

S. Sukumar Vs. Spl. Commissioner of Commercial Taxes, Madras

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Court : Chennai

Decided On : Feb-12-1990

Reported in : AIR1991Mad238

Judge : Bakthavatsalam, J.

Acts : [Succession Act, 1925](#) - Sections 211 and 216; [Code of Civil Procedure \(CPC\), 1908](#) - Order 19, Rule 1

Appeal No. : Writ Petn. No. 8427 of 1989

Appellant : S. Sukumar

Respondent : Spl. Commissioner of Commercial Taxes, Madras

Advocate for Pet/Ap. : Mr. P. Kothandaraman

Judgement :

1. This writ petition coming on for orders as to admission on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. P. Kothandaraman, Advocate for the petitioner and of Mr. P. Arivudainambi, Government Advocate on behalf of the respondent pursuant to the issue of notice of motion the court made the following Order :--

The petitioner seeks a writ of mandamus directing the respondent to discharge its obligation of paying the amounts representing the service benefits of the

petitioner's sister late S. Kamarvathy like pension, gratuity, provident fund, arrears of pay and other amounts to the petitioner.

2. The averments in the affidavit filed in support of the writ petition are as follows :

The petitioner is the brother of late S. Kamalavathy, who was working in the office of the respondent, that he was promoted as Assistant Commissioner of Commercial Taxes and was working in Ezhilagam, Chepauk, Madras, that she was hit by a bus owned by Thiruvalluvar Transport Corporation (Madras to Nagereoil) on 2-12-1987 opposite to Ezhilegam Building, Chepauk, Madras and died on the spot leaving behind her one minor daughter and her unmarried sister as guardian to the minor daughter to receive the General Provident Fund, Death-cum-retirement gratuity and other benefits, and that the said deceased Kamalavathy executed a Will on 2-9-1986 wherein she bequeathed all her properties to her only daughter Miss Vidhya and appointed her daughter as the executrix of the will and in the event of her daughter being a minor at the time of her death, she appointed the petitioner herein who is the brother of the deceased, to be the executor of the Will. It is also stated in the Will that the petitioner herein should take care of all the properties of the deceased and deliver them to Miss. Vidhya after she attained majority. The petitioner applied for the grant of a probate of the will of late Kamalavathy in this Court in December, 1987 in O.P. NO. 277 of 1988 and the probate of the will was granted by this Court on 12-8-1988. After the probate was obtained, the petitioner sent a letter to the respondent setting out all the facts and asking the respondent to pay the amounts belonging to the estate of late Kamalavathy to him as the executor of the Will. Since no reply was received, the petitioner personally met the then Commissioner of Commercial Taxes and represented to him that the amounts payable to his sister's estate has to be paid to him. In fact, a photostat copy of the probate order was also sent to the respondent. The petitioner was not favoured with any reply. It is alleged that a sum of Rs. 1 lakh is with the respondent and under S. 216 of the Indian Succession Act, the petitioner is entitled to act as the representative of the deceased and under S. 211 of the Indian Succession Act, he is the legal representative of the deceased Kamalavathy for all purposes and all the properties of the deceased person vests in him. As such, it is alleged that the respondent ought to have paid the monies to

him at least on the date when he sent his letter with the copy of the order in probate proceedings issued by this Court, since the respondent is under an obligation to pay the amounts in view of the probate granted by the original side of this Court. Hence the writ petition is filed by the petitioner to issue a writ of mandamus directing the respondent to pay the amounts due to late Kamalavathy to the petitioner.

3. Notice of motion has been ordered by me on 30-6-1989. Mr. Arivudainambi, Government Advocate, appears on behalf of the respondent and a counter-affidavit has been filed by the respondent. The facts are not denied in the counter-affidavit. The main objection taken in the counter-affidavit is that one P.A. Ravindran, who is said to be the husband of late Kamalavathy, has filed a civil suit on O. S. No. 4470 of 1988 and also taken out an application therein in I.A. No. 7935 of 1988 in the VIII Assistant City Civil Court, Madras to declare him and the minor daughter as the legal representatives of the deceased and the Court has also granted interim injunction in I. A. No. 7935 of 1988. It is further stated in the counter-affidavit that 'I understand that the order of injunction is in force.' It is further stated that a legal complication has arisen in setting the amounts due to the legal heirs of late S. Kamalavathy and hence a writ of mandamus will not lie. It is also stated that the question of legal heirship is yet to be decided by court and until such time, the pensionary benefits due to the minor daughter of the deceased cannot be claimed and disbursed to the petitioner as it would further aggravate legal complications and therefore the outcome of the suit has to be awaited. The fact regarding the probate of the will has been admitted in the counter-affidavit. It is submitted that when a suit filed by the husband of the deceased is pending, the letter, of the petitioner could not be acted upon and any decision could be taken only after the disposal of the suit. The plea of the petitioner is stated to be farfetched and unjust when the point of dispute over the legal heirship is yet to be decided by the Court in O.S. No. 4470 of 1988 filed by the husband of the deceased. It is also submitted that all the payments due to the family of the deceased Kamalavathy are withheld only in the Government account so as to avoid wrong payment in the matter and the payment of terminal benefits due to the family of the deceased will be made only after the decision to be taken in O.S. No. 4470 of 1988 and unless and until the real legal heirship is decided, the payment

of pensionary benefits could not be made to the petitioner.

