



C.M.A.(MD).No.673 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.673 of 2016

1. Sara Begam
2. Nazar Fathima
3. Yasmin
4. Kathoon Bibi (died)

... Appellants/Petitioners

(Memo in U.S.R.No.1348, dated 18.01.2021 is recorded as A4 died. A1 to A3, who are already on record, are recorded as LRS of the deceased A4 vide order of this Court dated 05.03.2021 made in C.M.A(MD) No. 673 of 2016).

-VS-

1. Jainu Bunnisha

2. The Senior Post Master,
Head Post Office,
Near Sethupathy Higher Secondary School,
Madurai – 625 001.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 384 of Indian Succession Act, against the judgment and decree dated 25.08.2015 made in S.O.P.No.1 of 2013, on the file of the I Additional District Court, Madurai.



WEB COPY



C.M.A.(MD).No.673 of 2016

For Appellants : Mr.S.Vellaichamy

For Respondents : Mr.S.Jeyasingh
CGSC - for R2

: No appearance – for R1

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellants as against the order passed in S.O.P.No.1 of 2013, on the file of the I Additional District Court, Madurai, wherein, the appellants herein have filed the Succession Original Petition before the I Additional District Court, Madurai and the petition was allowed, however, imposed condition that the nominee is entitled to receive the amount and to disburse the same to the petitioners. As against the same, the present appeal has been filed.

2. According to the appellants, they filed Succession Original Petition before the trial Court in respect of three items of property. The trial Court has allowed the petition in respect of two items and in respect of the third item, it was dismissed. There is no dispute in respect of the third item and this appeal



C.M.A.(MD).No.673 of 2016

WEB COPY

has been filed as against the item Nos. 1 and 2. The trial Court has directed the nominee, to receive the amount and to disburse the same to the appellants/petitioners.

3. Despite the name of the first respondent is printed in the cause list, there is no representation on the side of the first respondent.

4. According to the second respondent, since the first respondent was appointed as nominee, the trial Court has directed to give Succession Certificate and to disburse the amount through nominee.

5. The learned counsel appearing for the appellants would contend that the first respondent's whereabouts were not known and the trial Court while granting Succession Certificate by accepting the contention of the appellants once again passed the order to receive the amount by the nominee and to disburse the same to the petitioners. Hence, the trial Court has issued Succession Certificate on condition and the same is liable to be set aside. The appellants have not disputed the findings of the trial Court in respect of the third item and only the appeal is filed for the limited scope of findings that



C.M.A.(MD).No.673 of 2016

the item Nos.1 and 2 amounts, have to be received by the nominee and disbursed to the petitioners.

6. This Court heard both sides and perused the materials available on record.

7. The trial Court has issued Succession Certificate in favour of the appellants in respect of items 1 and 2 of the property and in respect of the 3rd item, the petition was dismissed. There is no appeal filed as against the 3rd item of the property. The present appeal has been filed against the limited condition imposed by the trial Court.

8. As rightly contented by the learned counsel appearing for the appellants, once the trial Court issued the said Succession Certificate in favour of the appellants, there is no necessary to impose condition that the amount has to be disbursed through the nominee. Further, the so called nominee, the first respondent has not appeared before the Court and according to the appellants, she whereabouts not known and notice was also served and name is printed in the cause list. Therefore, it is not appropriate to



C.M.A.(MD).No.673 of 2016

WEB COPY

impose condition that the amount has to be received by the nominee and thereafter, disbursed to the petitioners. Therefore, condition imposed by the trial Court in respect of receipt of the amount by the nominee is liable to be set aside. Accordingly, the condition imposed by the trial Court is set aside.

9. As far as the second respondent is concerned, he is only a formal party. According to the second respondent, since the first respondent appointed as nominee, the amount has to be disbursed through the first respondent, he has as to act, according to the orders passed by the Court. In view of the above said submissions, the present appeal is liable to be allowed and the order passed by the trial Court in respect of the condition imposed, is liable to be set aside.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed by the trial Court in respect of the 1 and 2 items of the property is modified by setting aside the condition imposed by the trial Court to the effect that the petitioners are entitled for a Succession Certificate under Schedule VIII of the Indian Succession Act, as ordered by the trial Court except the condition imposed by the trial Court that the amount has to be



C.M.A.(MD).No.673 of 2016

received by the nominee and disbursed to the petitioners. In other respects, the order passed by the trial Court is confirmed. There shall be no order as to costs.

22.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

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



WEB COPY



C.M.A.(MD).No.673 of 2016

P.DHANABAL,J.

ebsi

C.M.A.(MD)No.673 of 2016

22.03.2024