



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.688 of 2019

and

C.M.P. No.12901 of 2019

R. Neelammal

...Appellant

Vs.

1. J. Vinu

2. The Branch Manager
Central Cooperative Bank,
Chetpet, Thiruvannamalai District.

3. The Special Officer,
Central Cooperative Bank,
Thiruvannamalai, Thiruvannamali District.

4. The Joint Registrar
Central Cooperative Bank,
Thiruvannamalai, Thiruvannamali District.

... Respondents



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

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Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 26.02.2019 passed in A.S. No.84 of 2017, on the file of the Additional District Court, Fast Track Court, Arani (A.S. No.10 of 2016, District Court, Thiruvannamalai), reversing the decree and judgment dated 17.12.2013 passed in O.S.No.37 of 2009, on the file of the Subordinate Court, Arani.

For Appellant	: Mr.M. Ganesh for Mr. N. Manokaran
For R1	: Ms. U. Meharunisha for Mr. K.S. Ganesh Babu
For R2	: No appearance
For R3 and R4	: Mr. P. Gurunathan Additional Government Pleader (C.S.)

JUDGMENT

The appellant is the plaintiff in O.S. No.37/2009 on the file of the Subordinate Court, Arani and she filed the said suit claiming half share in the maturity value of the suit deposit in the second defendant bank under Receipt number 123062 dated 22.01.2007 made by her husband Ramakrishna Reddiar (since deceased) along with the first defendant J. Vinu. She also prayed for a permanent injunction restraining the second defendant bank from disbursing the entire deposit amount to the first defendant and for costs.



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

3.1. The plaintiff is the wife of late Ramakrishna Reddiar. Ramakrishna Reddiar owned several properties including a rice mill. Since Ramakrishna Reddiar and the plaintiff did not have any issues, Ramakrishna Reddiar's sister's sons were assisting him in his business. Therefore, Ramakrishna Reddiar made several deposits including a sum of Rs.4,95,000/- with the second defendant bank under the scheme 'valarmathi deposit' on 22.01.2007 for 13 months. The said Fixed Deposit was made under 'either or survivor' scheme.

3.2. Ramakrishna Reddiar died intestate on 03.12.2007. According to the plaintiff, though Ramakrishna Reddiar and the first defendant jointly made the deposit with the second defendant bank, the first defendant is refusing to give half share to her in the said deposit.



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

Therefore, the plaintiff issued a legal notice dated 03.03.2008 (Ex.A1) to the second defendant bank requesting them to pay half share in the fixed deposit. Since the said notice did not evoke any response from the second defendant, she filed the suit.

4. In the trial court, the defendants 3 and 4 remained absent and were set ex-parte. The suit was resisted by the first respondent on the following grounds:

- i. The suit filed by the plaintiff is not maintainable.
- ii. Late Ramakrishna Reddiar (the maternal uncle of the first defendant) and the family of the first defendant were living jointly in Devimangalam village and they were all doing business jointly.
- iii. Ramakrishna Reddiar, during his life time, deposited various amounts in the names of the first defendant and his brothers.
- iv. Since Ramakrishna Reddiar was a senior citizen, his name was added in the suit deposit as he would be getting 1% additional interest from the bank.
- v. Since the said Fixed Deposit was made under 'either or survivor'



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

scheme, the plaintiff cannot claim any right over the same after the death of her husband Ramakrishna Reddiar. In fact Ramakrishna Reddiar, during his life time, handed over the Fixed Deposit receipt to the first defendant. Therefore, the suit filed by the plaintiff is liable to be dismissed.

4.1.The second defendant in his written statement made the following contentions.

- i. Late Ramakrishna Reddiar and the first defendant jointly deposited a sum of Rs.4,95,000/- under Receipt number 123062 with the second defendant Bank. The said deposit was made for a period of 13 months.
- ii. Unless the original Fixed Deposit receipt is produced by the plaintiff, the bank cannot disburse the amount to her.

5. On the basis of the above pleadings, the trial Court framed necessary issues and posted the case for trial.



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

6. The plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A7. The first defendant examined himself and one another witness and marked Ex.B1 to Ex.B5.

7. The learned trial court judge, after analysing the oral/documentary evidence on record, decreed the suit in favour of the plaintiff, vide his decree and judgment dated 17.12.2013, on the following grounds.

- i. It is admitted that the plaintiff is the wife of late Ramakrishna Reddiar and therefore she comes under Class I heir.
- ii. Though the first defendant had contended that the suit Fixed Deposit was made from the joint family income of his family, he has not explained to the satisfaction of the court as to why Ramakrishna Reddiar's name was also indicated in the Fixed Deposit.
- iii. After the death of Ramakrishna Reddiar, his wife is entitled to half share in the deposit amount of Rs.4,95,000/-



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

8. Aggrieved over the decree and judgment passed by the trial court judge, the first defendant filed an appeal in A.S.No.10/2016, before the District Court, Thiruvannamalai. Subsequently it was transferred to the Additional District Court, Thiruvannamalai, and renumbered as A.S. No.84/2017. The learned Additional District Judge, after analysing the evidence on record, allowed the appeal, vide his decree and judgment dated 26.02.2019, on the following grounds:

- i. It is contended by the first defendant that in order to get 1% additional interest Ramakrishna Reddiar's name was included in the deposit.
- ii. Since the account was under 'either or survivor' scheme, the first defendant who is one of the depositors, is entitled to get the full maturity value of the fixed deposit.
- iii. As per the 'either or survivor' scheme, the person who is alive is entitled to get the entire maturity value of the fixed deposit and therefore, the plaintiff is not entitled to get any amount.



