(2007) 02 AP CK 0064

In the Andhra Pradesh High Court

Case No : C.M.A. No. 2855 of 2000

B. Agnis Marry — APPELLANT

Vs

Kanaparthi Jamima Raja Kumari and Another — RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Rule 45, 46, 46(5), 47, 47(1)
Civil Procedure Code, 1908 (CPC) — Section 60, 60(1)
Constitution of India, 1950 — Article 309
Employees Pension Regulations — Regulation 28, 44
Payment of Gratuity Act, 1972 — Section 11, 13, 14, 5, 6

Citation : (2007) 3 ALD 508 : (2007) 3 ALT 388 : (2007) 2 APLJ 64 : (2007) 114 FLR 1053

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : G. Pedda Babu, for the Appellant; P. Gopal Das, for the Respondent

Judgement

P.S. Narayana, J.—B. Agnis Marry, the fourth respondent in S.O.P. No. 17 of 1998 on the file of the Court of Ill-Additional District Judge, Guntur, had preferred this Civil Miscellaneous Appeal, being aggrieved of an order made by the learned Judge dated 21-7-2000 granting succession certificate in favour of first respondent-petitioner, Kanaparthi Jamima Raja Kumari.

2. The appellant is the second wife of the deceased, Kanaparthi Vedantha Deva Roy. The first respondent is the daughter of the said Kanaparthi Vedantha Deva Roy through his first wife, who is no more.

3. The specific case of the respondent-petitioner is that her father, Kanaparthi Vedantha Deva Roy died on 3-7-1997 testate executing last registered Will in a sound disposing state of mind n 15-1-1996. The claim for the issuance of a succession certificate by first respondent-petitioner was resisted by the appellant-respondent No. 4 denying the very execution of the Will as such. The learned Judge recorded the evidence of P.Ws.1 to 5 and R.Ws.1 and 2, marked Exs.A-1 to A-3 and Exs.B-1 to B-12 and after framing the points for consideration and on

appreciation of evidence came to the conclusion that the first respondent-petitioner is entitled to the issuance of succession certificate. Aggrieved by a portion of the order, the present Civil Miscellaneous Appeal had been preferred.

4. Sri G. Pedda Babu, the learned Counsel representing the appellant would maintain that though certain general grounds are raised even relating to the validity of the Will, the appellant is not disputing so far as it relates to item Nos. 2 to 8 but the controversy is in relation to the gratuity amount, i.e., item No. 1. The learned Counsel would also submit that the said gratuity amount would be governed by the A.P. Revised Pension Rules, 1980 and in the light of Rule 46(5), Rule 47(1) of the Rules, the appellant-wife of the deceased would be entitled to the gratuity amount in preference to the married daughter. The learned Counsel would contend that the gratuity amount to be treated on par with pension and the same cannot be treated as estate of the deceased. The A.P. Revised Pension Rules, 1980 would govern the field. The counsel would also submit that no distinction can be drawn between pension and gratuity payable by virtue of the Pensions Act, 1871 and the Payment of Gratuity Act, 1972 and the Rules framed thereunder. The principles applicable to the pension payable would be equally applicable to the gratuity payable and hence the same analogy has to be applied. In view of the same, Rules 46 and 47 of the A.P. Revised Pension Rules, 1980 have to be applied to the present case and the relief of grant of succession certificate in favour of the first respondent-petitioner, the married daughter of the deceased to be negatived. The counsel placed reliance on certain decision.

5. Per contra, Sri Gopaldas, the learned Counsel representing the first respondent would contend that the gratuity is the estate of the deceased and hence when the same was disposed of by the deceased by testamentary disposition the same to prevail over the Pension Rules if any. The counsel would submit that the provisions of the Indian Succession Act, Transfer of Property Act and other like statutes would definitely prevail over the A.P. Revised Pension Rules, 1980. The learned Counsel also had drawn attention of this Court to Section 60(1)(g) of the CPC and had explained the facts and circumstances, which led the deceased to execute the Will in question. The learned Counsel also placed reliance on certain decisions to substantiate his contentions.

