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Krishnaveni Vs. Meera at Devaki.

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Court : Chennai

Decided On : Mar-07-2012

Judge : R.Banumathi; S.Vimala, Jj.

Acts : Hindu Marriage Act - Section 11, 5(1), 16; Marriage Law (Amendment) Act, 1976; Family Court Act - Section 19 (1);

Appeal No. : A.S.No.154 of 2004

Appellant : Krishnaveni.

Respondent : Meera at Devaki.

Advocate for Def. : Mr. R.Ganesh Babu, Adv.

Advocate for Pet/Ap. : Ms. M.J.Sundara kanchana, Adv.

Judgement :

Prayer: Appeal Suit filed under Section 19 (1) of the Family Court Act, against the judgment and decree passed in O.S.No.8 of 1996, dated 30.12.2003 by the learned I Additional Principal Family Court at Chennai.

JUDGMENT

S.VIMALA, J.

1. Who is the legally wedded wife of the deceased-Sairam whether it is the first plaintiff or the first defendant is the main issue to be decided. Who are entitled to receive the pensionary benefits of the deceased Sairam i.e., whether the plaintiffs 1 to 3 (the wife and the children) or the defendants 1 and 3 (the second wife and the children) is the hot issue being tried from 1996.

2. The plaintiff filed the suit in O.S.No.8 of 1996 praying for a declaration that she is the legally wedded wife of the deceased and that the second and third plaintiffs are the legitimate sons of the deceased-Sairam and for a consequential order of injunction restraining the defendants from claiming any right whatsoever over the estate of the deceased-Sairam.

3. The brief facts of the case:

The marriage between the plaintiff and the deceased- Sairam took place on 16.2.1983 as per Ex.A1 (Ex.A1-Marriage Invitation of Mr.B.Sairam with T.Krishnaveni). Immediately after the marriage, she got conceived and delivered the first child i.e., the second plaintiff-Karthik. As she was ill-treated, she was constrained to live in her parents' house and she filed the petition for maintenance in respect of the second plaintiff-Karthik in M.C.No.232 of 1986 and the Court by the order (Ex.A2) dated 18.8.1987, awarded a sum of Rs.200/- per month for the maintenance of minor child-Karthik from the date of petition. i.e., 15.12.1986. In-between, the first plaintiff lived with the deceased on the eve of the marriage of her brother for a short while. The plaintiff delivered the second child i.e., the third plaintiff on 23.12.1986 (Ex.B4 Birth certificate of Muralidharan). Again, the deceased deserted her without any reasonable cause. The deceased was working as Foreman in the Combat Vehicle Research and Development and Establishment at Avadi, Chennai. The first plaintiff came to know that he was terminated from service on account of his incompetency in the service. The deceased died on 17.11.1995 (Ex.A3-Death Certificate of B.Sairam, the Deceased), leaving behind the legal representatives i.e., the plaintiffs (Ex. B5 Legal Heirs Certificate). The first plaintiff came to know that the first defendant was making attempt to receive the salary benefits, which accrued on account of the death of the deceased from the employer of the deceased. Therefore, she issued notice to the first defendant

as well as to the employer of the deceased (Ex.A6 Office copy of the notice). The notice issued to the first defendant was returned unserved (Ex.A7). The employer of the deceased gave reply under Ex.A8 stating that all pensionary benefits of Sri.B.Sairam, Ex-Foreman of this establishment have been paid to the individual as per the records available in the establishment, his wife Smt.Devaki being his nominee. Therefore, the first plaintiff was compelled to file the suit seeking for declaration.

4. The claim was resisted by the defendants on the following contentions:

a. The first plaintiff has to prove her status as the wife and also the status of P2 and P3 as that of the children of the deceased.

b. The defendants are legally entitled to receive the benefits accrued on the death of the deceased.

c. The first defendant is the nominee as per the official records maintained by the employer of the deceased.

d. The marriage between the first defendant and deceased took place on 2.2.1987. Out of the wedlock, two children were born i.e., second defendant was born on 12.12.87 and the third defendant was born on 6.8.90. e. When the deceased was terminated from service and when he was also suffering from the disease, the defendants alone were taking care of him. During those time, the defendants have never seen the plaintiffs. The suit has been filed in order to grab the service benefits of the deceased.