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

9. Aggrieved over the decree and judgment passed by the first appellate court, the present second appeal is filed by the plaintiff.

10. The second appeal was admitted by this Court on the following substantial questions of law:

" (a) Whether the first appellate court is right in dismissing the suit by giving undue credence to the interpolation of the word 'Either or Survivor' found in the joint deposit receipt issued in the name of late Ramakrishna Reddiar and the first defendant?

(b) Whether the first appellate court committed an error in non-suiting the plaintiff who happens to be the class I legal heir of the joint deposit holder late Ramakrishna Reddiar?

(c) Whether the interpretation given by the first appellate court to the word "Either or Survivor" is legally sustainable in law?

(d) Whether the first appellate court has committed an error in holding that the suit has not been properly valued for the purpose of court fees, particularly, when there is a legal bar to raise that issue under Section 12(2) of the Tamilnadu Court Fees and Suit Valuation Act, 1955?



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

11. Heard Mr.M. Ganesh, learned counsel appearing for the appellant, Ms. U. Meharunisha, learned counsel appearing for the first respondent and Mr. P. Gurunathan, learned Additional Government Pleader, appearing for the respondents 3 and 4.

12. Mr.M. Ganesh, learned counsel appearing for the appellant relied on the decision in *Parvathi vs. Valliyammal and another* reported in **2005(1) CTC 684** and contended that the fixed deposit receipt is merely a written acknowledgment by the bank that it holds a certain sum to the use of its customers and that the bank is thus a debtor to the account holders in respect of the amount deposited - a debt which is repayable by the bank to the account holders with interest on expiry of an agreed period and that in order to obtain a valid discharge under a tripartite agreement, the bank may be right in disbursing the amount to the survivor. But, once controversy arises, *inter se* the depositors, we have to anticipate a gift deed in favour of the survivor. Unless there is a gift, the survivor can only receive the amount as a trustee of the



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

surviving other heirs of the deceased depositor and the surviving depositor cannot have any exclusive interest over the same simply because it was deposited under the scheme "either or survivor".

12.1. He also relied on the decision of this Court in *Sekar @ Arun Sekar vs. Meenammal and another (S.A(MD) No.191 of 2007 dated 13.03.2019)* wherein this Court has held that it is settled law that a person, in the fixed deposit under 'either or survivor' scheme, with a bank the survivor is only a trustee to receive the amount on behalf of the other legal heirs and the survivor cannot get any exclusive right.

13. Per contra, Ms. U. Meharunisha, learned counsel for the first respondent contended that the fixed deposit was made by Ramakrishna Reddiar only for the welfare of the first defendant and therefore, the plaintiff is not entitled to get any share in the fixed deposit.

14. It is pertinent to point out that, in the written statement of the first defendant, there is no specific pleading that the fixed deposit



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

was made by late Ramakrishna Reddiar for the welfare of the first defendant. On the other hand, it was contended by the first defendant that late Ramakrishna Reddiar was managing the properties of joint family properties of the first defendant's family and made certain deposits with the second defendant bank. According to the first defendant, Ramakrishna Reddiar's name was included in the deposit since he will be getting additional interest of 1%. It is admitted that late Ramakrishna Reddiar and the first defendant deposited a sum of Rs.4,95,000/- with the second defendant bank under 'either or survivor' scheme for 13 months. Before the maturity of the fixed deposit, Ramakrishna Reddiar died. The first defendant claims absolute right over the entire amount as he is the 'survivor'. In the decision in *Parvathi vs. Valliyammal and another* (cited supra), it has been held that in the absence of a specific gift deed in favour of the survivor, the survivor cannot claim any exclusive right over the maturity value of the fixed deposit.



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

14.1. Similarly in the decision in ***Sekar vs. Meenammal and another*** (cited supra) this Court has held that the survivor is only a trustee to receive the amount on behalf of the other legal heirs and he cannot claim any exclusive right. Admittedly Ramakrishna Reddiar had not executed any gift deed in favour of the first defendant. In the circumstances, the survivor (the first defendant) can only receive the amount as a trustee of the other legal heirs of late Ramakrishna Reddiar. Thus the plaintiff, who is the legal heir of Ramakrishna Reddiar is entitled to get half share in the fixed deposit amount of Rs.4,95,000/-. The first appellate court had committed an error by not adverting its attention to the decisions consistently rendered by this Court and therefore, the substantial questions of law are answered in favour of the plaintiff.

15. In the result,

- i. the Second Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.



S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

WEB COPY

ii. The decree and judgment dated 26.02.2019 passed in A.S. No.84 of 2017, on the file of the Additional District Court, Fast Track Court, Arani, is set aside.

iii. The decree and judgment dated 17.12.2013 passed in O.S.No.37 of 2009, on the file of the Subordinate Court, Arani, is upheld.

20.11.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga

To

1. The Additional District Judge, Fast Track Court, Arani
2. The Subordinate Court, Arani
3. The Section Officer, VR Section, High Court, Madras.



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S.A.No.688 of 2019 and C.M.P. No.12901 of 2019

R. HEMALATHA, J.

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S.A.No.688 of 2019
and
C.M.P. No.12901 of 2019

20.11.2024