



S.A No.709 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A No.709 of 2013

1.Sulochana

... Appellant

Vs.

1.Krishnaveni

2.The Head Post Master

O/o Head Post Office,
Mayiladuthurai Town,
Nagapattinam District.

3. Government of Tamil Nadu, Rep by

The District Collector
O/o Thiruvarur District Office,
Thiruvarur.

4.Ramalingam

5.Government of India, Rep by

It's Secretary
Department of Posts and Telegraph
Government of India,
New Delhi.

...Respondents



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PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree of Principal Sub Court, Mayiladuthurai, dated 18.09.2012 made in A.S No.53/2011 reversing the Judgment and decree of Principal District Munsif, Mayiladuthurai dated 24.01.2011 made in O.S No. 271 of 2009.

For Appellant: Mr.B.Jawahar
For R1 & R4: Not Appeared
For R2 & R5: Mr.S.Janarthanam
For R3 :Dr.S.Suriya
Additional Government Pleader

JUDGMENT

The appellant herein is the plaintiff in suit O.S NO. 271 of 2009, on the file of the Principal District Munsiff, Mayiladuthurai, filed against the defendants/respondents herein to declare her as a legal heir of her son deceased Muthukumar and also prayed for permanent injunction against the respondents not to disburse the insurance amount which was taken by the Muthukumar under the Rural Postal Life Insurance for Rs.60,000/- in the Head Post Office, Mayiladuthurai. The 3rd defendant contested the suit stated that she was the wife of the said deceased Muthukumar and they love each other and got Married registered on 20.09.2006 and during his life time he took Rural Postal Life



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Insurance(herein after referred to as "Postal Insurance") for Rs.60,000/- in the Head Post Office, Mayiladuthurai on 30.03.2007 and went abroad where he died on 26.10.2008, as a legal heir and nominee she is entitled to receive the insurance amount but the plaintiff not accepted their love marriage and also denied her legal heir status with MuthuKumar filed suit by suppressing real facts. Moreover, the amount lying in the accounts of the first defendant under the Rural Postal Life Insurance scheme this defendant alone nominated by the deceased Muthu Kumar to receive the said amount. Hence, she denied the plaintiff's claim. The Fourth defendant herein is the father of Muthukumar he is being the legal heir of the said Muthukumar, claimed that he is entitled to receive the said Insurance amount as he spent more than three lakhs to sent his son abroad and also for other passport expenses. Hence he raised objection to dispose the said Postal Insurance amount in favour of the plaintiff. Before the Trial Court the Postal Authorities stated that said Muthukumar took Insurance Policy under the Rural Postal Life Insurance to the tune of Rs. 60,000/- and proposed 3rd defendant as a nominee but the plaintiff raised objection however as per the rule of Postal Insurance, nominee is entitle for the said insurance amount hence they bound to discharge amount to the nominee.



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2. On considering the oral and documentary evidence the Trial

Court concluded that marital status claimed by the 3rd defendant with the said Muthukumar has not been proved even marriage certificate dated 21.09.2006 alone is not sufficient to conclude that she is a legally wedded wife of the deceased Muthukumar. Further, there was no cohabitation between her and Muthukumar thereby held that the plaintiff alone is the legal heir of the deceased Muthukumar but with respect to disbursing amounts in respect of Postal Insurance by the first defendant, it was established that she was nominated by the Muthukumar thus she is entitled to receive it, accordingly the Trial Court partly allowed the suit.

3. Aggrieved over the same 3rd defendant preferred and appeal before the Principal Sub Court, Mayiladuthurai, in A.S No.53 of 2011, on hearing both sides the lower appellate Court held that alleged marriage with deceased Muthukumar was proved by the 1st defendant through registered Certificate/Ex.B6 wherein the performance of the marriage in temple has also been mentioned and the same was not disproved by the plaintiff by adducing the contra evidence thereby the marriage certificate deemed to be valid thereby set aside the findings of the Trial Court by allowing the appeal.

4. Challenging the said findings the plaintiff preferred this



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second appeal submitted that lower appellate Court failed to take note of the fact that Hindu Marriage has to be solemnized by the following mandatory procedure contemplated under Hindu Marriage Act merely registering marriage without following necessary procedures for solemnization of marriage will not confer the status of husband and wife for the parties. No such marriage was performed between the deceased Muthukumar and 1st defendant, but without appreciating this aspects the lower appellate Court erroneously held that it as a valid marriage as such is unjust and and unfair and liable to be set aside.

5. This Court admitted the second appeal with the following substantial questions of law:

1. Whether the Judgment of the lower appellate Court is liable to be set aside as it failed to comes to closer quarters of judgment of the trial Court?

6. The facts reveals that the plaintiff/Sulochana being mother of the deceased Muthukumar filed a suit to declare her as a only legal heir of the deceased Muthukumar against the defendants, and she is entitled to receive the amount which belongs to his son's Life Insurance lying in the hands of the Postal Authorities Defendants 2, 3 and 5 respondents herein



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and also prayed for prohibitory relief not to disburse the amount to the third defendant alleged to be a wife of the said deceased Muthukumar and the fourth defendant father of the deceased Muthukumar. The Postal Authorities admitted that the said deceased Muthukumar took Rural Postal Insurance for a sum of Rs.60,000/- and the nominee is the 3rd defendant and the third defendant claimed herself as legally wedded wife she alone entitled to receive the amount as legal heir of the deceased Muthukumar.

7. The foremost point to be decided is whether the third defendant is legally wedded wife of the Muthukumar. In fact, the plaintiff denied her son's marriage with third defendant, but the third defendant contended that she had love affair with Muthukumar, against wish of their parents they performed marriage at Parimala Renganathar Temple and none of her relatives attended their marriage. Thereafter, marriage was registered on 21.09.2006 at Register Office, Peralam, Certificate also issued by the authorities which marked as Ex.B6. Immediately, he went abroad but the amount deposited in the post office was made by the deceased Muthukumar and third defendant was appointed as a nominee hence she entitled to said amount.

8. The learned counsel for the plaintiff pointed out that alleged



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marriage in the temple said to be held on 21.09.2006 not been proved with independent witness and mere certificate of registration itself not sufficient to conclude the validity of marriage between them. As per the Hindu Marriage Act, the marriage must be performed by tying Thali and exchanging garland. So as per the Hindu Marriage Act, she would bound to prove that the marriage was performed as per Hindu custom before registering their marriage. Further there is no independent witness to prove the said factum of the marriage but the lower appellate Court erroneously fixed the responsibility on the plaintiff that she has to adduce rebuttal evidence to dis-prove the contention of the marriage certificate Ex.B6. Admittedly Ex.B6/Marriage Certificate alone is not sufficient to conclude the validity of the marriage under Hindu law, it requires that valid marriage was performed before registering the marriage. Hence the burden is upon the third defendant to prove the factum of the marriage but she failed. Though the Trial Court rightly appreciated these aspects, but the lower appellate Court fixed responsibility to the plaintiff which is unjust and unfair and liable to be set aside. Furthermore, the third defendant during the cross examination admitted that there was no cohabitation between the deceased Muthukumar so their marriage also not consummated nor there is proof to



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prove that they lived together after alleged marriage. Law permits under section 114 of Evidence Act, presumption of marriage if there is continue cohabitation between the parties unless contrary is proved. But case in hand the third defendant herself admits that there was no cohabitation between deceased Muthukumar nor they lived as husband and wife. Besides, she failed to prove the validity of marriage as required under Hindu Marriage Act. Thus the third defendant not proved her marriage. But lower appellate Court erroneously appreciated Ex.B6 concluded that there was a valid marriage as such is unjust and unfair and liable to be set aside. Accordingly question of law 1 is answered.

9. Therefore, the mother/plaintiff is being the class one legal heir of the deceased son Muthukumar entitled to receive the said amount. Even though the third defendant was appointed as nominee, when there is dispute arouse with regard to receiving amount, plaintiff proved that she is only legal heir then the authorities bound to give the amount to the legal heir of the deceased. As discussed above, ^{3rd} defendant failed to prove her marriage with deceased Muthukumar thereby she is not entitled to receive any amount thus as legal heir, plaintiff is bound to receive the same.

10. If dispute arose between the nominee and legal heir of the



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deceased, the authorities bound to give amount to the legal heir because nomination itself became nullity. Hence the postal Authorities are directed to disburse amount arising from Postal Insurance to the plaintiff. Accordingly appeal is allowed, findings of the lower appellate Court is set aside. The suit is decreed as prayed for thereby plaintiff is declared as legal heir of the Muthukumar. Postal authorities are directed to hand over the amounts to the plaintiff.

11. In the result, the Second Appeal is allowed. There shall be no order as to costs.

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To

1. The Sub Court, Mayiladuthurai.
2. The District Munsif Court, Mayiladuthurai.
3. The Section Officer,
V.R Section,



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T.V.THAMILSELVI,J.

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