6. Heard the counsel.

7. The case in nutshell is that the first respondent as petitioner filed SOP. No. 17 of 1998 on the file of the Court of III Additional District Judge, Guntur, praying for the grant of succession certificate in her favour in respect of the schedule amounts due to her father, late Kanaparthi Vedandtha Deva Roy. It is her case that her mother Kanaparthi Jamima Rajakumari was given in marriage to the said Deva Roy as per Christian rites on 6-6-1971 at Repalle and due to the said wedlock she was born but after delivery of the first respondent-petitioner her mother died and she was brought up by her material aunt till the death of her mother. It is also stated that after the death of her mother her father began to live with the appellant-fourth respondent. The jewellery and house property

belonging to her mother were in possession of her father and he died on 3-7-1977 tested (sic. testate) executing a registered Will in a sound disposing state of mind on 15-11 -1996. As per the terms of the Will, the first respondent-petitioner is entitled to the schedule amounts due to her late father whereas some other properties were bequeathed to her mother and the jewellery of her mother were in the custody of late father and the same were kept in lock and the first respondent-petitioner got the same from the locker. It is also stated that the respondents 5 to 11 in SOP referred to supra demanded for the production of succession certificate.

8. The fourth respondent filed counter denying the allegations. She had taken a specific stand that without obtaining probate or letters of administration, the OP for succession certificate cannot be maintained and the Will is a fabricated and concocted document and on the date of execution of the Will her husband was not in a sound disposing state of mind. She had taken a specific stand that she married the said Deva Roy on 1-6-1978 as per Christian Law at Christs Luthern Church, Repalle and there is a certificate to that effect as contemplated under the provisions of Christian Marriage Act. It is also stated that encouraged by other family members the said Deva Roy filed divorce OP No. 20 of 1993 on the file of District Judge, Guntur and he also filed IA No. 399 of 1993 for examination of the appellant-fourth respondent by doctors. She had opposed the said application and the same was dismissed on 27-1 -1994 and when the petition was posted for enquiry in the meanwhile the said Deva Roy died on 3-7-1977 leaving the appellant-fourth respondent as her surviving legal heir. The Mandal Revenue Officer after enquiry issued a legal heir certificate and family members certificate. She had also made certain allegations against the other family members and also plays of fraud. Further specific stand was taken that u/s 6 of the Payment of Gratuity Act, 1972 an employee is not entitled to nominate any person other than the person who is his family member and all other kind of nominations are void and hence either the first respondent-petitioner or respondents 1 to 3 in the SOP referred to supra are not entitled to receive gratuity after the death of Deva Roy. The sixth respondent also filed a counter. The contesting parties had let-in evidence as already referred to supra. The learned Judge framed the following points for consideration:

(1) Whether the registered Will dated 15-11 -1996 executed in favour of the petitioner, is true and valid document?

(2) Whether the petitioner is entitled to receive the death benefits of late Deva Roy from the respondents 5 to 11?

(3) Whether the contention of the fourth respondent that she alone entitled to the death benefits of late Deva Roy?

(4) Whether the petition is maintainable?

(5) To what relief?

9. The learned Judge proceeded to discuss the aspects at paras 9 to 23 and ultimately came to the conclusion that the first respondent-petitioner is bound to succeed in getting a succession certificate. P.W.1 is the first respondent in the present appeal, the petitioner in S.O.P. P.Ws.2, 3, 4 and 5 also were examined. As against this evidence, the appellant R-4 in S.O.P., examined herself as P.W.1 and R.W.2 was examined. Exs.A-1 to A-3 and Exs.B-1 to B-12 were marked. Ex.A-1 is the registered Will executed by Deva Roy in favour of the first respondent-petitioner dated 15-11-1996, Ex.A-2 is the Photostat copy of the judgment and decree in OP No. 144 of 1989 and Ex.A-3 certified copy of deposition of Kanaparthi Vedantha Deva Roy. The marriage certificate was marked as Ex.B-1, Ex.B-2 is the certified copy of the order made in IA No. 399 of 1991 in O.P. No. 20 of 1993 on the file of Principal District Court, Guntur, Ex.B-3 is the certified copy of the order in I.A. No. 399 of 1993 along with affidavit and order dated 27-1-1994, Ex.B-4 is the death certificate issued by Municipality, dated 5-8-1997, Ex.B-5 is the legal heir certificate issued by MRO Guntur, dated 14-10-1997, Ex.B-6 is the Family Member Certificate issued by MRO, Guntur, dated 14-10-1997, Ex.B-7 is the Will executed by Kanaparthi Vedantha Deva Roy dated 12-10-1989, Ex.B-8 is the copy of legal notice issued to the Principal, AC College, Guntur, Ex.B-9 is the postal receipt dated 19-2-1998, Ex.B-10 is the postal acknowledgement, Ex.B-11 is the discharge of death claim dated 17-12-1997, Ex.B-12 is the five photos with negatives. Though there appears to be some dispute with regard to the factum of marriage, inasmuch as some divorce proceedings had been initiated by Deva Roy during his life time. It can be taken that in fact there was a valid marriage in accordance with Christian rites in between the said deceased Deva Roy and appellant after the death of the mother of the first respondent. Even other wise, this question had not been seriously canvassed before this Court. Equally, the validity of the Will which no doubt had been denied by the appellant, Ex.A-1 also had not been seriously canvassed. Even other wise, it is needless to say that in the light of the evidence of P.W.1 and also P.W.2 the attestor of Ex.A-1 and P.W.3 the document writer, there cannot be any doubt whatsoever that Ex.A-1 was duly proved. Hence, the said findings are hereby confirmed. The only question which had been argued in elaboration by the counsel on record is as hereunder:

