

Soudamini Vs. Kunhathi

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Court : Kerala

Decided On : Mar-29-2012

Reported in : 2012(3)KLT96

Judge : S.S. Satheesachandran

Appeal No. : O.P.(C) No. 3 of 2012

Appellant : Soudamini

Respondent : Kunhathi

Judgement :

1. A short, in fact, a four line order passed by the learned Sub Judge, Payyannur, on an application moved for interim directions/orders in an appeal preferred from a decree granting a declaratory relief to the plaintiff, regarding her entitlement to claim pension as the widow of a retired Army Personnel, has given rise to serious questions over the jurisdiction of the Civil Court vis--vis the entertainability of a suit before a Civil Court to claim pensionary benefits as the legal heir of a military personnel.

2. Ext.P4 is the order passed by the learned Sub Judge, Payyannur on the application moved by the 1st respondent in A.S.No.52/2010, which arose from the decree passed in O.S. No.133/06 by the learned Munsiff, Payyannur. That suit was instituted by the 1st respondent in the aforesaid appeal, as the plaintiff. Shorn off all paraphernalia covering the pleadings of the parties involved in the lis, suffice

to state, the suit was laid by the aforesaid respondent claiming herself to be the widow of late Kunhircaman, a retired Army Personnel. The second defendant in the suit, on Kunhathi, who claimed to be the legally wedded wife of late Kunhircaman, after his demise, has been recognised as his widow entitled to claim his pensionary benefits, was the backdrop which led to the suit by the plaintiff to seek a declaratory relief that she is the legally wedded wife of late Kunhircaman, and she alone is entitled to claim his pensionary benefits. In such suit, apart from the 2nd Defendant Kunhathi, the Treasury Officer and the Pensioning Authority of the Army and some others were also arrayed as co-defendants.

3. On the materials placed in the suit, the learned Munsiff came to the conclusion that at a time when the material relationships of late Kunhircaman subsisted with Kunhathi, he developed an affinity towards the plaintiff and maintained a relationship with her recognizing and acknowledging her also as his wife. Though the second defendant was proved to be legally wedded to Kunhircaman and thus entitled to the status of his widow, the learned Munsiff recognised the claim of the plaintiff as well as a person entitled to pensionary benefits of late Kunhircaman taking a view that Kunhircaman was survived by more than one widow. For disposal of this Original Petition with the question of jurisdiction arising for consideration, the reasonings of the learned Munsiff to hold so or its correctness, do not call for critical scrutiny. Suffice to state that the learned Munsiff on the aforesaid opinion expressed, granted a decree in favour of the plaintiff recognising her entitlement to collect half of the pensionary benefits of late Kunhircaman. Learned Munsiff granted a decree to the plaintiff directing the Pensioning Authority of the Defence services to consider apportionment of the family pension of deceased Kunhircaman between the plaintiff and the second defendant, with a further direction that a decision thereof should be taken within one month from the date of such judgment.

4. The second defendant assailed that decree filing the aforesaid appeal. In such appeal, the plaintiff moved cross-objections to the extent the decree was not granted in terms of the suit. She also moved an application to restrain the 1st defendant, Treasury Officer, from disbursing the pension, which has been continuously collected by the appellant viz., Kunhathi.

To that application, the appellant filed Ext.P3 objections. The learned Sub Judge has passed Ext.P4 order on the aforesaid application. That orders reads thus:

“Heard. The Civil Court has no jurisdiction to entertain the petition as per S.33, 34, 35 of Armed Force Tribunal Act, 2007. No interim relief is (sic) such relief can be granted. The suit is also dismissed. Hence no such direction can be granted. Hence Interlocutory Application dismissed. No costs.”

Impeaching the above order, the plaintiff has filed this Original petition invoking the visitorial jurisdiction vested with this Court under Article 227 of the Constitution of India.

5. Notice given, the 1st respondent has entered appearance. After hearing the counsel on both sides, and noticing that a question of law relating to jurisdiction under different Statutes is involved in the matter, I requested learned Senior Counsel Sri. S.V. Balakrishna Iyer to assist this Court to examine the challenge raised against Ext.P4 order passed by the learned Sub Judge. Accordingly, learned Senior Counsel Sri. S.V. Balakrishna Iyer has argued at length with reference to the Statutes and also judicial precedents having application over the question posed for consideration.

