SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Annamma Vs. State of Kerala

Annamma Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/32053

Court : Kerala

Decided On : Jan-13-2015

Judge : Honourable Mr.Justice v.K.Mohanan

Appellant : Annamma

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN & THE HONOURABLE MR.JUSTICE P.D.RAJAN TUESDAY, THE13H DAY OF JANUARY201523RD POUSHA, 1936 WP(Crl.).No.1 of 2015 (S) ---------- PETITIONER: ---------- ANNAMMA,AGED59YEARS,W/O.THOMAS (LATE), RESIDING AT THAZHAKKAL HOUSE,KANGAZHA VILLAGE, CHANGANASSERY TALUK,KANGAZHA P.O.,KOTTAYAM DISTRICT. BY ADVS.SRI.SANTHAN V.NAIR SRI.K.KRISHNAN RESPONDENTS: ---------- 1. STATE OF KERALA,REPRESENTED BY THE CHIEF SECRETARYTO GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,STATUE, TRIVANDRUM - 695 001.

2. THE DISTRICT COLLECTOR, COLLECTORATE BUILDING,CIVIL STATION, KOTTAYAM DISTRICT - 686 001.

3. THE DISTRICT SUPERINTENDENT OF POLICE, OFFICE OF THE DY.S.P.,CIVILSTATION, KOTTAYAM DISTRICT - 686 001.

4. MARIYA KUTTY,AGED88YEARS,W/O.THOMMAN (LATE), NELLINILKKUMTHADATHIL,VAIKOM TALUK, KOTHANALLOOR VILLAGE,KOTHANALLOOR KARA, KOTHANALLOOR P.O.,KOTTAYAM DISTRICT - 686632.

5. GRACY,AGED50YEARS,D/O.THOMMAN (LATE), RESIDING AT NELLINILKKUMTHADATHIL, VAIKOM TALUK,KOTHANALLOOR VILLAGE, KOTHANALLOOR KARA,KOTHANALLOOR P.O., KOTTAYAM DISTRICT - 686 632.

6. SAJI,AGED48YEARS,S/O.THOMMAN (LATE), RESIDING AT NELLINILKKUMTHADATHIL, VAIKOM TALUK,KOTHANALLOOR VILLAGE, KOTHANALOOR KARA,KOTHANALLOOR P.O., KOTTAYAM DISTRICT - 686632. pto ...2... WP(Crl.).No.1 of 2015 (S) 7. MATHEW,AGED60YEARS,S/O.THOMAS (LATE), RESIDING AT NELLINILKKUMTHADATHIL, VAIKOM TALUK,KOTHANALLOOR VILLAGE, KOTHANALLOOR KARA,KOTHANALLOOR P.O., KOTTAYAM DISTRICT - 686 682.

8. SUB INSPECTOR OF POLICE (NAME NOT KNOWN), KADUTHURUTHI POLICE STATION,KADUTHURUTHI, KOTTAYAM DISTRICT, PIN - 686 604.

9. ASSISTANT SUB INSPECTOR OF POLICE (NAME NOT KNOWN), KADUTHURUTHI POLICE STATION,KADUTHURUTHI, KOTTAYAM DISTRICT - 686 604. R1-R3,R8-R9 BY SRI.TOM JOSE PADINJAREKKARA, FOR ADDL.DGP BY PUBLIC PROSECUTOR SRI.SHIBU JOSEPH, R4 -R7BY ADV.SRI.A.K.HARIDAS THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON1301-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: pk WP(Crl.).No.1 of 2015 (S) ---------- APPENDIX PETITIONER'S EXHIBITS: ---------- EXHIBIT-P1:TRUE COPY OF THE REGISTERED WILL NO.26/2012 OF KARUKACHAL SUB REGISTRAR OFFICE EXECUTED BY THOMMAN, FATHER OF THE

PETITIONER AND THE DETENUE. EXHIBIT-P2:TRUE COPY OF THE STANDING DISABILITY ASSESSMENT BOARD CERTIFICATE NO.6186 DHK DATED1212/2011 ISSUED BY THE GOVT.DISTRICT HOSPITAL, KOTTAYAM. EXHIBIT-P3:TRUE COPY OF THE PLAINT IN OS NO.186/2014 FILED BY THE PETITIONER FOR AND ON BEHALF OF THE DETENUE, PENDING BEFORE THE MUNSIFF COURT, ETTUMANOOR. EXHIBIT-P4:TRUE COPY OF THE REPRESENTATION ALONG WITH ITS POSTAL RECEIPT DATED2012/2014 SENT TO THE1T RESPONDENT. EXHIBIT-P5:TRUE COPY OF THE REPRESENTATION ALONG WITH THE POSTAL RECEIPT DATED2012/2014 SENT TO THE2D RESPONDENT. EXHIBIT-P6:TRUE COPY OF THE REPRESENTATION SENT TO THE3D RESPONDENT ALONG WITH THE POSTAL RECEIPT DATED2012/2014. RESPONDENT'S EXHIBITS: NIL ---------- //TRUE COPY// P.S.TO JUDGE pk V.K. MOHANAN & P.D. RAJAN, JJ.