Whether granting of succession certificate in favour of the first respondent in relation to item No. 1 gratuity amount be sustained in the facts and circumstances of the case?

10. Point No. 1: The substance of the factual matrix already had been discussed above, as already observed the validity of Ex.A-1 is not in serious controversy. Equally, the status of the appellant as second wife after the death of first wife of Deva Roy is also not in serious controversy.

Rule 46 of the A.P. Revised Pension Rules, 1980 deals with Retirement Gratuity:

46. Retirement Gratuity: (1) (a) A Government servant, who has completed five years qualifying service and has become eligible for service gratuity or pension

under Rule 45, shall on his retirement, be granted as retirement gratuity:

Sub-rule (5) specifies:

(5) For the purpose of this rule and Rules 47 and 49, ''family'' in relation to Government servant, means,

(i) Wife or wives, in the case of a male Government Servant;

(ii) Husband in the case of female Government Servant;

(iii) Sons including step-sons, posthumous sons, and adopted sons (whose personal law permits such adoption);

(iv) Unmarried daughters including step daughters, posthumous daughters and adopted daughters (whose personal law permits such adoption);

(v) Widowed daughters including stepdaughters and adopted daughters;

(vi) Father, and

(vii) Mother including adoptive parents in the case of individual whose personal law permits adoption;

(viii) Brothers below the age of 18 years including step brothers;

(ix) Unmarried sisters and widowed sisters including step sisters;

(x) Married daughters; and

(xi) Children of pre-deceased son.

47. Persons to whom gratuity is payable (1)(a). The gratuity payable under Rule 46 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of nomination under Rule 49.

(b) If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below:

(i) If there are one or more surviving members of the family, as in Clauses (i), (ii), (iii) and (iv) of Sub-rule (5) of ,Rule 46 to all such members in equal shares;

(ii) If there is no such surviving members of the family, as in Sub-clause (i) above, but there are one or more members as in Clauses (v), (vi), (vii), (ix), (x) and (xi) of Sub-rule (5) of Rule 46, to all such members in equal shares.

Rule 47 of the A.P. Revised pension Rules, 1980 deals with person to whom gratuity is payable and Sub-rule (1) specifies the gratuity payable to person or persons on whom the right to receive the gratuity by himself or nominees under Rule 49.

Rule 49 of the A.P. Revised Pension Rules, 1980, deals with nominations. It is also not in serious controversy that there is no nomination in the present case. Rule 47 specifies that if there is no such nomination or the nomination does not subsist the gratuity shall be payable in the manner indicated below. If there are one or more surviving members in the family as in Clauses (i), (ii), (iii) and (iv) of Sub-rule 5 of Rule 46 of the Rules to all such members in equal shares and Rule 47(b)(ii) specifies if there is no such surviving members in the family as in the Sub-clause (i) above, but there are one or more members as in Clauses (v), (vi), (vii), (ix), (x) and (xi) of Sub-rule 5 of Rule 46 to all such members in equal shares.

11. These are the rules on which strong reliance was placed by the learned Counsel representing the appellant. Further strong reliance was placed on the decision of the Division Bench in Mt. Hanifabai and Anr. v. Karachi Port Trust AIR 1929 Sindh 177 wherein it was held:

If succession certificate is to be given in respect of the estate of the deceased person it must be in respect of an estate, which goes to the heirs of the deceased person. A succession certificate cannot be granted in case of gratuity, which does not form part of the estate of the deceased but is merely a sum paid to particular persons who are not necessarily the heirs of the deceased.

