

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 05TH DAY OF NOVEMBER, 2014

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

MISCELLANEOUS FIRST APPEAL NO.4989/2014 (CPC)

BETWEEN:

1. SRI. J. RAMESH
S/O JAVARE GOWDA
AGED ABOUT 44 YEARS
NO.377, C-TYPE,
NOTU MUDRANA NAGARA,
RBI, MYSORE-570 016
2. SMT. CHENNAMMA
W/O JAVAREGOWDA
AGED ABOUT 61 YEARS
NO. 2116, DEVARAJA MOHALLA
MYSORE-570 001. ... APPELLANTS

(BY SRI.ANANDARAMA K, ADVOCATE)

AND:

1. KUM. CHANDANA
D/O LATE MAHADEV J,
AGED ABOUT 6 YEARS
2. MASTER SAGAR
D/O LATE MAHADEV J,
AGED ABOUT 2 YEARS
(RESPONDENTS 1&2 BEING MINORS
ARE REP. BY THEIR MOTHER
CUSTODIAN AND GUARDIAN
SMT. HEMALATHA M,
THE 3RD RESPONDENT)
3. SMT. HEMALATHA M
W/O LATE J.MAHADEVA

AGED ABOUT 31 YEARS
R/AT NO.80, SHARAVATHI BLOCK,
RMP COLONY,
YELWALA
MYSORE TALUK-571 190.

4. BRANCH MANAGER
LIC OF INIDA
BRANCH IV, DEWANS ROAD,
CHAMARAJA MOHALLA
MYSORE-570 004.
5. THE ASSISTANT MANAGER-CLAIMS
SBI LIFE INSURANCE CO. LTD.
VISHWAMANAVA DOUBLE ROAD
SARASWATHIPURAM
MYSORE-570 009.
6. THE POST MASTER
YADAVAGIRI POST OFFICE,
MYSORE CITY-570 020. ... RESPONDENTS

(BY SRI K.L. SRINIVASA, ADVOCATE FOR R-3;
R-1 & R-2 MINORS REP. BY R-3;
SRI. R. RAJAGOPALAN, ADVOCATE FOR R-5;
SRI. PANCHAJANYA, ADVOCATE FOR R-4;
NOTICE TO R-6 DISPENSED WITH)

THIS APPEAL IS FILED UNDER ORDER 43, RULE 1(r)
OF CPC, AGAINST THE ORDER DATED 31.5.2014 PASSED
ON I.A.NO.5 IN O.S.NO.772/2013 ON THE FILE OF THE III
ADDITIONAL SENIOR CIVIL JUDGE, CJM, MYSORE,
ALLOWING IA NO.5 FILED U/O 39, RULES 1 & 2 OF CPC.,

THIS APPEAL COMING ON FOR ADMISSION THIS
DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Defendants 1 & 2 are questioning the correctness and
legality of the order passed by III Addl.Sr.Civil Judge dated

31.05.2014 in O.S.772/2013 whereunder application filed by third plaintiff both on her behalf and on behalf of her minor children namely, plaintiffs 1 and 2 seeking for a direction to defendants-1 and 2 to pay plaintiffs their 3/4th share out of the money received by defendants -1 and 2 from LIC having been allowed and directing them to deposit in the Registry of the trial Court, came to be allowed.

2. I have heard the arguments of Sri Anandarama K., learned Advocate appearing for appellants and Sri K.L.Srinivasa, learned Advocate appearing for respondent Nos. 1 to 3, Sri R Rajagopalan, learned Advocate appearing for respondent No.5 and Sri Panchajanya, learned Advocate appearing for respondent No.4. Notice to respondent No.6 has been dispensed with by order dated 20.10.2014.

3. Short point that is involved in the present appeal is:

“Whether order passed by the trial Court directing defendants-1 and 2 to deposit the amount is to be sustained, set aside or modified?”

4. Facts in brief which has led to filing of present appeal can be crystallized as under:

Plaintiffs have filed a suit for partition and separate possession claiming $3/4^{\text{th}}$ share in item Nos.1 to 7, $1/4^{\text{th}}$ share in item Nos. 8 & 9 of plaint schedule and for a direction to defendants-1 and 2 to pay plaintiffs their $3/4^{\text{th}}$ share in the money collected by them in respect of the policies issued on the life of late Sri J.Mahadeva namely, husband of third plaintiff and father of plaintiffs - 1 and 2 contending interalia that late Sri Mahadeva had taken out insurance policies as described in item Nos.1 to 7 of plaint schedule and he having expired on 29.06.2013 leaving behind plaintiffs and second defendant to succeed to his estate, are entitled for share as claimed.

