
(2010) 08 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 37766 of 2007 and M.P. No. 1 of 2007

N. Elangathir

APPELLANT

Vs

The Manager Indian Bank and Others

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 08 MAD CK 0003

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : D.S. Thirumavalavan, for the Appellant; Karthika Ashok, for R1 and R2, R. Arumugam, for R5 and K.S. Ramakrishnan, for R10, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This writ petition has been filed by the Petitioner under Article 226 of the Constitution of India, seeking an order in the

nature of writ of mandamus, directing the Respondents to consider the representation of the Petitioner, dated 19.04.2007 and pass appropriate orders.

2. The Petitioner herein has averred that his maternal uncle, Late Natarajan, who was employed in the Neyveli Lignite Corporation at Neyveli had

deposited a huge amount with the Respondents 1 to 11 and he has further stated that the said Natarajan died issueless and he executed a Will in

favor of the Petitioner herein. Based on the Will, the Petitioner has claimed right for the amount deposited with the Respondents 1 to 11.

3. The Petitioner has also stated that the said Natarajan lived with his elder brother, one Gomathinayagam at Chennai and hence, Munusamy, his

elder brother's son and his wife Anbarasi were appointed as nominees in their

individual capacity or joint capacity for all the fixed deposits and the

S.B. Account maintained by the deceased Natarajan. According to the Petitioner, the deceased Natarajan had wife by name Rukmani Ammal,

who died in the year 1997, due to diabetic problems in a Hospital. The Petitioner is the son of his younger sister, Sakunthala, who died one year

prior to the death of Natarajan. According to the Petitioner, the said Natarajan had executed a Will on 17.04.2007 in favor of his younger sister,

Sakunthala's son Elangathir, the Petitioner herein. Based on the Will, the Petitioner is claiming right as legal heir and seeking direction under Article

226 of the Constitution of India.

4. It is not in dispute that the Petitioner has to establish the Will, as per procedure known to law. The right claimed by the Petitioner is a mixed

question of law and fact. Hence, without adducing evidence, the genuineness of the Will cannot be decided, by any writ Court. Therefore, the

Petitioner could have approached only the competent Civil Court having jurisdiction to decide the genuineness of the Will. The Petitioner cannot

claim any right based on a Will, without establishing the genuineness and the legality of the Will in the manner known to law.

5. Directly filing this writ petition, seeking a direction against the Respondents, based on a Will, which has not been established, is not legally

sustainable. It is also the duty of the Petitioner to impale the rival claimants, namely the close relatives of the deceased, who are entitled to claim

right to the property in the absence of the Will.

6. This Court in Prasad Properties and Investments Pvt. Ltd., v. Hindustan Petroleum Corp. Ltd., reported in 2009 (4) CTC 259, has held that

when there is disputed questions of fact involved, the writ petition cannot be entertained and accordingly, the Petitioner therein was given

opportunity to approach the Civil Court, while dismissing the writ petition.

7. In the Governing Council of American College v. The Director of Collegiate Education, reported in 2000 (9) CTC 401, a Division Bench of this

Court held that the question as to who are actually the members of the Governing Council on the relevant dates was a disputed question of fact,

which cannot be gone into by a writ Court.

8. Following the decision rendered by the Hon"ble Apex Court in Tamil Nadu Electricity Board Vs. Sumathi and Others, , in S. Lilly Pushpam Vs.

The Union of India (UOI) and Others, , this Court held that where there are disputed questions of fact and an unequivocal denial of tortuous liability, seeking remedy under Article 226 may not be proper.

9. Relying on the various decisions of the Hon''ble Apex Court, in *Durai Arivudainambi v. Election Commissioner of India*, reported in 2001 (3)

CTC 361, this Court has held that adjudication of disputes regarding caste, being mixed question of law and fact which cannot be decided under

Article 226, as evidence has to be let in and accordingly, the writ petition was dismissed as not maintainable.

10. It is a well settled proposition of law laid down by the Hon''ble Apex Court by various decisions that disputed questions of law cannot be

decided by a writ court, as the same could not be decided without appreciation of evidence. In the instant case, the Petitioner herein has claimed

right, based on an alleged Will and the Will was not probated or established in the manner known to law and therefore, without establishing the

genuineness and the validity of the Will, the Petitioner herein cannot seek any relief, based on the Will. The genuineness and the validity of the Will

could only be decided by adducing evidence, after impleading all necessary parties, who are entitled to claim right to the property in the absence of

the Will. Since the relief sought for in the writ petition relates to questions of fact, the relief sought for in the writ petition is not sustainable in law,

accordingly, liable to be dismissed.

11. In the result, this writ petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, it is made clear that the

Petitioner is at liberty to approach the competent Civil Court to establish his right by proving the Will, according to law. No order as to costs.