12. Certain provisions of the Pension Act, 1871 and also Payment of Gratuity Act, 1972 also had been referred to in this context. Section 11 of the said Act deals with exemption of pension from attachment. Section 6 of the Payment of Gratuity Act, 1972 deals with nominations and Sub-section (3) of Section 6 of the Payment of Gratuity Act specifies that if an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family, shall be void. Section 5 of the Act deals with Power to exempt and Section 13 of the Act deals with protection of gratuity, Section 14 of the Act deals with Act to override other enactments etc.

13. Section 60 of the CPC dealing with the property liable to attachment and sale in execution of decree, under (1) provisio (g) it is specified except stipends and gratuities allowed to pensioners of the Government (or of a local authority or of any other employer) or payable out of any service family pension fund notified in the Official Gazette by (the Central Government or the State Government) in this behalf, and political pension.

14. Reliance was placed on a decision in Rashtriya Mill Mazdoor Sangh Vs. National Textile Corporation (South Maharashtra) Ltd. and others, and also another decision in Katheeja Bai Vs. Superintending Engineer and Others, Strong reliance was placed on the decision of the Apex Court in Jodh Singh Vs. Union of India (UOI) and Another, But however in the said decision it was observed that whether the gratuity specifically sanctioned in favour of widow, as widow of the deceased by the President under the Rules could be the subject-matter of testamentary disposition has not been considered in this matter because that amount has been included in the probate of the will of the deceased and the widow had not questioned that order before the Court and hence that question is

kept open.

15. Reliance was also placed on the decision of the Supreme Court in Smt. Violet Issac and Ors. v. Union of India and Ors. Supreme Court Service Rulings Vol. II, page 1, where while dealing with the Family Pension Rules 1964, the Apex Court observed that family pension does not form part of the estate enabling him to dispose of the same by testamentary disposition.

16. Certain submissions were made by both the counsel that inasmuch as the Pension and Gratuity being similar the same principles ought to be made applicable and on the contrary the counsel for the first respondent contending otherwise that these are distinguishable and hence the decision of the Apex Court is not applicable to the facts on hand.

17. Reliance was also placed on the decision reported in Ramwati v. Krishan Gopal and Ors. 1988 (2) SLR 61 wherein at para 3 it was observed:

If the employee is dead, obviously the gratuity cannot be deemed to be payable to the employee. If the said gratuity becomes payable to the heirs of the employees, obviously the same becomes attachable in the hands of the employer as the employer is legally bound to pay the said gratuity to the legal heirs of the employee. I am in complete agreement with the ratio laid down by the Madhya Pradesh High Court in the aforesaid judgment and hold that this amount of gratuity, which was attached by the Court in the hands of the employer, is not now liable to be refunded to the appellant.

18. Strong reliance was placed on a decision of the Full Bench of this Court in K. Sasikala Vs. Life Insurance Corporation of India, Bellampalli, Adilabad District and another, wherein this Court at para 5 observed:

In the light of the above, admitted facts, let us now look into the effect of transfer of policy. Sections 38 and 39 of the Act are the relevant provisions, Section 38 deals with assignment and transfer of insurance policies. We are not concerned with Sub-sections (1) to (4) as in the present case, the factum of assignment of policies is admitted. Sub-section (5) reads thus:

..38. Assignment and Transfer of Insurance Policies:

(5) Subject to the terms and conditions of the transfer of assignment the insurer shall, from the date of the receipt of the notice, referred to in Sub-section (2), recognize the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings."

Section 39 should also be seen at this stage. Sub-section (4) of Section 39 reads thus:

"39. Nomination by Policy Holder:

(4) A transfer or assignment of a policy made, in accordance with Section 38 shall automatically cancel a nomination;

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer''s interest in the policy..."

It is therefore clear from a combined reading of both the above provisions that from the date of transfer of a policy, the nomination stands cancelled and there after the Corporation will recognize only the transferee as entitled for any benefit under the policy. It also makes the transferee liable for any claim by the claimant and not the insurer. Thus the claimant or the nominee, could proceed against the assignee and the Corporation need not be made a party to such proceedings, as its liability stood transferred to the transferee. In view of the clear position of law, the stand of the Corporation is perfectly legal and the writ petition is liable to be dismissed as against it. The 2nd respondent Bank is, however, liable to pay the amount to the L.Rs. of the deceased. The petitioner has no right to claim the amounts on the basis of the nomination, which stood cancelled.