---------- W.P.(Crl)No.1 of 2015 ---------- Dated this the 13th day of January, 2015

JUDGMENT

V.K.Mohanan,J.

The petitioner herein is the sister of one Benny, aged 42 years, a person alleged to be a detenu in the above writ petition(Criminal). The petitioner claimed that the guardianship of the above Benny was given to the petitioner by the father of the petitioner as well as the said Benny, vide his registered Will dated 30.1.2012 as evidenced by Ext.P1. The claim of the petitioner is that she looked after the so called detenu right from his childhood, who is suffering from 'moderate mental retardation'. To show the above disability, the petitioner has produced Ext.P2. It is also the apprehension and allegation of the petitioner that as per W.P.(Crl) No.1/2015 2 Ext.P1 Will, the above Benny was given 9 Are 44 square feet of property and respondents 4 and 5, who are none other than mother and another sister of the petitioner, were permitted to reside in the house available in the said property. But, now the petitioner apprehends that there is a move from the side of respondents 4 and 5 to grab the bequethed property, which is stand in the name of

the detenu and with that ulterior motive, the 4th respondent, the mother of the detenue as well as the petitioner, preferred a petition before the District Collector, Kottayam and by influencing respondents 8 and 9, under the guise of proceedings in the said petition, they obtained custody of the detenu from the Police Station. It is also averred that respondents 8 and 9 compelled the petitioner to bring the detenu in the Police Station and as per their threat and coercion, the petitioner constrained to W.P.(Crl) No.1/2015 3 handover the custody of the detenu to respondents 4 and 5. So, according to the petitioner, the above approach of respondents 8 and 9 is highly arbitrary, illegal and improper and the custody of the detenu, Mr. Benny, under respondents 4 and 5 is illegal especially when their father, by Ext.P1, conferred the guardianship of the said Benny to the petitioner. Therefore, in the above writ petition, among other, it is prayed to issue a Writ of Habeas corpus or any other appropriate writ, direction or order directing the respondents 1 to 3 to find out and produce the body of the petitioner's brother Benny.

2. When we admitted the above writ petition, we directed the learned Government Pleader to get instructions from respondents 8 and 9 about the allegation and actual position of the case and the whereabouts of the detenu. Thus, when the case was taken on 18.1.2015, the W.P.(Crl) No.1/2015 4 so called detenu was produced before this Court. Considering the seriousness of the allegation and the rival contentions, we again directed the learned Government Pleader to get proper instructions from the 2nd respondent as to whether the local committee in terms of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (hereinafter referred for short 'Act' only) has been constituted or not and whether such committee is functioning in the locality coming under the jurisdiction of the 2nd respondent.

3. Thus, when the case is taken up today, the learned Government Pleader submitted that in terms of the above Act, the local committee has been already constituted and the same is functioning in the Kottayam District. As directed by this Court on 8.1.2015, the detenu W.P.(Crl) No.1/2015 5 is produced before us and respondents 4 and 5 and the petitioner are present. We heard the learned counsel for the petitioner and respondents 4 and 5.

4. It is the admitted case of the petitioner that the so called detenu is suffering from 'moderate mental retardation'. The said fact is supported by Ext.P2. If that be so, we are of the view that, particularly, when the local committee as envisaged under the above referred Act has already been constituted and functioning in the District, all disputes can be referred to the 2nd respondent, who can be authorised to take a decision in terms of the above Act, particularly, with respect to the permanent or interim custody of the detenu, since the 4th respondent- mother of the detenu has already approached the 2nd respondent by filing a petition. True, the said petition may not be strictly in accordance with the terms W.P.(Crl) No.1/2015 6 of the Act referred above. However, we direct the 2nd respondent to consider the petition already filed before the 2nd respondent by the 4th respondent, as a petition filed under the provisions of the above Act. In the result, this writ petition is disposed of directing the 2nd respondent to consider the petition already filed by the 4th respondent before him as a petition moved under the provisions of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and for the consideration of the said petition, the 2nd respondent is directed to post the matter before him on 16.1.2015, on which date respondents 4 and 5 are directed to appear in person before him and they are also directed to produce the detenu Mr. Benny, aged 42 years, S/o. Thomas @ Thomman (Late) as well as the 4th respondent, W.P.(Crl) No.1/2015 7 at 11 a.m. On producing the above referred person, after hearing all the interested parties including the petitioner and respondents 4 and 5, the 2nd respondent is directed to decide all the matters coming under his jurisdiction in terms of the above Act and he is also directed to pass any order including with respect to the custody of the detenu, Mr. Benny and thereafter, proceed to finally dispose of the petition filed by the 4th respondent, in accordance with the law and procedure. V.K. MOHANAN, JUDGE. P.D. RAJAN, JUDGE. acd W.P.(Crl) No.1/2015 8 W.P.(Crl) No.1/2015 9

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com