



C.M.A. (MD)No.802 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.802 of 2022

and

C.M.P.(MD) No.7303 of 2022

R.Radhakrishnan

...Appellant/Petitioner

Vs.

1.The Senior Manager,
Central Bank of India,
No.6, Thirumukulam North Street,
Tallakulam,
Madurai-625 007.

2.R.V.N.Thamburaj

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 384 of the Indian Succession Act, to set aside the judgment and decree passed in S.O.P.No.1 of 2014 on the files of the I Additional District Court, Madurai and allow the appeal.

For Appellant : Mr. L.Jeen Felix

For R1 : Mr.R.Rajesh Saravanan

For R2 : Mr.L.George Pavi



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JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the judgment and decree passed by the I Additional District Court, Madurai in S.O.P.No.1 of 2014 dated 08.11.2016.

2.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i) for the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

(ii) the petitioner was appointed as a nominee of one Mr.A.J.Lawrence Christuraj, who committed suicide on 12.11.2013. The deceased had deposited a sum of Rs.10,00,000/- in the respondent Bank. Since the deceased died interstate, the petitioner being the nominee, filed an application for grant of succession certificate in his favour. However, the learned District Judge considering the evidence of the parties has dismissed the said application.



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(iii)the second respondent has filed counter affidavit stating that the deceased though died interstate, his brother and sister are very much alive and they have not been impleaded as necessary parties. As such, the application of the petitioner on the ground of non-joinder of necessary parties is not maintainable.

(iv)to substantiate the case before the Tribunal, on the side of the petitioner he was examined himself as P.W.1 and Ex.P1 to Ex.P12 were marked and on the side of the respondents R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R4 were marked.

(v) After considering the material evidence adduced on both sides, the learned trial Judge dismissed the application filed by the petitioner. Challenging the same the present appeal is filed.

3.Though several grounds have been raised in the present appeal, the main contention of the learned counsel for the appellant is that the appellant was taking care of the deceased till his death and also he has given some considerable amount. Further, since the appellant has already been appointed as a nominee, he is entitled to claim succession certificate.



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4.The learned counsel for the respondents submitted that the appellant was appointed only as a nominee. Therefore, at the most, he will be treated only as a trustee and he cannot seek for succession certificate in his favour, particularly when the legal heirs of the deceased are very much alive.

5. In the light of the above submission, now the points arise for consideration in this appeal are:

(a) Whether the appellant being a nominee is entitled to succession certificate particularly when the other legal heirs of the deceased are very much alive?

(b) To what other reliefs?

6. I have heard the learned counsel appearing on either side and perused the entire materials placed on record.

7.The fact that the appellant was appointed as a nominee by the deceased is not disputed. In general, the nominee was appointed to handle the amount as per the Banking Regulation Act. It is a well settled position that the nominee is



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always treated as trustee to receive the money left by the deceased in the bank and hand over the same to the legal heirs of the deceased. Such being the position, merely because the petitioner is appointed as nominee, as a matter of right he cannot seek succession certificate.

8.It is relevant to note that Section 372 of the Indian Succession Act, contemplates that even while filing an application for grant of succession certificate, it is the requirement of law to mention the near relatives of the deceased. Admittedly, as per the evidence adduced before the trial Court, it is clearly established that R.W.2 one of the witness, is none other than the brother of the deceased and the legal heirs of the deceased were not impleaded as party to the proceedings initiated by the petitioner. When the legal heirs are very much alive and not made as party to the proceedings, the very application itself is not as per law and same deserves to be dismissed. At any event, any amount left by the deceased will become the estate of the deceased. Such estate normally devolves upon all the legal heirs of the deceased and not to the nominee. Such being the position of law, as a matter of right the petitioner cannot seek succession certificate merely on the ground that he is the nominee of the deceased. The points are answered accordingly.



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9.In the light of the above discussion, I do not find any infirmity or irregularity in the order passed by the I Additional District Court. Accordingly, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.03.2023

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

- 1.The First Additional District Court,
Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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