19. Strong reliance was placed by the counsel representing the first respondent on the decision of the Rajasthan High Court in Subhita v. Pitharam 2001 (2) CCC 15 (Raj.) wherein the learned Judge while dealing with issuance of succession certificate for claiming Gratuity and GPF the same was granted by the trial Court in favour of father against the married daughter of the deceased and the trial Court believed the execution of the will by the deceased in favour of the appellant who granted succession certificate in favour of father of the deceased held that the appellant cannot be treated as legal heir in terms of Regulations 28 and 44 of Employees'' Pension Regulation and Employees General Provident Fund Regulations. It was also held that the parties are governed by Hindu Succession Act and the statutory provisions of the Hindu Succession Act would prevail upon the Regulations which were only guiding factors and the trial Judge erred in interpreting rights and the married daughter is entitled under Hindu Succession Act but execution of Will gave her an additional right and hence succession certificate to be issued in her favour.

20. The substance of the question to be decided in the present Civil Miscellaneous Appeal would boil down to the limited extent whether in relation to the gratuity amount, can there be testamentary disposition as in the present case or not. The counsel on record no doubt made certain submissions relating to the nature of the gratuity but were unable to point out the clear definition of the said expression. The counsel for the appellant contended that Pension and gratuity to be treated as on par and the counsel for the first respondent

contending otherwise. The payment of Gratuity, the payment of pension these are governed by the specific enactments and the object lying behind these statutes may have to be taken into consideration. A couple of the relevant provisions of both the Pensions'' Act, 1871 and Payment of Gratuity Act, 1972 already had been referred to supra. It is no doubt true that while interpreting the provisions of the statutes and certain regulations in the event of conflict the statutory provisions to prevail and the subordinate legislation to yield to the principal legislation. It may be in certain cases if the same can be resolved otherwise the provisions can be harmoniously construed. The service benefits of an employee would be covered slightly by a different field. Such service benefits and disbursement thereof are governed by relevant Service Rules, which would be promulgated in exercise of the powers under Article 309 of the Constitution of India. It is true that if the submission of the counsel for the first respondent that the testamentary disposition governed by the provisions of Indian Succession Act to prevail over the Regulations to be accepted then the issuance of succession certificate in relation to item No. 1 of the schedule also cannot be found fault. On the contrary, if it is to be viewed that by virtue of Rules 46 and 47 of the A.P. Revised Pension Rules, 1980 referred to supra, the wife would be entitled to the Gratuity amount and of the married daughter to be excluded in the light of the entries then the relief of grant of succession certificate so far as it relates to item No. 1 to be negatived. It is true that the intention of the testator was to exclude the wife that was the reason why the testator executed a will in favour of the married daughter. All was not well, in between the husband and wife, which had resulted in divorce proceedings. No doubt it had not attained the finality and in the meanwhile he died. This is the actual scenario and at that juncture this litigation cropped up. On a careful analysis of the relevant provisions of the Pensions'' Act, 1871 and also the Payment of Gratuity Act, 1972 underlying the objects and principles governing the field in relation to the service benefits and also specific exemption which had been thought of, this Court is of the considered opinion that as far as the payment of gratuity is concerned for the issuance of succession certificate in the light of the Service Rules governing the field it is just and akin to the pension and hence the Service Rules which virtually govern a different field cannot be said to be in conflict with either the provisions of the Indian Succession Act or the Transfer of Property Act. It is needless to say that for all other items the testator was at liberty to dispose of the same by virtue of testamentary disposition but in the light of the provisions referred to supra, this Court is of the considered opinion that the issuance of succession certificate in relation to item No. 1, the gratuity amount, cannot be sustained. This Court is expressing this view keeping in view the object with which the service benefits would be granted and also the background under which several Service Rules are being framed in exercise of the powers conferred under Article 309 of the Constitution of India. Except this view, no other view is possible and it is needless to say that unless there is a direct conflict, always the provisions are to be harmoniously construed. In view of the same, the appellant is bound to succeed only to the extent of item No. 1, i.e., gratuity amount, the other findings recorded by the learned Judge are hereby confirmed except in relation to item No. 1, gratuity amount.

21. Accordingly, this Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs.