
(2003) 08 AP CK 0033
In the Andhra Pradesh High Court
Case No : CMA. 3604 of 2002

S. Fazeelath Begum

APPELLANT

Vs

K. Abdul Hakeem (died) by LRs. and Others

RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:

Andhra Pradesh Government Life Insurance Fund Rules — Rule 31
Andhra Pradesh Revised Pension Rules, 1980 — Rule 46, 47, 49

Citation : (2004) 1 ALD 647 : (2004) 2 ALT 331

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K. Vijaya Kumar, for the Appellant; Syed Shareef Ahmed, for the Respondent

Judgement

C.Y. Somayajulu, J.—Seventh respondent in OP No. 489 of 1998 is the appellant in this appeal.

2. Respondents 1 to 8 filed the aforesaid O.P. u/s 372 of the Indian Succession Act seeking Succession Certificate in their favour for the 3/4th amount from out of the securities left behind by K. Shabbir Ahmed (hereinafter referred to as the deceased), who happened to be the son of respondents 1 and 2 and brother of Respondents 3 to 8, i.e., policy No. 42584A dated 1.11.1997, Policy No. 425874B dated 1.6.1992 of A.P. Government Life Insurance Fund, Policy No. AP/46037-CS dated 16.3.1992 of postal Life Insurance, and the amounts lying to the credit of S.B. Account No. 20/3488 in the State Bank of India, TIF Compound, Gooty Road, Kurnool, and S.B. Account in Syndicate Bank. Their contention is that since as per the Muslim Law all of them put together are entitled to 3/4th share in the estate left behind by the deceased and the remaining 1/4th belongs to the appellant, who is the wife of the deceased, they may be granted Succession Certificate in respect of 3/4th share of the deceased in the above mentioned securities. The said petition is opposed by the appellant on the ground that as widow of the deceased she alone is entitled to all his death benefits, as she was

nominated by the deceased to receive those amounts. In support of the case of Respondents 1 to 8 one witness was examined as PW.1 and Exs.A.1 to A.6 were marked, and on her behalf appellant examined herself as RW.1 and another witness as RW.2, but did not adduce any documentary evidence. During the pendency of the proceedings 1st respondent died. So Respondents 2 to 8 were recognized as his heirs and consequently their share also got enlarged. The Trial Court on the ground that Respondents 1 to 8 are also heirs to the estate left behind by the deceased, allowed the petition and ordered issuance of Succession Certificate to Respondents 2 to 8 for 3/4th share in the above mentioned securities left behind by the deceased. Hence, this appeal by the widow of the deceased.

3. The contention of the learned Counsel for the appellant is that since the retiral benefits do not form part of the estate of the deceased but are governed by the nomination as per the Rules under which the scheme came into force, the appellant, as the nominee of the deceased, only is entitled to those benefits to the exclusion of Respondents 1 to 8 and so the Court below was in error in allowing the O.P. He placed strong reliance on *K. Satyavathi v. Employees State Insurance Corporation* 1990 (3) ALT 253 and *Saroj v. Murti Devi* AIR 1991 P&H 193, A.P. Revised Pension Rules, A.P. Government Life Insurance Fund Rules and A.P. General Provident Fund Rules in support of his contention. He also contended that since the suit filed by Respondents 1 to 8 in O.S. No. 596 of 1998, for declaration that they also are jointly entitled to 3/4th share in the estate left behind by the deceased was dismissed, this O.P. filed by Respondents 1 to 8 subsequent to the dismissal of the said suit ought not to have been entertained by the Court below. The learned Counsel for Respondents 2 to 8, relying on "introduction to the Indian Succession Act, 1925" with Short Notes published in 1996 by Universal Law Publishing Co. Pvt. Ltd. reading:

""Succession" means capable of comprehending every kind of passing of property. When the British settled down to govern India, they were faced with the task of ascertaining the nature and incidents of the laws to be administered. With reference to the two main communities inhabiting the country, namely, the Hindus and Mohammadans, there was no much difficulty in the matter, because each of these communities had its own personal laws embodied in its sacred texts, but there were other smaller section of the population which belonged to neither of these communities and in those cases it was not proper to administer the laws of a religion to which they did not owe any adherence or commitment. Amongst such minor communities were the Christians and Parsis. It was then thought the enactment of a law of succession mainly based on the English Law might meet the requirement, and that with suitable modifications and safeguards the same might be embodied in statute."

contended that since Succession Act does not govern succession among Hindus and Mohammadans and since as per the Muslim Law Respondents 2 to 8 also have a share in the estate of the deceased, they are entitled to a Succession

Certificate in respect of their share in the securities left behind by the deceased, and so there are no grounds to interfere with the order under appeal.

