

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/09/2002

CORAM

THE HONOURABLE MR.JUSTICE A.K. RAJAN

SECOND APPEAL NO.1097 of 1992

Sathiyavani .. Appellant

-Vs-

1. Ramayee Ammal

2. The Regional Commissioner,
Office of the Regional
Commissioner of Provident Funds,
22-23, Royapettah High Road,
Madras-14.

3. Assistant Provident Fund
Commissioner, P.B.No.588,
W.B. Road,
Trichy-620008.

4. Life Insurance Corporation
of India, rep. by its
Divisional Manager,
"Jeevan Prakash",
Gandhiji Road,
P.B. No.39, Thanjavur-613001.

5. Tiruchi District Panchalai
Thozhilalar Sangam,
by its Secretary,
Karur Mills Limited,
Dindigul Road, Thanthoni Post,
Karur Taluk.

6. Subramani

7. Murugan

8. Valiappan .. Respondent

Appeal is filed against the judgment dated 1.11.1991 in A.S.No.136 of 1989 passed by the Subordinate Judge of Karur, as stated therein.

!For Appellant : Mr. M.S.Krishnan

^For Respondents : Mr. M.M.Sundaresh,
for M/s. V.K.Muthusamy for R.1.
Mr. P.Narasimhan, S.C.G.S.C.,
for R.2 and R.3.

!JUDGMENT

The Second Appeal is filed against the judgment and decree in A.S.
No.136 of 1989.

2. The suit was filed by the plaintiff for a declaration that she is entitled for the entire amount payable by the Provident Fund authorities, as well as the insurance policy in the name of her son as well the amount in the cotton mill Union, by name Tiruchi Mavatta Panchalai Thozhil Sangam. Plaintiff is the mother of Ganesan, the deceased who was working in a mill in Karur. Fifth defendant is the wife. Ganesan died without any issues, intestate. The moneys were payable to him by the Provident Fund Authorities and from insurance company as the deceased had taken the insurance as well as from the Labour Union. Even before the suit was filed, the fifth defendant was paid 50% of the amount by the Provident Fund authorities. Insurance company has not paid any moneys to the wife or to the mother. Admittedly, the parties are Hindus and therefore, both the plaintiff and the fifth defendant are Class-I heirs. Therefore, even if there is any nomination in favour of either of them, the amount has to be shared by all the heirs of the deceased. The lower Court granted a decree in favour of the plaintiff declaring that the plaintiff is entitled to the sum of Rs.2,675/- payable by the insurance company, that is, the balance amount to the account of the deceased Ganesan. The trial Court found no amount was payable by the Union. Appellate Court has confirmed the decree of the trial Court to the same effect. Against that, the second appeal has been filed.

3. The second appeal was admitted on the following substantial question of law:

1) Whether the view taken by the Court below that the appellant is not entitled to any amount from the provident fund and life insurance policy of her deceased husband on the ground that she has remarried, is right ? "

4. Admittedly, the plaintiff is the mother of Ganesan and the fifth defendant is the wife of the said Ganesan. The first Appellate Court has taken the view that subsequent to the death of Ganesan, since the fifth defendant had married again, she is not entitled to succeed to any of the amount in the provident fund. This conclusion of the first Appellate Court is erroneous and not sustainable in law. The widow is entitled to the share in the husband's property on the date when the husband died. Her subsequent marriage will not in any way affect this. Therefore, the judgment of the Courts below are not sustainable and hence, it is set aside. Both the plaintiff and the fifth defendant are entitled to a share in the properties left by Ganesan on the date of his death.

5. It is stated that the fifth defendant/appellant herein has received 50% of the Provident Fund amount; therefore, the balance of 50%

together with interest, if any, shall be paid to the plaintiff.

6. The insurance amount has not been paid to any of them. Therefore, the amount payable by the insurance company shall be paid equally to both the plaintiff and the fifth defendant, inasmuch as no amount has been paid to any one of them.

7. Learned counsel for the appellant submits that the mother of the deceased is not entitled to any property, inasmuch as she has not proved that she is solely depending upon the son; according to Section 24 of the Hindu Succession Act, unless the plaintiff has proved that she is the dependent, she is not entitled to succeed to the property. This argument is stated only to be rejected. There is no substance in this argument.

6. Inasmuch as this appellant has not filed any suit or counterclaim, decree will be drafted only after payment of Court fee by the fifth defendant for the decree.

7. With the above observation, the Second Appeal is allowed.

Substantial Question of Law is answered in favour of the appellant. No costs.

27.9.2002.

Index: Yes

Web Site: Yes

vs

To:

1. The Subordinate Judge, Karur.
2. The Principal District Munsif, Karur.
3. The Record Keeper, V.R. Section

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