. Govindammal
2. Dhanam Ammal
3. Bankaru Ammal

4. The Secretary
Agriculture Co-operative Bank
Mangalampet, Virudhachalam Taluk
Cuddalore District

5. The Manager
Central Co-operative Bank
Mangalampet, Virudhachalam Taluk, Cuddalore District

6. The Post Master
Post Office, Thirupapuliyur Post Office
Cuddalore District

... Respondents



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Prayer: Civil Miscellaneous Second Appeal is filed under Section 372 of the Hindu Succession Act, read with Section 100 of Code of Civil Procedure, against the decree and judgment dated 28.04.2015 passed in C.M.A. No.50 of 2011 on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam confirming the decree and judgment dated 19.04.2011 passed in S.O.P. No. 41 of 2006 on the file of the Subordinate Judge, Virudhachalam, Cuddalore District.

For Appellants	:	Mr. R. Singaravelan, Senior Advocate for Mr. M. Muruganantham
For Respondent	:	Ms. R. Meenal for R1 to R3 Ms. T. Girija for R4 Mr. R. Arumugam for R5 Mr. A.Veeramani Central Government Counsel for R6

J U D G M E N T

The Civil Miscellaneous Second Appeal is filed against the decree and judgment dated 28.04.2015 passed in C.M.A. No.50 of 2011 on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam, confirming the decree and judgment dated 19.04.2011 passed in S.O.P. No.41 of 2006 on the file of the Subordinate Judge, Virudhachalam, Cuddalore District.



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2. The deceased Lakshmi Ammal has filed a petition in S.O.P. No.41 of 2006 on the file of the Principal Subordinate Court, Virudhachalam, for issuance of succession certificate, in order to get her 1/4th share from the respondents 5 to 7. The learned Principal Subordinate Judge, after considering the evidence, dismissed the succession Original Petition by order dated 19.04.2011. Challenging the same, the deceased Lakshmi Ammal filed an appeal in C.M.A. No.50 of 2011 on the file of the III Additional District and Sessions Judge, Cuddalore at Vridhachalam. The learned Additional District and Sessions Judge, after hearing the arguments, dismissed the appeal and confirmed the order passed by the learned Principal Subordinate Judge in S.O.P. No.41 of 2006 by judgment dated 28.04.2015.

3. In the mean time, mother of the deceased Lakshmi Ammal, namely Ammayee Ammal, died.

4. Challenging the judgment and decree of the first appellate Court, the deceased Lakshmi Ammal filed the present second appeal before this Court raising the following substantial question of law;



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A. Whether Courts below while admitting that the appellant and the respondents 2 to 4 are legal heirs of the Perumal Chettiar and Ammayee Ammal, but denied to issue the legal heir certificate it is valid in law or not.

B. Whether Courts below concluded by appreciating the entire things by adopting the Hindu Succession Act or not.

5. Pending Second Appeal, the said Lakshmi Ammal died and subsequently, the legal heirs of the deceased Lakshmi Ammal were brought on record as appellants 1 and 2.

6. This Court, after hearing the arguments, dismissed the Second Appeal by judgment dated 28.06.2022. Challenging, the same, the appellants 1 and 2/legal heirs of the deceased Lakshmi Ammal, filed a review application in Review Application No.25 of 2023 before this Court on the ground that substantial question of law was not formulated and answered in the second appeal. Since, no substantial question of law was formulated in the Second Appeal, while dismissing the Second appeal on 28.06.2022, the review application was allowed by order dated 20.02.2023 and the present Second Appeal in C.M.S.No. No.20 of 2015 was restored. Subsequently, this Court



formulated the following substantial questions of law;

1. Whether the Courts below were right in rejecting the grant of Succession Certificate in favour of the appellant with respect to bank deposits in the 6th respondent bank which has no objection to allowing the petitioner and the 5th respondent bank which had remained ex-parte?

2. Whether the Courts below were right in rejecting the petition holding that the appellant failed to prove that the bank deposits were made by his father Perumal Chettiar without taking into consideration that the respondents had categorically admitted that the deposits are made by Perumal Chettiar but in the name of the mother Ammayee Ammal?

3. Whether the Courts below were right in rejecting the petition after the categorical admission of the respondents that the amounts belonged to the father and therefore the burden of proof shifts to the respondents to prove that the amounts were deposited by the father Perumal Chettiar in the name of the mother Ammayee Ammal?



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4. Whether the Courts below were right in rejecting the petition without there being no valid evidence produced by the respondents that the deposits were made in the name of mother Ammayee Ammal?

5. Whether the Courts were right in rejecting the petition in view of the Judgment passed by *the Hon'ble High Court, Madras in 2010 (4) CTC 815* wherein it is categorically held that when rival claims are made, the same are to be sorted out in appropriate proceedings.

After allowing the review application and formulating the above substantial questions of law, this matter is taken up for hearing.