4. Since it is not the contention of the appellant that the estate of the deceased is governed by the provisions of Succession Act, reference to the above extracted introduction, made by the learned Counsel for respondents, has no relevance for a decision in this appeal. Respondents 1 to 8 who in fact sought for issuance of a Succession Certificate cannot say that Succession Act does not apply to them. In fact a Division Bench of this Court in *Ali Mohammed Khusro and Others Vs. The Special Deputy Collector Land Acquisition, Industries, ,* held that Section 370 of Succession Act applies to Muslims also.

5. I find no merit in the contention of the learned Counsel for the appellant since O.S. No. 596 of 1998 was dismissed, the Court below ought not to have entertained this O.P., as no such plea was taken in the counter filed by the appellant and since appellant as RW.1 did not state about Respondents 1 to 8 filing a suit in respect of the same securities and its dismissal. In fact, neither the decree nor the judgment in O.S. No. 596 of 1998 is brought on record in this case. Only when the judgment and decree in O.S. No. 596 of 1998 are brought on record, can the Court know the relief sought in the suit, the parties thereto and the properties covered thereby. Since the judgment and decree in O.S. No. 596 of 1998 are not brought on record the alleged dismissal of that suit has no bearing on the result of this petition which is but a summary proceeding. The right to file suit to establish the interest in the securities in respect of which Succession Certificate is issued, in a civil Court is not lost by the order issuing a Succession Certificate in view of Section 372 of the Succession Act.

6. The details of securities in respect of which the Certificate is applied for are not clearly mentioned in the petition. But from a reading Paras 6 and 9 of the petition, it is to be seen that Succession Certificate is sought in relation to the amounts due to the deceased as service benefits from the Office of the Superintendent Engineer (R&B) Provident Fund, etc., amount due from the Office of the Accountant General, the amount due from the Directorate of Insurance, obviously in respect of APGLI, the amounts due from Postal Life Insurance, and the amounts lying to the credit of S.B. Accounts in State Bank of India and Syndicate Bank.

7. Learned Counsel for the appellant contends that the terminal benefits, i.e., gratuity and provident fund due consequent on the death of the deceased were already paid to the appellant in pursuance of the nomination made by the deceased. In *K. Satyavathi* case (supra) it is held that amount due and payable to an employee under the head of "death-cum-retirement gratuity" as per Rule-50 of the Pension Rules, does not form part, of his estate, and so his mother cannot claim any part of the said amount by way of general succession, and his wife alone is exclusively and absolutely entitled to the same. Therefore, if Respondents 2 to 8 are seeking Succession Certificate in respect of death-cum-retirement gratuity, family pension, provident fund, they are not entitled to a

Succession Certificate in respect thereof, because appellant, as nominee, is entitled to those amounts absolutely as held in K. Satyavati case (supra) inasmuch as they do not form part of the estate of the deceased for Respondents 2 to 8 claim a share therein.

8. The contention of the learned Counsel for appellant is that since A.P. Government Life Insurance Fund Scheme is governed by A.P.G.L.I. Fund Rules, Insurance Act, 1938 does not apply to APGLI Fund, and since Rule 31(a) of APGLI Fund Rules reads:

"Provided that any nomination to the exclusion of wife or husband (in the case of female Government Employee) or children shall be null and void."

applying the ratio in K. Satyavathi case (supra) it should be held that appellant only is entitled to APGLI Fund of the deceased. I am not able to accept the said contention. Rule 46 (5) of the A.P. Pension Rules reads:

"For the purpose of this rule and Rules 47, 48 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 a 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 mother, including adoptive parents in the case of individual whose personal law permits adoption;
- (vii) Brothers below the age of 18 years including step brothers;
- (viii) Unmarried sisters and widowed sisters including step sisters;
- (ix) Married daughters; and
- (x) Children of pre-deceased son."

Rules 47(1)(b), 2, 3 and 4 of the Revised Pension Rules read:

"47 (1) (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.

