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A.S.(MD)No.192 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.192 of 2018

- 1.Vijaya
- 2.Latha
- 3.Aparna

...Appellants

(3rd appellant is declared as major and the guardianship of her grand mother 1st appellant Vijaya is discharged, vide Court order, dated 23.07.2024, made in C.M.P.(MD)No.11201 of 2018 in A.S.(MD)No.192 of 2018)

Vs.

- 1.The General Manager,
Indian Overseas Bank,
Annasalai Head Office,
Chennai.
- 2.The Zonal Manager,
Indian Overseas Bank,
Zonal No.2,
Cantonment,
Tiruchirappalli.
- 3.The Branch Manager,
Indian Overseas Bank,
Nachalur,
Kulithalai Taluk.



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4.Vasantha (Died)

5.Vanitha

6.Sumathi

...Respondents

(4th respondent died and the respondents 5 and 6 who are already on record are recorded as Legal Representatives of the deceased 4th respondent and represent the estate of the deceased R4, vide Court order, dated 09.02.2024, made in C.M.P.(MD)No. 1180 of 2024 in A.S.(MD)No.192 of 2018)

PRAYER: This Appeal Suit filed under Section 96 of C.P.C., to against the judgment and decree, dated 31.03.2003, made in O.S.No.70 of 2000 on the file of the Subordinate Judge's Court, Kulithalai.

For Appellant : Mr.S.Jayavel

For R1 to R3 : Mr.N.Dilip Kumar

R4 : Died

For R5 and R6 : No appearance

JUDGMENT

The plaintiff has filed a suit as informa pauperies and for declaring that the second plaintiff is entitled to “A” schedule properties with a consequential relief directing the defendants 1 to 3 to pay “A” schedule property amount to the second plaintiff. Also to declaring that the second plaintiff is entitled to get job on compassionate ground in accordance to her educational qualification, with consequential mandatory injunction directing the defendants to provide job to the 2nd



plaintiff. Declaring the 3rd plaintiff is entitled to “B” schedule property and consequentially directing defendants 1 to 3 to pay the “B” schedule property to the 3rd plaintiff. Finally, for declaring that the 1st plaintiff is entitled to “C” schedule property and consequently directing the defendants 1 to 3 to pay “C” schedule property.

2. The brief facts of the case are that the first plaintiff Vijaya is the wife of Pakkirisamy. According to Vijaya the marriage with Pakkirisamy took place in the year 1966 and they are blessed with three daughters namely, Latha (2nd plaintiff), Vanitha (5th defendant) and Sumathi (6th defendant). The 3rd plaintiff is the daughter of the 2nd plaintiff / Latha. In other words, the 3rd plaintiff is the granddaughter of the 1st plaintiff and the Late. Pakkirisamy. The defendants 1 to 3 are the officials of Indian Overseas Bank. The 4th defendant is claiming to be the wife of Pakkirisamy and has set up her claim against the terminal benefits of Late.Pakkirisamy. Hence, the present suit was filed by the plaintiffs with the above stated prayer. The Trial Court had dismissed the suit. The Trial Court has disbelieved the case of the plaintiff Vijaya by relying on the maintenance petition filed by the 4th defendant Vasantha wherein she had claimed maintenance against her husband Pakkirisamy. Further, the Trial Court disbelieved the Will alleged to have executed by the Late.Pakkirisamy in



favour of the 3rd plaintiff minor Aparna. Therefore, the entire suit came to be dismissed. Aggrieved over the same, the present First Appeal is filed.

3. Pending first appeal, the 4th defendant Vasantha died. It is seen that the said Vasantha has no children, which is evident from her own deposition before the Trial Court that she is not having any children. In such circumstances, this Court is not inclined to go into the issue who is the first wife and who is the second wife and their rights. However this Court ought to analyze independently whether Vijaya is the wife of Pakkirisamy.

4. The learned Counsel appearing for the plaintiffs submitted that the Late.Pakkirisamy has entered the second plaintiff Latha as his nominee in his service record. This fact has been admitted by the respondents 1 and 3 in their written statement wherein it has been stated as under:

“5. This defendant submits that during 1983 Mr.Packirisamy nominated the 4th defendant Vasantha as his nominee stating that she is his wife. But he had changed the nomination in 1992 by submitting a form dated 26.11.92 in favour of second plaintiff Latha, stating that she is his daughter.”

In fact, Vasantha has also admitted the same while deposing in her written statement



wherein she has stated that that deceased Pakkirisamy had become alcoholic that too after his illegitimate relationship with the first plaintiff. But her contention is that under the influence of the alcohol and the first plaintiff, the deceased had nominated second plaintiff Latha as his nominee. Even though there is an admission that it was due to his addiction to alcohol, the fact remains that the second plaintiff was nominated in the service records.

5. The Learned Counsel appearing for the plaintiffs submitted that even if the admitted fact is taken into account, as on the date of filing the suit, the said Latha was 28 years old. Hence, the said Latha would have born in the year 1972. Therefore, it could infer that Vijaya is the wife who was married to Pakkirisamy prior to 1975. After hearing the submissions, this Court is convinced that the first plaintiff is entitled to the benefits of the Late.Pakkirisamy.

6. The plaintiffs are claiming that the entire suit properties would go to the plaintiffs as per the Will. But this Court is of the considered opinion that the Will had not been proved as it ought to be proved under law. Therefore, this Court is of the considered opinion that the said Vijaya (1st plaintiff) and other 3 daughters namely Latha (second plaintiff), Vanitha (5th defendant) and Sumathi (6th defendant) are the



legal heirs of the Late. Pakkirisamy. The defendants 1 to 3 are directed to pay the terminal benefits of the Late Pakkirisamy to the first plaintiff Vijaya.

7. The learned Counsel appearing for defendants 1 to 3 submitted since it is old record, they are not able to trace the papers. The said contention cannot be accepted. Since in the written statement, they have accepted that they were disbursing the terminal benefits to the 1st plaintiff Vijaya. Also stated that normally, the nominee would be entitled to the terminal benefits. When the matter is sub judice, the Bank has stopped the disbursement of terminal benefits and also stated that they would abide by the order of the Court. The said submission of the Bank is extracted hereunder:

“10. This defendant submits that the deceased Packirisamy had cancelled the earlier nomination and nominated the second plaintiff as his nominee. As for as the Bank is concerned once the Terminal Benefits are disbursed in favour of the nominee, it is a good discharge of the Terminal Benefits. However, as the matter is subjudiced, the bank has stopped disbursement of the Terminal Benefits. This defendant further submits that this defendant would abide by any order as this Honourable Court deems fit.”

Therefore, even though Vijaya is not a nominee in the service records, this Court had held that the first plaintiff is the wife of the deceased Pakkirisamy and the said Vijaya



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is entitled to the terminal benefits of the deceased Pakkirisamy. Therefore, this Court is directing the defendants 1 to 3 to disburse the terminal benefits and other benefits stated in the schedule of properties to the first plaintiff who is the wife of Pakkirisamy.

8. However, it is made clear that the plaintiffs and the 5th and 6th defendants are not entitled to compassionate appointment, since compassionate appointment ought to be considered within three years from the date of death of the deceased employee. In the present case the employee Pakkirisamy died on 05.12.1998 and the said three years lapsed on 05.12.2001 itself. Hence the prayer of compansionate appointment is declined.

9. With the above said directions, the appeal suit is partly allowed as stated supra. No costs.

02.08.2024

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

Tmg

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To

1.Subordinate Judge's Court, Kulithalai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

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