

(2016) 12 CAL CK 0008

In the Calcutta High Court

Case No : F.M.A.T. No. 600 of 2013, (CAN 2387 of 2016)

Rama Paul

APPELLANT

Vs

Alok Narayan Chowdhury

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 170 AIC 573

Hon'ble Judges : Jyotirmay Bhattacharya and Ishan Chandra Das, JJ.

Bench : Division Bench

Advocate : Dr. Sutanu Kr. Patra and Mr. Rajib Basak, Advocates, for the University of Calcutta; Mr. Soumya Kanti Chatterjee, Advocate, for the Respondent No. 1; Mr. Shyamal Chakraborty, Mr. Sarbesh Pal and Ms. A. Banerjee, Advocates, for the Defendant Nos. 3 to 6/Ap

Final Decision : Disposed off

Judgement

Jyotirmay Bhattacharya, J. - This first miscellaneous appeal is directed against an order being 21 dated 5th August, 2011 passed by the Learned Xth Bench of City Civil Court at Calcutta in Title Suit No. 1222 of 2010 at the instance of the defendant no.3 to 6/appellants.

2. Since all the parties are now before us and the relevant papers which are necessary for disposal of the appeal are also available before us, we on the joint request of the learned counsel appearing for the parties, have decided to dispose of the appeal itself on merit by dispensing with the requirement of filing paper books in this appeal.

3. By the impugned order, the plaintiff's application for temporary injunction was allowed. The parties to the suit were directed to maintain status quo regarding release of any amount towards Provident Funds, Gratuity and other service benefits of Debabrata Pal till the disposal of the suit.

4. The legality of the said order is under challenge in this appeal. Let us now

consider as to how far the learned Trial Judge was justified in passing the impugned order in the facts of the instant case.

5. The plaintiff, claiming himself to be the nephew (sister's son) of Debabrata Pal, since deceased, filed a suit for declaration that Debabrata Pal having died bachelor intestate, he being the sister's son of Debabrata Pal as class-II heir is entitled to get all the retirement benefits of Debabrata Pal. Debabrata Pal was an employee of Calcutta University. He died on 7th December, 1993. The plaintiff claimed that the defendant no.3 was not legally married wife of the said Debabrata Pal. The plaintiff also alleged that the defendant nos. 4, 5 and 6 are not the sons and daughters of Debabrata Pal. He thus, asserted that the defendant nos. 3 to 6 cannot inherit the estate of the deceased. As such, they cannot claim any interest in the retirement benefits of Debabrata Pal.

6. After filing the said suit, the plaintiff filed an application for temporary injunction for restraining the University of Calcutta from disbursing any amount payable on account of the death of the said Debabrata Pal to any of the respondent nos. 3 to 6 till the disposal of the suit.

7. The defendant nos. 3 to 6 appeared in the suit and contested the said injunction proceeding by filing objection. They claimed that the defendant no.3 is the legally married wife of the said Debabrata Pal and the defendant nos. 4, 5 and 6 are the sons and daughters of the said Debabrata Pal. It is also alleged by them that succession certificate has also been issued in favour of the defendant no.3 for realisation of the retirement benefits of the said Debabrata Pal from his employer. They thus, prayed for dismissal of the plaintiff's application for injunction.

8. In course of hearing of the injunction proceeding, the defendant nos. 3 to 6/ appellants herein produced several documents to support their claim that the defendant no.3 is the legally married wife of the said Debabrata Pal. The appellants have also filed a supplementary affidavit before this Court annexing those documents.

9. On perusal of the said supplementary affidavit, we find that the Voter Identity Cards, Ration Cards and Invitation Card of the Shradh Ceremony of the said Debabrata Pal and writing of the plaintiff herein acknowledging the defendant no.3 as the wife of Debabrata Pal have been annexed to the said supplementary affidavit.

10. On perusal of those documents, we find that the Voter Identity Cards were issued in favour of the defendant nos. 3, 4 and 5 by the concerned authority sometime in 1995 i.e. after the death of the said Debabrata Pal. However, the Ration Card was issued by the Rationing Officer on 6th April, 1991 which is prior to the death of Debabrata Pal. In all these documents, the name of Debabrata Pal was described as either the husband of the defendant no.3 or the father of the defendant nos. 4 and 5. The writing which is also annexed to the said supplementary affidavit, shows that the plaintiff authorised the defendant no.3 to

collect the rent from the tenant inducted by Debabrata Pal. The plaintiff admitted therein that the defendant no.3 is the wife of Debabrata Pal.

11. Though fact remains that the defendant no.3 was not nominated by the Debabrata Pal as his nominee in respect of his Provident Fund dues and other dues but at the same time considering the documents as referred to above, we are of the view that the defendant no.3 has succeeded in proving at least prima facie that she is the legally married wife of the said Debabrata Pal and the other defendant nos. 4, 5 and 6 are the sons and daughters of Debabrata Pal.

12. True if the defendant no.3 is not nominated by the Debabrata Pal as his nominee in the service record in respect of his provident fund dues and other retiral dues, the defendant no.3 cannot claim the retiral benefits of the said Debabrata Pal after his death as a nominee but on the strength of the Succession Certificate, she can very well insist upon the employer of the said Debabrata Pal for release of all the retiral dues of the said Debabrata Pal in her favour.

13. Admittedly, Succession Certificate has been issued in favour of the defendant no.3 authorising her to collect the retiral dues of the said Debabrata Pal after his death. The issuance of the said Succession Certificate has also been disclosed by the defendant in the said proceeding. The issuance of the said Succession Certificate has not been challenged by the plaintiff. Succession Certificate has not yet been revoked. This is still in operation in the field.

14. As such, we are of the view that the University of Calcutta cannot deny payment of retiral dues of the said Debabrata Pal to the defendant no.3 if the Succession Certificate, issued by the competent court is produced by the defendant no.3.

15. In these set of facts, we are of the view that the learned Trial Judge was not justified in directing the parties to maintain status quo with regard to the release of retiral dues of Debabrata Pal.

We thus, set aside the said impugned order.

16. We feel that justice will be sub-served if we direct the University concerned to deposit the entire retiral dues including Provident Fund, Gratuity etc. of the said Debabrata Pal with the learned Trial Court in connection with the suit within a time bound period.

Accordingly, we dispose of the appeal by directing the University of Calcutta to deposit the entire terminal dues including Provident Fund and Gratuity of the said Debabrata Pal, since deceased in the Trial Court relating to the said suit within a period of four weeks from date.

17. In the event such deposit is made by the University of Calcutta with the learned Trial Court, the learned Trial Court, will permit the defendant no.3 to withdraw 75% of such deposit without any security subject to compliance of necessary formalities in this regard; however, with an undertaking that in the

event she ultimately fails to succeed in the suit, she will have to return the money which she will withdraw from the court on the strength of this order.

18. The learned Trial Court is also directed to invest rest of such deposits with any Nationalised Bank in a Short Term Fixed Deposit and will keep such deposit renewed from time to time till the disposal of the suit.

19. Since all the parties are now before the court, we also request the learned Trial Judge to dispose of the suit itself as early as possible but preferably within one year from the date of communication of this order.

The parties are also directed to co-operate with the learned Trial Judge so that the time as framed hereinabove for disposal of the suit can be adhered to by the learned Trial Court.

The appeal is thus, disposed of.

Since the appeal is disposed of in the manner as aforesaid, no further order need be passed on the stay application.

The application for stay being CAN 2387 of 2016 is thus, deemed to be disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the Learned advocates for the parties immediately.