5. It is not dispute that defendant No.1 namely, brother of deceased was the nominee of LIC policy No.722016098 described as item No.5 in the plaint schedule having received the sum assured together with all monies accrued thereto. After receiving the proceeds he has taken out a policy in the name of first plaintiff by paying single premium as per Annexure-H appended to the present

appeal. The original LIC policy as per Annexure-H is in the custody of first defendant.

6. Sri Anandarama, learned Advocate appearing for appellant would fairly submit that said original LIC policy will be handed over to third plaintiff who is the guardian of first plaintiff. He has made such submission after consulting first defendant who is present before Court and as such, same is accepted and placed on record. In view of the same, direction given by the trial Court under the impugned order against first defendant cannot be sustained and to that extent, it is set aside.

7. Now turning my attention to the direction issued by trial Court against defendant No.2 to deposit 3/4th of entire amount received by her in respect of item Nos.1 to 4 of plaint schedule - LIC policies is concerned, records would indicate that second defendant who is mother of deceased Sri Mahadeva namely, mother-in-law of third plaintiff and grand mother of plaintiffs -1 and 2 has received the proceeds of these LIC policies taken out by her son during his life time in a sum of Rs.2,52,115/- as she had been described as nominee under the said policies. Receipt of said amount by

her is not disputed. As to 'whether she could have unilaterally received the said amount particularly when other class-I heirs are also being entitled to' it is the question and when said issue is addressed to, at this juncture, prima facie it has to be necessarily held that plaintiffs - 1 to 3 along with defendant No.2 would be entitled to share in the said amounts.

8. It is not in dispute that second defendant's son i.e., deceased Sri Mahadeva was married to third plaintiff and out of said wed lock, plaintiffs 1 and 2 are born. As such, plaintiffs and defendant No. 2 being Class - I heir of deceased Sri. Mahadeva would be entitled to succeed to the estate of the deceased which would be in the event of trial Court holding that deceased Sri Mahadeva had died intestate. At this stage, trial Court has examined the prayer made by plaintiffs and has directed the second defendant to deposit $\frac{3}{4}$ th of the amount received by her. Sum total of the policies - item Nos.1 to 4 and 7 put together, would be Rs.7,52,115/- and $\frac{1}{4}$ th of the said amount would be Rs.1,88,000/-. Even assuming that second defendant would be entitled to $\frac{1}{4}$ th share in the event of her claim for full share being negated by the trial Court, she would be

entitled to a sum of Rs.1,88,000/-. It is not in dispute that in respect of item Nos.1 to 4 of plaint schedule, she has received a sum of Rs.2,52,000/-. In other words, as of now she has retained excess amount of Rs.64,000/- and as such, it would suffice if the order of trial Court is modified by directing second defendant to deposit a sum of Rs.64,000/- within a period of five weeks from today and no opinion is expressed with regard to the rival claims in this regard. Trial Court would be at liberty to adjudicate the claim of the parties on merits and in accordance with law without being influenced by any observation made by it in the order dated 31.5.2014 or order passed by this Court which is within the limited sphere of examining the correctness or otherwise of the order passed on I.A.No.V.

9. Accordingly, with these observations, appeal stands disposed of.

Original of Annexure-H - LIC policy standing in the name of first plaintiff shall be handed over by first defendant to third plaintiff before trial Court on the next date of hearing. Said original LIC policy shall be produced by the

plaintiffs as and when called upon either by the Court or by defendant No.1 for purposes of production and marking of it.

It is needless to observe that in the event a prayer is made by plaintiffs seeking for payment of the amount under item No.7 namely, Postal Life Insurance is made, trial Court shall pass order for releasing the said amount in favour of plaintiffs subject to such restrictions and conditions as it deems fit including protecting interest of the minor children namely, plaintiffs - 1 and 2 for which defendants present before this Court has stated no objection through their learned Advocate, which submission is placed on record.

**Sd/-
JUDGE**

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