

Cheriyar Joseph Poppallil and Others

Vs

Geevarghese Philip (Dead) By His Legal Representatives and Others

Civil Appeal No. 337 of 1967

(G. K. Mitter, C. A. Vaidialingam, I. D. Dua JJ)

16.02.1972

JUDGMENT

VAIDIALINGAM, J. -

1. After this appeal has been heard for a few days and when it is part-heard today, it has been represented by Mr. S. T. Desai, learned counsel for the appellants, Mr. Sarjoo Prasad, learned counsel for the legal representatives of the deceased first defendant and Mr. D. N. Mukherjee, learned counsel for the 4th defendant that the parties have been able to come to a settlement and requested that the appeal may be disposed of as compromised on the following terms -

- (1) The legal representatives of the deceased first defendant will re-deposit in the trial court the entire amounts that have been drawn by either the first defendant or the legal representatives from the Receiver or from the court in respect of the profits realised by the receiver;
- (2) Similarly, Mr. K. E. Mammen, the 4th defendant will re-deposit in the Trial Court, half of the amount that has been withdrawn by him;
- (3) The re-deposit mentioned in clauses (1) and (2) should be made in the trial court on or before Monday, the 5th June, 1972;
- (4) In addition to the amounts mentioned in the above clauses, the legal representatives of the deceased first defendant, as well as the 4th defendant will jointly or severally deposit in the trial court on or before Monday, the 5th June, 1972, a further sum of Rs. 25,000/-;
- (5) The appellants in this appeal (the legal representatives of the original plaintiff) are not liberty to withdraw unconditionally the entire amounts mentioned in the above clauses;
- (6) The appellants are also at liberty to withdraw the entire amounts which are with the Receiver as well as the amounts deposited by the Receiver in court, as on today, less any amounts that may be due by way of expenses or remuneration of the Receiver. If sufficient funds are not available with the Receiver or in court, to meet the expenses of the management and remuneration due to the Receiver, those amounts or such amounts to make up the deficit will be paid to the Receiver by the 4th defendant and the legal representatives of the deceased 1st defendant;

(7) In case of default in the payment of Rs. 25,000/- or in the re-deposits mentioned in clauses (1) and (2) above, or any part thereof within the period fixed, the appellants will be entitled to levy execution for the amounts remaining unpaid or undeposited with interest at six per cent. from the 5th June, 1972, until realization;

(8) On deposit by the respective parties of the entire amounts as mentioned above, the Receiver will put the legal representatives of the deceased defendant No. 1, or anybody deputed by them in that behalf and the 4th defendant in possession of the factory and other properties which are with him as Receiver;

(9) On deposit of the amounts by the parties, as mentioned above, the suit will stand dismissed and all parties will bear their own costs throughout;

(10) Parties are at liberty to apply to this Court for any direction that may be found necessary in this regard.

2. The appeal is disposed of in terms of the above settlement.

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