5. Before the lower Court the first plaintiff has been examined as PW.1 and Exs.A1 to A8 have been marked. On the side of the defendants, the first defendant has been examined as D.W.1 and no documents have been marked.

6. The lower Court on consideration of the evidence adduced has given a finding that the first plaintiff is the legally wedded wife and P2 and P3 are the legitimate children of the deceased-Sairam. The lower Court has considered the marriage invitation, the order of maintenance passed by the Judicial Magistrate and the Legal Heirs Certificate, apart from the evidence of P.W.1 and D.W.1. With regard

to the issue on the entitlement to receive the pensionary benefits and the right to get appointment on compassionate grounds, the lower Court has given a finding that D1 to D3 are entitled to the same. The lower Court has given the finding that:- (a) the first defendant is the nominee as per the nomination made by the deceased in the service records; (b) the government servants are empowered to nominate anybody as a nominee and the deceased had nominated the first defendant; (c) It is the defendants who are taking care of the deceased and, therefore, all service benefits are payable to defendants 1 to 3.

7. Challenging the findings, the present appeal has been filed on the following grounds:

(i) The trial court having declared the legal heirship of the plaintiffs should not have denied the right of receiving the death benefits of the deceased;

(ii) The trial court is wrong in giving a finding that the first plaintiff is an erring spouse and, therefore, she is not entitled to claim the death benefits;

(iii) The lower court ought to have held that the first defendant is not entitled to family pension as under Rule 54 of Central Civil Service Pension Rules, under which, the second wife is not entitled to family pension. (iv) The lower court has not properly appreciated the maintenance proceedings in proper perspective.

8. It is the contention of the learned counsel for the appellant that the appellants alone are entitled to receive the death benefits including pension of the deceased as the legitimate heir of the deceased. But, it is the contention of the learned counsel for the respondents that the defendants alone are the legitimate heir of the deceased and as such the respondents alone are entitled to receive the death benefits including pension of the deceased. The further contention of the respondents is that as the first respondent is the nominee of the deceased, she alone is entitled to receive the same.

9. The lower court has given a finding that the plaintiffs 1 to 3 are the legitimate heir of the deceased. As against this finding, there is no cross appeal. Therefore, the finding of the lower court with regard to legal heirship of the appellants has

become final. The only question to be decided is whether as a nominee, the first respondent and her children are entitled to receive the pensionary and other benefits of the deceased.

10. The learned counsel for the appellants has relied upon the following decisions and as contended that the pension being the social welfare measure, intended for the welfare of the family of the deceased providing social security in the event of death of the deceased, the nomination itself is invalid and, therefore, the first respondent cannot claim the pension as a nominee. 10.1. Smt.Violet Issaac and Others Vs. Union of India and Others reported in (1991) 1 SCC 725, wherein it has been held as follows:

The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The employee has no title nor any control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition. Accordingly, in the present case the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased. (emphasis supplied)

10.2. In Jodh Singh Vs. Union of India and Another reported in AIR 1980 SC 2081, it has been held as follows:

Special family pension is payable to the widow on the death of the officer. It is not payable to his lifetime. What is not payable during lifetime of the deceased over which he has no power of disposition cannot form part of his estate. It is the event of his death that provides the eligibility qualification for claiming special family pension. Such qualifying event which can only occur on the death of the deceased and which event confers some monetary benefit on someone other than the

deceased albeit related to the deceased, cannot form part of the estate of the deceased which he can dispose of by testamentary disposition. (Emphasis supplied)

