

(2017) 02 BOM CK 0035

In the Bombay High Court

Case No : Second Appeal No. 80 of 2010

Regional Provident Fund Commissioner

APPELLANT

Vs

Sharda

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Citation : (2017) LabLR 485

Hon'ble Judges : Mr. Ravi K. Deshpande, J.

Bench : Single Bench

Advocate : Dr. R.S. Sundaram, Advocate, for the Appellant; Shri R.A. Gupte, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Mr. Ravi K. Deshpande, J.(Oral)—The dispute in this second appeal pertains to the benefits to which the plaintiff and the defendant No. 4, the second Amendment as per Court order dated 05.12.2009 wife of Asaram the deceased, were entitled to. Asaram had two wives (i) Meerabai and (ii) Malanbai the defendant No. 4 in the suit. The plaintiff Nos. 1 and 2 both were the daughters of Asaram and they claimed all the dues payable upon the death of Asaram. The appellant-Regional Provident Fund Commissioner was joined as defendant No. 2 in the suit, whereas the Forest Development Corporation of Maharashtra, the employer was joined as defendant No. 1.

2. The operative portion of the decree passed by the Trial Court is reproduced below:

The suit is partly decreed with costs.

The defendants Nos. 1 to 4 jointly and severally pay the amount of Rs. 7422/to the plaintiff No. 1 Sharda within three months from the date of this order.

The defendants Nos. 1 to 3 are hereby restrained from making any payment of post death benefits of deceased Asaram to defendant No. 4 in future.

The defendants Nos. 1 to 4 shall bear their own costs.

A decree be drawn up accordingly.

3. The appellant preferred Regular Civil Appeal No. 128 of 2004 and the lower Appellate Court modified the decree passed by the Trial Court, operative part of which is reproduced below:

Appeal is partly allowed.

Judgment and decree dated 7/10/2003 passed by the Trial Court is set aside and modified as under :

Defendant Nos. 1 to 3 are jointly and severally directed to pay Rs. 6,288/and 7th share of post death pensionary and monetary benefits to the plaintiff Sharda and remaining 7th share to the defendant No. 4 and her daughters Ku Mamta and Anita as the legal heirs of deceased Asaram Nimbekar, within three months from the date of decree.

Parties to bear their own costs.

Decree be drawn up accordingly.

4. It is the defendant No. 2-Regional Provident Fund Commissioner who is before this Court in this second appeal.

5. Undisputedly, the defendant No. 4 Malanbai widow of Asaram was the nominee in respect of the dues payable by the Regional Provident Fund Commissioner. Accordingly, all the dues are released in favour of the defendant No. 4. During the pendency of suit, the plaintiff No. 2 Shalini daughter of Asaram expired and they were no other legal heirs brought on record. The plaintiff No. 1 has married. Upon marriage being performed she also may not be entitled to such dues. At any rate, the Courts below could not have passed a decree against the present appellant, who has honoured the nomination of the deceased. The plaintiff being not a nominee, was not entitled to monetary dues payable by the appellant. The question of law is answered accordingly. Hence, the decree passed by the Courts below against the appellant cannot be sustained and to that extent it operates against the appellant.

6. In the result, the second appeal is allowed. The judgment and decree passed by the Trial Court in Regular Civil Suit No. 26 of 1995 on 07.10.2003 as well as by the lower Appellate Court in Regular Civil Appeal No. 128 of 2004 on 25.10.2005 is set aside to the extent it operates against the appellant. No order as to costs.

7. It is informed that the appellant has deposited the amount in this Court. If it is so, the appellant is permitted to withdraw the same along with the interest, if any, accrued thereon.