7. The learned Senior Counsel appearing for the appellants submitted that the petitioner-deceased Lakshmi Ammal's father, one Perumal Chettiar, while he was alive, had deposited a huge amount in his name in the Bank and post office/respondents 5 to 7 therein, and till his death, he used to renew the same. While so, on 12.04.2001, the said Perumal Chettiar died and in the legal heirship



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certificate obtained from the Tahsildhar, Vridhachalam, the deceased Lakshmi Ammal and the respondents 1 to 4 therein have been shown as legal representatives. The 1st respondent therein/deceased Ammayee Ammal, used to renew the deposits with the consent of the petitioner-deceased Lakshmi Ammal and the respondents 1 to 4 therein stating to share the same at a later point of time. While so, the deceased Lakshmi Ammal came to know that, after the death of her father Perumal Chettiar, the 1st respondent therein/deceased Ammayee Ammal, substantially withdrawn the deposit amount to the tune of Rs.17 lakhs , from the 5th respondent herein/Central Co-operative Bank without getting any consent from the deceased Lakshmi Ammal and other legal heirs. The 1st respondent therein/deceased Ammayee Ammal, has no right in the said deposit and that the deceased Lakshmi Ammal and the respondents 2 to 4 therein alone were entitled for 1/4 share each as legal heirs. Therefore, earlier, the deceased Lakshmi Ammal filed the petition for issuance of Succession Certificate to receive her 1/4th share from the respondents 5 to 7 therein and her mother Ammayee Ammal was shown as the 1st respondent, who has not substantiated as to whether the legal heirship certificate is valid in law or not. Therefore, the approach of both the Courts below is wrong. Once Perumal Chettiar, father of the petitioner-deceased Lakshmi Ammal and the respondents 2 to 4 therein had



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deposited amount in the Bank and Post Office, after his death, the petitioner-deceased Lakshmi Ammal, as his legal heir, is entitled to get her share and unless the Succession Certificate is issued in favour of the petitioner-deceased Lakshmi Ammal, the appellants would not be in a position to get their share. Both the Courts below failed to consider and deal with the subject as per the Indian Succession Act. Therefore, the appeal has to be allowed and the order of both the Courts below are liable to be set aside and succession certificate has to be issued to the appellant.

8. The learned Senior Counsel further submitted that after the death of the father of the deceased Lakshmi Ammal, the mother of the deceased Lakshmi Ammal gave the shares to other daughters and since the deceased Lakshmi Ammal got married against the wishes of her mother, they refused to give the share to deceased Lakshmi Ammal. This plea of the appellant was not properly considered and therefore, the orders of the courts below are liable to be set aside.

9. The learned counsel for the respondents 1 to 3 submitted that the respondents 1 to 3 filed a petition before the Consumer Forum and obtained an order. As per the order of the consumer forum, they have given the amount. He



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further submitted that when the said Perumal Chettiar was alive, he had given a letter to the Bank to include his wife Smt. Ammayee Ammal to that account and therefore, after the death of the father, the mother Ammayee Ammal got the entire amount. The deceased Perumal Chettiar had deposited 13 Fixed Deposits as stated by the deceased Lakshmi Ammal along with his wife/Ammayee Ammal, in "as either or survivor account". Therefore, after the death of the Perumal Chettiar, when his wife Ammayee Ammal was alive, till the life time of Ammayee Ammal, it is the property of the Ammayee ammal. Therefore, the petitioner-deceased Lakshmi Ammal is not entitled to get any relief and consequently, the appeal is not maintainable.

10. Heard both sides and perused the records.

11. Admittedly, the appellant-deceased Lakshmi Ammal is one of the daughters of the P.M.K. Perumal Chettiar and Ammayee Ammal. The said Perumal Chettiar, while he was alive, had made 13 fixed deposits in the District Central Co-operative Bank/5th respondent herein, in his name, along with his wife Ammayee Ammal, in a "either or survivor" account besides made deposits in Post Office. Admittedly, the father of the petitioner-deceased Lakshmi Ammal



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died on 12.04.2001 and the petitioner-deceased Lakshmi Ammal filed a petition in S.O.P. No.41 of 2006 on the file of the Principal Subordinate Court, Virudhachalam, for issuance of Succession Certificate in order to get her 1/4th share from the respondents 5 to 7 therein. Though the learned Principal Subordinate Judge dismissed the same for other reasons, the fact remains that from the materials produced by the Bank, it shows that all the accounts are in the account categorised as 'either or survivor' which means the father and mother of the petitioner-deceased Lakshmi Ammal both can operate the account. Admittedly, in the case of “either or survivor”, if either one dies, the survivor is the owner of the asset and till the life time of the survivor, the survivor can maintain the account and enjoy the money deposited in the account.

12. In this case, at the time of filing of the Succession O.P., since the survivor was alive, the succession O.P. itself is not maintainable. Therefore, in that way, the appeal is also not maintainable. Even at the time of the appeal, the mother was alive and pending appeal, the mother died. There is no dispute that the accounts maintained by the father and mother is “either or survivor”. Therefore, after the life time of both only, their legal representatives are entitled to get the amount, whereas, in this case, at the time of filing of the succession



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O.P. and Second Appeal, the survivor was alive and therefore, the succession was not in operation and the petitioner-deceased Lakshmi Ammal is not entitled to get her share. The appellants have not disputed that it is not 'either or survivor' account. Therefore, till the life time of the survivor, the legal representatives of Perumal Chettiar are not entitled to get any share.

13. The learned Senior Counsel appearing for the appellants submitted that during pendency of the first appeal, the 1st respondent therein/Ammayee Ammal/mother of the deceased Lakshmi Ammal died intestate and there is no testamentary succession and as one of the legal representatives, the petitioner-deceased Lakshmi Ammal is entitled to her share.

14. Though this Court, after the review application, formulated the substantial questions of law, while disposing of this case, on hearing the arguments and considering the materials, this Court finds that even the succession O.P. itself is not maintainable and therefore, the first appeal and the present CMSA are also not legally sustainable. Since the survivor/Ammayee Ammal died, the appellants/the legal heirs shall work out their remedy in the manner known to law.



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15. With the above observations, the Civil Miscellaneous Second

Appeal is dismissed. No costs.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



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- To
1. The III Additional District and Sessions Judge, Cuddalore.
 2. The Subordinate Judge, Virudhachalam, Cuddalore District.
 3. The Section Officer,
VR Section,
High Court,
Madras.



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P. VELMURUGAN. J

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