10.3. In Janaki and another Vs.Kiliambal and Others, the learned Single Judge of this Court, has held as follows:

..... Rule 46 of the Tamil Nadu Pension Rules is to the effect that the gratuity payable under Rule 45 shall be paid to the person or persons on whom the right to receiving the gratuity is conferred by means of a nomination under Rule 48. Rule 48 provides that the Government servant shall make a nomination in Form 1 or Form 2 as may be appropriate in the circumstances of the case conferring on one or more persons the right of receiving the death-cum-retirement gratuity payable under Rule 45. The proviso to the rule is to the effect that the nomination shall not be in favour of any person or persons other than the members of his family and such nomination shall be in the order laid down in sub-sec.(5) of Rule 45. Hence, the nomination made by deceased Narasinghan with regard to his family pension and death-cum-retirement gratuity are not valid as they are not in accordance with Rules 45 and 48 of the Tamil Nadu Pension Rules..... (emphasis supplied)

10.4. Perusal of these decisions go to show that in respect of family pension, the deceased had no right to nominate anybody, in violation of the Pension Rules, as a person entitled to receive the pension and, therefore, any such nomination made by him is invalid.

11. The learned counsel for the respondents, on the other hand, contended that as per Rule 54(7) (a) (i) of Central Civil Services Pension Rules, where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal share and, therefore, the first respondent is also entitled to receive the pension. Perusal of Swamy's Pension Compilation (edited by Muthuswamy and Brinda) reveals that the second wife is not entitled to family pension as she is not a legally wedded wife under the Hindu Marriage Act. It has been clarified that as per Section 11 of the Hindu Marriage Act, the marriage can be declared as null and void and can be annuled by a decree of nullity if the marriage contravenes any of the clauses i.e., i, iv and v of Section 5 of the Act.

Section 5(1) stipulates that marriage cannot be legally solemnised when either party has a spouse living at the time of such marriage.

11.1. So far as this case is concerned, when the marriage between the first defendant and the deceased took place on 02.02.1987, the first plaintiff as the legally wedded wife was alive and their marriage having been performed even during the year 1983 i.e., on 16.2.1983.

11.2. The status of the first plaintiff, as the legally wedded wife was not disputed by the husband before the Criminal Court when the first plaintiff filed the petition for maintenance for her child. First Plaintiff being the legally wedded wife of the deceased Sairam is entitled to receive the pension. The children born to first Plaintiff from the lawful wedlock viz., second and third plaintiffs are each entitled to the pension till they attain the age of 25.

11.3. So far as the issue regarding admissibility of family pension to the children of the deceased Government Servant (where the marriage is void or voidable) is concerned, in view of Section 16 of the Hindu Marriage Act, the children are deemed to be legitimate. They are entitled to receive the family pension. In view of the presumptions available under Section 16 of the Hindu Marriage Act, which is reproduced for convenient reference:- Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of Marriage Law (Amendment) Act, 1976 as whether or not a decree of nullity is granted in respect of that marriage under this act, and whether or not the marriage is held to be void otherwise than on a petition under this act.

11.4. Therefore, the second and third defendants as children of the deceased are also entitled to receive family pension, even though the first defendant is not entitled to. As per the Rules, the children are entitled to family pension till they attain the age of 25. The second and third Plaintiffs are stated to be born on 20.11.1983 and 23.12.1986 respectively. Second and third Defendants-Respondents 2 and 3 are said to have been born on 12.12.1987 and 06.08.1990 respectively. Plaintiffs 2 and 3 and Defendants 2 and 3 are entitled to receive their

share of pension till they respectively attain the age of 25. First Plaintiff being the legally wedded wife of the deceased Sairam is entitled to receive her share of pension till her life time.

11.5. The Department under which, the deceased had been employed shall quantify the arrears of family pension payable to the appellants as well as respondents 2 and 3 and pay it according to their entitlement and also up to the age to which, they are eligible to receive the pension.

12. In the result, the judgment and decree in O.S.No.8 of 1996 dated 30.12.2003 on the file of I Additional Principal Family Court, Chennai is modified to that extent and this appeal is allowed in part accordingly. The department shall ensure the compliance of the judgment as expeditiously as possible. There shall be no order as to costs.

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