



S.A.No.53 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.53 of 2024

and

C.M.P.No.1448 of 2024

1.Mrs.Vijayalakshmi

2.Mrs.Sarasa

... Appellant

Vs.

1.Tmt.K.Shanthi

2.K.Thiagarajan

3.K.Vijayakumar

4.Mrs.K.Nalini

5.The Post Master General,
Chennai City Region,
Anna Salai, Chennai - 600002.

6.The Superintendent of Post Offices,
Chengalpattu Division,
Chengalpattu - 603001

. .. Respondents



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Prayer:- Second Appeal is filed under Section 100 of C.P.C to set aside the decree and Judgement dated 31.08.2023 and made in A.S.No.16 of 2023 on the file of the XIX Addl.City Civil Judge at Chennai reversing thereby the decree and Judgement dated 16.03.2022 and made in I.A.No.5 of 2021 in O.S.No. 2500 of 2019 and the decree in O.S.No.2500 of 2019 on the file of the Court of the I Asst. City Civil Judge at Chennai and to restore those of the Trial Court.

For Appellants : M/s.A.Kanagasabapathy

JUDGEMENT

The defendants 1 and 2 in O.S.No.2500 of 2019 are the appellants before this Court. The Second Appeal arises against the proceedings initiated for rejecting the plaint. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiffs had filed the suit O.S.No.2550 of 2019 on the file of the I Assistant City Civil Court, Chennai seeking relief of (i) declaration that the plaintiffs 2 to 4 are the surviving legal heirs of the deceased husband of the 1st plaintiff Mr.K.Kamala Kannan, who died



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on 31.03.2000, (ii) declaration that the 1st plaintiff has a right to get equal shares in the service benefits, pension amount and other amounts of the deceased husband K.Kamala Kannan (iii) a permanent injunction restraining the defendants 3 and 4 from granting the service benefits, pension amounts of the deceased husband of the 1st plaintiff late K.Kamala Kannan to defendants 1 and 2 without consent of the plaintiffs.

3. The plaint proceeds on the basis that the 1st plaintiff is a legally wedded wife of the deceased K.Kamala Kannan and their marriage had been solemnized on 24.02.1975. The 1st plaintiff and the said Kamala Kannan were originally living with the mother of the said K.Kamala Kannan one Alamelu at Arumugam, Mochari Road, Madurandagam, where he was working as a postman in the office of the 4th defendant. The plaintiffs 2 to 4 are the children born to the 1st plaintiff and K.Kamala Kannan. The plaintiffs 2 and 3 are studying and completed their schooling at Madurandagam.



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4. The plaintiff would submit that the deceased K.Kamala Kannan had nominated the 1st plaintiff as the nominee in the official records of the 4th respondent herein. The 1st plaintiff would submit that after the demise of her husband on 31.03.2000, she had approached the office of the 4th defendant to settle the retirement benefits where she became aware of the 1st defendant's claim that she was the wife of the late K.Kamala Kannan. The 1st plaintiff would submit that she was surprised to hear about this claim as her husband had never informed her about this relationship.

5. The plaintiff would submit that the 1st defendant had filed a petition for Succession Certificate before this Hon'ble Court in O.P.No.100 of 2006. After the counter was filed by the plaintiffs and the evidence was recorded, this Court was pleased to issue the Succession Certificate in favour of the 1st defendant by order dated 08.03.2019. However, with a direction that :-



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“The issue of Certificate is based only on the prima facie opinion and it is not conclusive proof of rejection of the claim of the 3rd respondent in the suit .

It is open to the 3rd respondent to establish her claim in properly constituted civil suit and claim her share in the estate of the deceased”

Immediately, the plaintiff herein who is the 3rd respondent in O.P.No.100 of 2006 had come forward with the present suit.

6. After receiving summons in the suit, the 1st defendant had come forward with an application [under the provisions of Order VII Rule 11 (a) and (d)] to reject the plaint. The rejection of the plaint was on the following grounds:-

a) Notice under Section 80 (1) of the CPC has not been issued prior to the institution of the suit. The issue of the notice is mandatory unless the plaintiff is able to show that urgent orders were required.

b) There is no cause of action for the filing of the suit and the



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cause of action pleaded is an illusory one.

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7. The 1st respondent/plaintiff had filed a detailed counter inter alia contending that the application for rejecting the plaint was not maintainable since the plaintiff had set out in detail the cause of action for filing the said suit. The plaintiff would submit that the suit has been moved only as per the directions of this Court in O.P.No.100 of 2006 and that apart the issuance of the Succession Certificate is based only on the prima facie opinion and is not conclusive proof. The plaintiff would submit that the contention of the defendants that the term estate would not cover the movable property is without any basis.

8. The Trial Court after considering the evidence had allowed the application (I.A.No.5 of 2021 in O.S.No.2500 of 2019) and rejected the plaint in O.S.No.2500 of 2019. Challenging the same, the plaintiffs had filed A.S.No.16 of 2023 on the file of the XIX Additional Judge, City Civil Court, Chennai. The learned Appellate



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Judge had allowed the appeal and set aside order passed by the Trial Court. Aggrieved by the same, the appellants are before this Court.

9. Heard the learned counsel for the appellants who are the defendants 1 and 2 who had taken out the application for rejecting the plaint.

10. It has been time and again held that in considering the issue as to whether the plaintiff has made out a cause of action what has to be looked into is only the plaint and its contents and the documents filed alongwith the plaint. In the instant case, the plaintiff has clearly and cogently set out the cause of action for filing the suit. That apart, in the Succession O.P.No.100 of 2006 before this Court, this Court had directed the 3rd respondent/plaintiff herein to establish her claim in a properly constituted civil suit and claim her share in the estate of the deceased and it is on the basis of this direction that the above suit has been filed.



11. The application for rejection of the plaint has been filed not only on the ground that there is no cause of action but also on the ground that it is barred by law in as much as the plaintiff had not issued a Section 80 (1) notice prior to the institution of the suit which is a mandatory notice as the defendants 5 and 6 in the above suit are Government bodies.

12. As regards this issue, the defendant has totally overlooked the provisions of Section 80(2) of the CPC which carves out an exception when a suit can be moved (without issuing notice). Section 80 (2) of the CPC reads as follows:-

“(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without



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serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).”

13. In the instant case, the plaintiff has filed the suit seeking urgent orders. Therefore, the Lower Appellate Court has rightly allowed the appeal and set aside the order passed by the Trial Court dated 16.03.2022 made in I.A.No.5 of 2021 in O.S.No.2500 of 2019



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and I see no reason to interfere with the same. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

14. The learned counsel for the appellants would submit that in the above suit written statements have been filed and therefore, a time frame may be given for its disposal. Considering the fact that this suit is a second round of litigation and taking into account the fact that the written statement has been filed, a direction is issued to the Trial Court (I Assistant Judge, City Civil, Court, Chennai) to dispose of the above suit within a period of 8 months from the date of receipt of the copy of the judgment.

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Index : Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

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1. The XIX Addl.City Civil Judge at Chennai.
2. The Court of the I Asst. City Civil Judge at Chennai.
3. The Section Officer,
V.R.Section,
High Court, Madras.

P.T.ASHA, J.,

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