

**(2011) 01 KL CK 0237**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 25003 of 2007**

Santha

APPELLANT

Vs

Government of Kerala and Another

RESPONDENT

**Date of Decision : 06-01-2011**

**Acts Referred:**

**Citation :** (2011) CriLJ 4861 : (2011) 3 Crimes 466 : (2011) 2 KLJ 593 : (2011) 2 KLT 816

**Hon'ble Judges :** S. Siri Jagan, J

**Bench :** Single Bench

**Advocate :** Georgekutty Mathew, for the Appellant; Mohammed Fazil (GP), for the Respondent

**Final Decision :** Allowed

## Judgement

S. Siri Jagan, J.—The petitioner is the sister of late K.K. Ambi @ Ambikuttan, who died intestate on 15.7.1997 while working as Driver in the D.R.D.A., Idukki. In Succession O.P. No. 6/2002 as between the widow of the said K.K. Ambikuttan and his mother, the Sub Court, Thodupuzha held that the mother of late K.K. Ambikuttan, namely, Smt. Ammukuttyamma, is entitled to half share over the terminal benefits of Sri. Ambikuttan from the Government. The order of the Sub Court is Ext.P1. The question involved in this writ petition relates to the provident fund amounts of Sri. Ambikuttan. The amounts have not been disbursed yet. While so, Smt. Ammukuttyamma expired. Ammukuttyamma had left a will registered with the Karikode Sub Registrar's office, wherein she had bequeathed all her properties, including the death benefits of her deceased son, to the petitioner herein. Ext. P2 is the copy of that will. By Ext. P3, the Tahsildar, Thodupuzha issued a legal survival certificate in respect of late Smt. Ammukuttyamma, wherein it has been certified that the petitioner is the only surviving legal heir of Smt. Ammukuttyamma. In spite of production of Ext.P1 judgment and Exts.P2 will and P3 legal survival certificate, before the 2nd respondent, the 2nd respondent refused to disburse Ammukuttyamma's share of

the P.F amounts due to Sri. Ambikuttan to the petitioner. Ext. P4 letter has been issued by the 2nd respondent to the petitioner wherein, the petitioner has been directed to obtain a legal heirship certificate in respect of late Smt. Ammukuttyamma and arrange to forward the same through the District Development Officer for Scheduled Castes, Alappuzha for further action. The petitioner earlier approached this Court by filing W.P(C) No. 22160/2005, wherein Ext. P5 judgment has been passed. By Ext. P6, the 1st respondent wrote to the 2nd respondent stating thus: Kind attention is invited into the reference cited. I am to inform that Smt. Santha, who claims her mothers share of P.F money in respect of late K.K. Ambi by virtue of the will executed by Smt. G. Ammukutty Amma, may be directed to obtain a succession certificate from a civil court declaring her absolute right to claim the money.

It is under the above circumstances the petitioner has filed this writ petition seeking the following reliefs:

- i) quash Ext. P6 order as illegal;
- ii) issue a writ of mandamus directing the 2nd respondent to disburse the share of P.F. Amount of deceased K.K. Ambikuttan to the petitioner immediately.

A counter affidavit has been filed on behalf of the 1st respondent taking the stand that as per rules, the petitioner is liable to produce a succession certificate to enable her to get payment of the share of her mother from the provident fund amounts due to late Sri. Ambikuttan. According to them, insofar as the rules prescribe production of a legal heirship certificate, succession certificate is mandatory.

2. I have considered the rival contentions in detail. I am of opinion that the rules of the Government have to be read in conjunction with the general law of the land. The rules are so framed to ensure that the amounts go to the rightful legal heir of the deceased Government servant. Therefore, if conclusive proof of succession as per the general law of the land is available, further proof in the form of the documents prescribed by the rules is not mandatory. Only when conclusive proof is not available, the respondents can insist on proof by way of documents prescribed by the rules. For testamentary succession, a registered will is sufficient proof of succession unless, of course, anybody disputes the validity of the will itself. In Kerala, will is not a compulsorily probatable document as per the law of succession even for Christians now. As such, a will, that too a registered will, is sufficient proof of succession. When a person produces such a will, notwithstanding the rules which prescribe production of legal heirship certificate or succession certificate, the will would be a very valid document to prove the right of the petitioner to claim payment on the basis of that will. Here, the petitioner has even obtained Ext. P3 heirship certificate. The same read with the will is more than sufficient proof of entitlement of the petitioner for getting Smt. Ammukuttyamma's share amount of the provident fund amounts due to late Sri. K.K. Ambikuttan. As such, I do not find any merit in the objection raised

by the respondents in the matter.

Therefore, the writ petition is allowed and the respondents are directed to see that the petitioner gets the Ammukuttyamma's share in the provident fund amount due to late Ambikuttan on the basis of Exts.P2 and P3 certificates as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.