2. If a Government servant dies after retirement without receiving the gratuity admissible under Sub-rule (1) of Rule 46 the gratuity shall be disbursed to the family in the manner indicated in Sub-rule (1).

3. The right of a female member of the family or that of a brother, of a Government servant who dies while in service or after retirement, to receive the shares of gratuity shall not be affected if the female member marries or remarries, or the brother attains the age of eighteen years after the death of the Government servant and before receiving her on his share of the gratuity.

4. Where gratuity is granted under Rule 46 to a minor member of the family of the deceased Government servant, it shall be payable to the guardian on behalf of the minor."

Rule 49(1)(i) reads:

"The Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family."

Rule 49(4) reads:

"The nomination made by a Government servant who has no family at the time of making it, or the nomination made by a Government servant under the second proviso to Clause (i) of Sub-rule (3) where he has only one member in his family shall become invalid in the event of the Government servant subsequently acquiring a family, or an additional member in the family, as the case may be."

In *K. Satyavathi case (supra)*, the learned Judge after extracting the relevant provisions of Rules 50 and 51 of Central Services Pension Rules, which are in pari materia with the above extracted Rules, held that since mother is excluded in the presence of wife from claiming death-cum-retirement gratuity, held that mother is not entitled to a share in the gratuity payable to a deceased employee.

9. Introduction to APGLI Fund Rules shows that the scheme was made to ensure protection to the families of the deceased Government employees, but "family" is not defined in those rules. Rule 31 (b) of A.P.G.L.L Fund Rules reads:

"That the nominee shall be related to the subscriber by blood or marriage or to be one, whom he is legally bound to maintain."

No provision similar to Rule 47(1)(b)(i) and (ii) of A.P. Pension Rules, which excludes parents, in the presence of spouse and children, is brought to my notice in APGLI Fund Rules. Therefore, the ratio in *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, , referred to and followed in *K. Satyavathi case (supra)* applies to APGLI Fund and all the members of the "family" of the deceased would be entitled to share the APGLI Fund of the deceased, as per their entitlement under the personal law governing them. In view thereof I am unable to agree with the contention of the learned Counsel for the appellant that all others, except wife

and children, are excluded from sharing the amount due under APGLI Fund of the deceased, merely because Rule 31(a) of APGLI Fund Rules lays down that nomination "to the exclusion of the wife and children" is null and void. This rule has to be read in conjunction with Rule 31(b) extracted above. Aged parents are related by blood and are also legally bound to be maintained by the deceased. If it is the intention of the Government that wife and children only, but no others should have the benefit of GLI Fund, it would have clearly stated that the nominee should be wife or children, only but not others or would have made a provision similar to Rule 47(1)(b) of the Revised Pension Rules. In fact, in K. Satyavathi case (supra), strongly relied on by the learned Counsel for the appellant, itself it is clearly held that the amount payable to a deceased employee under Group Insurance Scheme forms part of the estate of the deceased, unlike death cum retirement gratuity, Pension, etc. In view of the above decision of this Court, Saroj case (supra) relating to Group Insurance Scheme of Army personnel rendered by the Panjab and Haryana High Court cannot be taken into consideration for deciding this appeal. I find no force in the contention of the learned Counsel for the appellant that Group Insurance Scheme is different from Government Life Insurance Scheme and so the ratio in K. Satyavathi case (supra) relating to Group Insurance Scheme, does not apply to APGLI Fund.

10. Amount due under postal life insurance, contributed by the deceased, and the amounts deposited by the deceased in his S.B. Accounts, in Banks do form part of the estate of the deceased, and so the Rules of succession as applicable to Muslims would govern those securities. So, the Court below granting Succession Certificate to Respondents 2 to 8 for their share in the amounts due on postal life insurance and amounts lying to the credit of the deceased in his S.B. Accounts cannot be said to be erroneous.

11. In the result, by making it clear that the appellant is exclusively entitled to the service benefits, i.e., death-cum-retirement gratuity, family pension, provident fund and benevolent fund only consequent on the death of the deceased and the Respondents 2 to 8 are not entitled to any share therein, and that the Respondents 2 to 8 are entitled to the shares as mentioned in the order under appeal of the Court below in respect of the amount due consequent on the death of the deceased from APGLI, Postal Life Insurance, and the amounts stand to the credit of the deceased in State Bank of India and Syndicate Bank, the appeal is disposed of. Parties are directed to bear their own costs in this appeal.