4. Mr. P. Kolhandaraman, learned counsel appearing for the petitioner mainly contends that when once the probate of the Will has been obtained, by the petitioner on the Original Side of this Court in O.P. No. 277 of 1988, it is not open to the respondent to take an objection as has been taken in the counter-affidavit. The learned counsel argues that no injunction has been granted pending the suit in O.S. No. 4470 of 1988 on the file of the VIII Assistant City Civil Court, Madras and has produced before me a copy of the order passed in I.A. No. 7935 of 1988 in O.S. No. 4470 of 1988 dated 22-3-1989 by which the injunction petition has been dismissed.

5. Mr. Arivudainambi learned Government Advocate strenuously contends that unless the suit is decided by the civil court, the respondent cannot take the risk of paying the amounts due to the deceased Kamalavathy to the petitioner. The learned counsel submits that rightly or wrongly a dispute has been raised by the husband of the deceased Kamalavathy and it is pending adjudication in a civil court and hence, the respondent cannot pay the amounts due till the final adjudication of the civil suit.

6. After considering the arguments of Mr. P. Kothandaraman, learned counsel for the petitioner and of Mr. Arivudainami, learned Government Advocate appearing for the respondent and after perusing the counter-affidavit filed by the respondent. I am of the view that the stand taken by the respondent is wholly unjustifiable. It is not disputed that the petitioner has obtained a probate of the Will executed by late Kamalavathy in O.P. No. 277 of 1988 on the file of the Original Side of this Court as early as 12-8-1988. It is well settled that unless that probate is set aside, nobody can have any claim over the estate of the deceased Kamalavathy except the petitioner. It is unfortunate that the deceased has left a minor daughter under the care of the petitioner. It is equally unfortunate that the respondent should take such an attitude not to disburse the amounts due to the late Kamalavathy in spite of the probate of the Will of the deceased by the petitioner, under the guise of a pending suit filed by the husband of the deceased Kamalavathy. Though it is stated in the counter-affidavit that the respondent understands that the order of

injunction is in force, the learned counsel for the petitioner produced a copy of the order in I.A. No. 7935 of 1988 in O.S. No. 4470 of 1988 dated 22-3-1989 which shows that the said application for injunction has been dismissed. As such, no injunction is in force as against the respondent. In fact, I find that the husband of the deceased Kamalavathy who filed the suit and in the application for injunction the Respondent has been set ex parte in the said application for injunction. Since nobody represented the respondent before the City Civil Court on that day, the application for injunction was disposed of. Having been a party to the application for injunction, it is, highly unfortunate that a counter-affidavit is being sworn before this court by a responsible officer of I.A.S. Cadre stating that 'I understand that the order of injunction is in force.' It is also unfortunate to note that this Court is not able to know the date on which the counter-affidavit has been sworn by the respondent. No date is given in the counter-affidavit. It is blank. As such, I am not inclined to accept the contentions raised by the learned counsel for the respondent that there are certain hurdles in the way of the petitioner getting the benefits of the order of probate granted by this Court. At any rate, since the daughter of the deceased Kamalavathy is a minor, as rightly pointed out by the learned counsel for the petitioner himself, I have to protect the interest of the minor also. Hence, I direct the respondent to invest all the amounts due to the deceased Kamalavathy in Canara Bank Kolturpuram Madras, 85 within four weeks from this date in a fixed deposit for a period of 36 months which will carry interest at 10% per annum and the petitioner is directed to draw the interest quarterly and utilise the same for the purpose of the maintenance of the minor girl i.e., the minor daughter of late Kamalavathy. The writ petition is allowed to this limited extent. No costs.

7. Before parting with the case, I am constrained to observe that the counter-affidavit of the respondent has been signed by an officer of I.A.S. cadre and unfortunately that officer has not taken care whether the counter-affidavit has been dated or not. The statement in the counter-affidavit is also noncommittal. The date of swearing of the counter-affidavit is left blank. In recent times, I am coming across that the officers do not care to sign the counter-affidavits filed before this Court properly and even they do not care to fill up the date on which they sign. This indifferent attitude on the part of the officers must be discouraged, by persons who have a control of them.

8. Petition allowed.

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