
(2006) 02 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 682 of 2006

Mrs. Manju Malhotra

APPELLANT

Vs

State of Haryana etc.

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Punjab Civil Services Rules — Rule 6.16(A)(2), 6.16(A)(4), 6.16B

Citation : (2006) 143 PLR 447

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Guarav Chopra, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The plaintiff in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit of the plaintiff claiming right of inheritance of movable and immovable property left by her deceased husband Shri M.S. Malhotra, was dismissed, except to the extent of payment of retiral benefits other than the Government Provident Fund and Gratuity.

2. As per the case set up by the plaintiff-appellant she married Capt. M.S. Malhotra on 28.5.1986. The plaintiff was a widow and was having two children from her previous marriage. Before the said marriage, the deceased M.S. Malhotra, had adopted one Nitika, defendant No. 2, daughter of his sister vide registered adoption deed dated 9.7.1979 Exhibit DW4/A. Capt. Malhotra died on 15/16.6.1993. According to the plaintiff she and her daughter Rupali are the legal heirs of the deceased Capt. Malhotra, whereas defendant No. 2 Nitika is claiming inheritance of Capt. Malhotra on the basis of Will dated 4.4.1989. The learned trial Court found that the Will of late Capt. Malhotra is not proved to be executed but found that a simplicitor suit for declaration is not maintainable. Consequently, the suit was dismissed. Aggrieved against the said judgment, two appeals were filed, one by the plaintiff against the finding recorded by the learned trial Court, holding the suit as not maintainable and another by the

defendants, challenging the finding on the question of Will.

3. The learned First Appellate Court has considered the entire evidence in respect of execution of Will particularly that of Pawan Kumar DW3, Document Writer as well as the attesting witness DW1 Vasudev Chhabra to hold that the Will is proved to be executed. The Court has taken into consideration the fact that a divorce petition was filed on 30.8.1991 which was decided on 5.10.1993 i.e. after the death of Capt. Malhotra. It was found that absence of signatures of attesting witnesses on each of the leaf of four pages of Will, is not sufficient to hold the Will as the one surrounded by the suspicious circumstances. The said finding is based upon proper appreciation of evidence. In fact, the same was not seriously challenged in second appeal as well.

4. The only argument which was raised by learned Counsel for the appellant was that the plaintiff is a nominee of the deceased in the service record of the deceased and, therefore, she alone is entitled to the payment of retiral benefits. It is argued that since the retiral benefits were payable after the death of the deceased, the deceased could not have executed any Will bequeathing such benefits by virtue of the Will. Reliance is placed upon *Union of India v. Radha Kissen Agarwalla and Anr.* 1969 S.L.R. 439, to contend that since the provident fund amount is not attachable during the lifetime of the subscriber, therefore, the said amount cannot be bequeathed by virtue of a Will. The judgments referred to by the learned Counsel for the appellant have no applicability to the facts of the present case. The said judgments deal with the question of attachment of provident fund money of a Government servant in execution of the decree by a Court. It has been found that the amount in the provident fund account is in the hands of the state Government as a trustee of the subscriber. Therefore, the argument raised by learned Counsel for the appellant that such amount cannot be bequeathed, in fact, was not dealt with in the said judgment.

5. In *Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others*, , the matter was remanded to the trial Court to decide the question whether the entire amount or the portion thereof, represents Provident Fund and compulsory deposit or pensionary benefits stands excluded from attachability in execution of civil decrees under the provisions the Provident Fund Act, 1925. Therefore, the said judgment is also of no help to the plaintiff for the question arising in the present appeal.

6. The learned Counsel for the appellant has referred to *Jodh Singh Vs. Union of India (UOI) and Another*, and *Smt. Violet Issac and Ors. v. Union of India and Ors.* J.T. 1991 (1) S.C. 337 to contend that retiral benefits cannot be bequeathed by Will. The said judgments relate to question of payment of family pension. It has been held that the family pension cannot be subject matter of testamentary disposition by the husband for the reason that the pension is not payable during the lifetime of the employee. Both the cases do not deal with the payment of other retiral dues.

7. The Hon"ble Supreme Court in Haryana State Electricity Board Vs. Surasti Devi, , has held that the mother of the deceased employee is not entitled to family pension scheme under normal circumstances in terms of Chapter VI of the Punjab Civil Service Rule Volume 2, but mother is certainly entitled to other benefits viz Government Provided Fund, leave encashment, etc., which were granted by the trial Court to her. Thus, the family pension is payable to the members of the family as per nomination made in terms of the scheme as defined under the Family Pension Scheme.

8. In the present case Rule 6.16-B of the Punjab Civil Services Rules as applicable in the State of Haryana, defines family which includes relatives enumerated in the said Rule, including the mother and daughter as well. An Officer could make nomination conferring on one or more persons the right to receive Gratuity that may be sanctioned under sub Rules (2) and (4) of Rule 6.16(A). The deceased could change his nomination in favour of any one or more members of the family as defined under the Rule. Therefore, the execution of the Will has the effect of substituting the nomination, which has been made in terms of the aforesaid Rule. The furnishing of nomination in a prescribed form is only to expedite the payment to the eligible person in terms of the wishes of the employee but such wish can be legitimately expressed in any other manner, which has the effect of superseding the nomination in terms of the aforesaid Rule. The nomination in the prescribed form is only a procedure, which does not affect the legal right of the members of the family as defined under the Rule. Therefore, even though the appellant was a nominee in the records of the Department but such nomination stands superseded by virtue of the Will, duly proved in favour of the members of the family as defined under the Rules.

9. In the present case, the Will Exhibit D1 specifically deal with the payment of Gratuity and Government Provided Fund to defendant No. 2. The learned first Appellate Court has found that except the said payments, which have been specifically bequeathed to defendant No. 2, the plaintiff-appellant shall be entitled to all other service/retiral benefits. The Government Provident Fund is the amount contributed by the deceased during the course of service. Similarly, the amount of Gratuity is payable for the service rendered.

10. The principles laid down in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, would be applicable in respect of status of a nominee as an heir entitled to receive the payment of benefits for the heirs. In view of the said provisions as well, defendant No. 2 as an heir of the deceased has rightly been found entitled to the payment of Government Provident Fund and Gratuity.

11. In view of the above discussion, I do not find that any such bequeath by Will is not contemplated in law. Consequently, I do not find that the judgment and decree passed by the Courts below suffer from any patent illegality or irregularity giving rise to any substantial question of law.

12. Hence, the present appeal is dismissed.