



C.M.A.(MD).No.1753 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1753 of 2013

1. George Edward
2. Mercy Selva Bai
3. Jasmin Ponmalar
4. Datton Selva Edward

..... Appellants/ Respondents

-VS-

Gnana Jansi

.... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of Civil Procedure Code, against the order dated 12.07.2013 passed in SOP No.2 of 2007 on the file of the Principal Sub Judge, Nagercoil.

For Appellants : Mr.G.Prabhu Rajadurai

For Respondent : Mr.M.P.Senthil

J U D G M E N T

The present appeal has been filed by the appellants challenging the order passed by the learned Subordinate Judge, Nagercoil in Succession O.P



C.M.A.(MD).No.1753 of 2013

WEB COPY

No.2 of 2007. In an accident that took place on 13.04.2006, one Dr.G.Ralston Sebastin Edward and his son Aneesh and his daughter Ashika had passed away. The petitioner in Succession O.P, who is the wife of the said Dr.G.Ralston Sebastin Edward, sustained injuries. The deceased had taken a Life Insurance Policy (Geevan Chaya), Nagercoil Branch, bearing No. 321418021 for Rs.8,00,000/- (Rupees Eight Lakhs only). When the petitioner made a claim before the Insurance Company for the said amount it was resisted by the parents of the deceased. Therefore, the wife of the deceased had filed the Succession O.P.No.2 of 2007 before the Principal Subordinate Judge, Nagercoil.

2. The petitioner had contended that her husband Dr.G.Ralston Sebastin Edward and her son had died on the spot at 06.00 p.m on 13.04.2006. Her daughter viz., Ashika was admitted to a hospital and she passed away at 11.00 p.m on 13.04.2006. In view of Section 33(a) and Section 46 of the Indian Succession Act, the sole legal heir is entitled to succeed the benefits of LIC Policy and had prayed for grant of Succession Certificate for the full policy amount.



C.M.A.(MD).No.1753 of 2013

WEB COPY

3. The parents of the deceased had contended that the son as well as the grand children had passed away simultaneously on the spot at about 06.00 p.m. When all of them had died simultaneously, Section 33 (a) and Section 46 of the Indian Succession Act are not applicable. According to the parents of the deceased, only Section 33 (b), Section 41 and Section 42 of the Act are applicable. If those Sections are made applicable, the petitioner would be entitled to 50% of the LIC Policy amount and balance 50% should be paid to the father of the deceased.

4. The Trial Court, after considering the oral and documentary evidence, had arrived at a finding that the husband and son of the petitioner alone had died on the spot at 06.00 p.m on 13.04.2006. However, her daughter viz., Ashika was admitted to a hospital and she passed away at a later point of time viz., at 11.00 p.m, on 13.04.2006. Therefore, the trial Court arrived at a finding that only Section 33(a) and Section 46 of the Indian Succession Act are applicable and the petitioner is entitled to get a Succession Certificate for the full policy amount, which is under challenge in the present appeal.



C.M.A.(MD).No.1753 of 2013

WEB COPY

5. According to the learned counsel appearing for the appellants, there is presumption under Section 21 of the Hindu Succession Act that when two persons have died simultaneously then for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder. However, such a presumption is not available under the Indian Succession Act 1995. Therefore, the daughter viz., Ashika cannot be presumed that she has been alive after the death of father and brother. Therefore, the trial Court was not right in invoking Section 33 (a) and Section 46 of the Indian Succession Act. Considering the fact that all of them had died simultaneously at 06.00 p.m on 13.04.2006, the trial Court ought to have invoked Section 33, Section 41 and 42 of the Indian Succession Act. In such an event, the father would be entitled to 50% of the share of the LIC Policy.

6. Per contra, the learned counsel appearing for the respondent had contended that the question of invoking presumption that the younger survived the elder can be invoked only if the contrary is not proved. In the present case, the Doctor, who had treated Ashika, viz., has been examined as P.W.2. The Accident Register relating to Ashika has been marked as Ex.P.10. The said Accident Register would clearly reveal that Ashika was admitted to



C.M.A.(MD).No.1753 of 2013

the Government Hospital, Virudhunagar, at 06.45 p.m on 13.04.2006 and she was alive, but, unconscious. Later she was referred to the Government Rajaji Hospital, Madurai, where she succumbed to the injuries only at 11.00 p.m. When the time of death of Ashika has been proved to be at a later point of time, the question of invoking presumption would not arise.

7. The learned counsel appearing for the respondent had further contended that the trial Court was right in relying upon Section 33(a) of the Act, that the widow of the deceased would be entitled to 1/3rd share and Ashika was alive at the relevant point of time and O.P in Succession and she would be entitled 2/3rd share. When Ashika passed away, Section 46 of the Succession Act has been invoked, this 2/3rd share also will devolve upon the mother. Therefore, the petitioner in the Succession O.P is entitled to the full policy amount. Hence, the trial Court is right in allowing the application entirety and the same need not be disturbed.

8. I have carefully considered the submissions made by the learned counsel on either side.



C.M.A.(MD).No.1753 of 2013

WEB COPY

9. The question that arises for consideration is whether one of the accident victims viz., daughter of the petitioner had died on the spot at about 06.00 p.m simultaneously along with her husband and her son or she died at a later point of time.

10. There is no dispute that the petitioner's husband and her son had died at 06.00 p.m on 13.04.2006. It is the contention of the petitioner that her daughter was admitted to the Government Hospital, Virudhunagar, and later, she was referred to Government Rajaji Hospital, Madurai and she passed away only at 11.00 p.m on 13.04.2006. In support of the said contention Ex.P. 10- Accident Register maintained by the Government Hospital, Virudhunagar, has been marked as Ex.P.10. A perusal of the Ex.P.10 will clearly disclose that at about 06.45 on 13.04.2006, Ashika was admitted to the hospital alive, but, she was unconscious. The Doctor, who had treated the said Ashika has been examined as P.W.2. During his examination, he has marked Accident Register as Ex.P.10, and he has further stated that he had referred Ashika for further treatment to the Madurai Rajaji Government Hospital at about 08.00 p.m. But, no records from Government Rajaji Hospital have been produced to indicate the time of death of Ashika. However, it is clear from Ex.P.10 and



C.M.A.(MD).No.1753 of 2013

deposition of P.W.2, Ashika was alive atleast till 08.00 p.m on 13.04.2006.

Therefore, it is clear that the Ashika had died at the later point of time than her father and brother.

11. As per Section 33 (a) of the Indian Succession Act, where intestate has left widow and lineal descendants, $1/3^{\text{rd}}$ of the property of the deceased shall belong to the widow and remaining $2/3^{\text{rd}}$ share shall go to his lineal descendants. Therefore, in the present case, $1/3^{\text{rd}}$ share of the LIC Policy shall go to the widow namely the petitioner and $2/3^{\text{rd}}$ shall go to the daughter the deceased viz., Ashika. The said Ashika had passed away after her father and brother. Therefore, as per Section 46 of the Indian Succession Act, if the intestate father is dead but the intestate mother is living and there is neither brother or sister nor any child of brother or sister of the intestate, the property shall belong to the mother. In the present case, admittedly, the intestate viz., Ashika was not having any brother or sister at the relevant point of time and therefore, $2/3^{\text{rd}}$ share would automatically go to mother viz, petitioner.

12. In view of the above said deliberations, the trial Court was right in invoking Section 33 (a), Section 46 of the Indian Succession Act, and Section



C.M.A.(MD).No.1753 of 2013

WEB COPY

33 (b) and Sections 41 and 42 of the Act can be invoked only if Ashika had died along with the father and brother. In view of the said deliberations, I do not find any merits in the appeal.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

18.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal Sub Judge,
Nagercoil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.1753 of 2013

R.VIJAYAKUMAR,J.

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C.M.A.(MD)No.1753 of 2013

18.04.2023