Lalithambika S. Vs. Nil

Lalithambika S. Vs. Nil

SooperKanoon Citation : sooperkanoon.com/1156236

Court : Kerala

Decided On : Jul-15-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Lalithambika S.

Respondent : Nil

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH TUESDAY, THE15H DAY OF JULY201424TH ASHADHA, 1936 OP(C).No. 1588 of 2014 (O) --------------------------- (AGAINST THE

ORDER

DATED31.2014 IN I.A.NO.2346/2013 IN OP (SUCC) NO.6/2012 OF THE MUNSIFF'S COURT, KAYAMKULAM.) PETITIONER(S): ---------------- 1. LALITHAMBIKA S. THONETHU VEEDU, KAREELAKULANGARA PATHIYOOR PADINJAREMURI, KAYAMKULAM.

2. SOORAJ.T.R., THONETHU VEEDU, KAREELAKULANGARA PATHIYOOR PADINJAREMURI, KAYAMKULAM.

3. SOORYAMOL T.R., THONETHU VEEDU, KAREELAKULANGARA PATHIYOOR PADINJAREMURI, KAYAMKULAM. BY ADVS.DR.K.P.SATHEESAN (SR.) SRI.M.R.JAYAPRASAD SRI.P.MOHANDAS

(ERNAKULAM) SRI.ANOOP.V.NAIR SRI.S.VIBHEESHANAN SRI.SIDDHARTH KRISHNAN RESPONDENT(S): ------------------- NIL THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON1507-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: APPENDIX IN O.P.(C) No.1588 OF 2014 PETITIONER(S) EXHIBITS EXHIBIT P1 : TRUE COPY OF THE OP (SUCC) NO.6/2012 FILED BY THE PETITIONERS BEFORE THE MUNSIFF'S COURT, KAYAMKULAM DATED610.2012 EXHIBIT P2 : TRUE COPY OF THE SUCCESSION CERTIFICATE ISSUED BY THE LEARNED MUNSIFF, KAYAMKULAM AS PER

ORDER
DATED94.2013 IN O.P (Succ.) No.6/2012 EXHIBIT P3 : TRUE COPY OF THE I.A. FILED BY THE PETITIONERS BEFORE THE MUNSIFF'S COURT, KAYAMKULAM IN OP (Succ) NO.6/2012 DATED282/2014 EXHIBIT P4 : TRUE COPY OF THE

ORDER
PASSED BY THE LEARNED MUNSIFF, KAYAMKULAM DATED31.2014 IN I.A.NO.2346/2013 IN OP (Succ.) No.6/2012. RESPONDENT(S) EXHIBITS NIL. //TRUE COPY// P.S. TO JUDGE. "C.R." V.CHITAMBARESH, J.

--------------------- O.P (C) No.1588 of 2014 --------------------- Dated this the 15th day of July, 2014

JUDGMENT

Can Family Pension be included in the Succession Certificate granted to the legal heirs of the deceased employee 2. The petitioners are the widow and children of one Mr.Reghunathan who was employed as a first grade surveyor in the Directorate of Survey and Land Records. The employee retired from service on superannuation and was drawing monthly pension from the State during the rest of his life. But the Death-Cum-Retirement Gratuity and Commuted Value of Pension had not been disbursed to the employee till his death. The petitioners therefore applied for a Succession Certificate in OP (Succ) No.6/2012 on the file of the Court of the Munsiff of Kayamkulam. The court below did grant a Succession

Certificate authorising the widow to receive the Death-Cum-Retirement Gratuity and Commuted Value of Pension.

3. The petitioners thereafter filed I.A.No.2346/2013 in OP (Succ) No.6/2012 to include also the Family Pension and other benefits. The said O.P (C) No.1588 of 2014 2 application purporting to amend the Succession Certificate was however dismissed by the court below by the order impugned. The petitioners contend that all the rights including Family Pension have been inherited by them only. The petitioners add that there was no justification in not including Family Pension in the Succession Certificate therefore.

4. I heard Dr.K.P.Satheesan, Senior Advocate duly instructed by Mr.Anoop V.Nair, Advocate on behalf of the petitioners in this Original Petition which raises an interesting question. No party has been arrayed as a respondent in this Original Petition on the premise that there was no objector in the court below despite paper publication.

5. A Succession Certificate under the Indian Succession Act, 1952 can be granted only in respect of 'debts' or 'securities' to which the deceased was entitled. The main object of a Succession Certificate is to facilitate collection of debts on succession and afford protection to the parties paying debts to the representatives of deceased persons. A Succession Certificate merely authorises its holder to collect the O.P (C) No.1588 of 2014 3 debt due to the deceased as a trustee and does not however decide its title. A decision in such proceedings under Section 372 of the India Succession Act, 1925 would not also operate as resjudicata in any subsequent suit.

6. Family Pension envisaged under Part III of the Kerala Service Rules, 1959 is payable to the relatives of the employee on his death only. Family Pension is not a debt due to the deceased employee which could be encashed by him during his life time. The right to receive Family Pension accrues only on the death of the employee and of course subject to his nomination. The Family Pension is independent and not claimed through the deceased employee. [See: Smt.Nirupama Sarkar v. Life Insurance Corporation of India (AIR1996 Kolkata 417)]. Therefore the Succession Certificate cannot take in the Family Pension

payable to the nominee or the legal heirs.

7. I am fortified in this view by the decision in Pabitra Mohan Pradhan and another v. Damayanthi Pradhan [AIR2003 Odisha 1] wherein it is held as follows:- O.P (C) No.1588 of 2014 4 "Though Section 370 of the Act does not apply, a representative of the deceased cannot maintain a suit or proceeding against an employer of the deceased without obtaining Succession Certificate under Section 214 provided it is a debt or security sought to be collected. Thus, to receive Family Pension, a Succession Certificate is not necessary as it is neither a debt nor security." (emphasis supplied) The court below was well justified in disallowing the application filed for amendment of the Succession Certificate to include also the Family Pension. It would suffice if a legal heirship certificate is obtained to receive Family Pension in the absence of any nomination. The Original Petition fails. Dismissed. No costs. V.CHITAMBARESH, Judge. nj.