6. What has been claimed in the suit is pensionary benefits on the footing of the status of the plaintiff as widow of a retired military personnel, late KunhIRaman. Her status as such is disputed by the 1st defendant viz., second defendant K.V. Kunhathi, who is, admitted, receiving such pensionary benefits recognising her as the widow of late KunhIRaman. On the dispute so canvassed in the suit, the first and foremost question that emergest for consideration is whether the Civil Court has jurisdiction to adjudicate the rival claim set up by the aforesaid parties as to who among them has the matrimonial status as the widow of late KunhIRaman, a retired military personnel, whose services are governed by the provisions of the India Army Act.

7. Suit was laid much before the coming into force of the Armed Forces Tribunals Act, which received the assent of the President on 20.12.2007, and came into force on 15.6.2008. S.2 of the Act covers the ambit and also its applicability to all

persons, subject to the Army Act, 1950, Navy Act, 1957 and Air Force Act, 1950 Sub-s. (2) of that section makes the Act applicable to the retired personnel governed by the aforesaid Act as well including their depending heir and successors insofar as it relates to their service matters. So far as late Kunhiraman, the retired army personnel, had he been alive he could have agitated any matter relating to his pensionary claim only before the Tribunal constituted under the aforesaid Act once such a tribunal is established. When sub-s. (2) of the Act spells out that so far as any matter relating to the service of the military personnel, any dispute thereof is to be governed by the provisions of the Act, not only canvassed by the military personnel, but, their dependents, heirs and successors as well, it does not give room for any doubt that any one claiming right under the military personnel overmatters of his service can have recourse only as provided under the aforesaid Act. S.3(o) of the aforesaid Act defines what is 'service matters'. For the purpose of consideration of the issue involved in the present case, sub-clause (1) under that definition alone need be taken note of which makes it abundantly clear that 'service matter' embraces within its scope remuneration including pension and other retirement benefits. S.14 of the Act deals with the authority and jurisdiction vested on the authority. Armed Forces Tribunal, that it alone is competent to decide any question relating to the service matter of a military personnel. Sub-s.(1) of S.14, which is of significance reads thus:

“Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all Courts (except the Supreme Court or High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to all service matters.”

Sub-section (4) of the aforesaid section further provides that for the purpose of adjudicating any matter coming before that Tribunal, it shall have all the powers vested in a Civil Court to the extent specified under that sub-section.

8. In the present case judgment in the suit was rendered as on 30.1.2010. The Armed Forces Tribunal. Kochi Bench was established by notification dated 2.12.2009, on 7.12.2009 is conceded by all the parties. So much so, though the

suit was instituted at a point of time when the Armed Forces Tribunal was not established its disposal was at a time after it came into existence. Where exclusive jurisdiction to consider service matters is conferred on the Armed Forest Tribunal under S.14 of the Act, referred to above, it does not require any dilation to hold that Civil Court has no jurisdiction whatsoever to determine the dispute canvassed in the suit which pertained to a service matter of a retired military personnel.

9. The decree granted by the Civil Court overlooking the exclusive jurisdiction conferred on the Armed Forces Tribunal over the dispute involved in the suit, cannot at all be sustained. In such circumstances exercising the powers of this Court under Article 227 of the Constitution of India annulling of that decree and striking of the suit itself from the file of the Court is called for. Though challenge in the petition is only against Ext.P4 order arising from an order in an interlocutory application in the appeal as the decree challenged in such appeal passed by the Civil Court was without jurisdiction, the decree has to be vacated. Setting aside of the decree passed in the suit and striking of the suit will not affect the entitlement of the petitioner to seek appropriate remedies moving an application before the Armed Forces Tribunal establishing her claim, if so entitled to, in accordance with law.

10. The decree passed in O.S.No.133 of 2006 is vacated and the suit shall stand dismissed. The appeal preferred against the decree. A.S. No.52 of 2010, shall also stand struck off from file. The rights of parties to seek appropriate reliefs over the disputes involved in the suit from competent forum having jurisdiction shall remain unaffected.

I place on record my appreciation for the valuable assistance rendered by the learned Senior Counsel Sri. S.V. Balakrishna Iyer, Sri. Parameswaran Nair, Assistant Solicitor General of India, Sri. M.V. Amarsan, counsel for the petition and Sri. Mahesh v. Ramakrishnan, counsel for the 1st respondent in resolving the question posed for consideration in the Original Petition.

Subject to the above observations, the Original Petition is disposed of.

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