

(2009) 06 KL CK 0139

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10866 of 2009

Sasikumar

APPELLANT

Vs

Geetha

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Education Rules, 1959 — Rule 8(1)

Citation : (2009) 3 ILR (Ker) 568 : (2009) 3 KLT 556 : (2010) 7 RCR(Civil) 1726

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : E.K. Nandakumar, A.K. Jayasankar Nambiar, K. John Mathai, P. Benny Thomas and Anil D. Nair, for the Appellant; P.R. Venkatesh, for the Respondent

Judgement

S.S. Satheesachandran, J.—These two Writ Petitions are filed by the rival parties in a proceeding under the Indian Succession Act, pending before the District Court, Thrissur. Petitioner in W.P.(C). No. 10866/2009 moved an application for issue of a letters of administration in respect of a will purported to have been executed by his father namely, Unnikrishnan, who expired on 28.9.2007. Petition numbered as L.A.O.P. No. 229/2008 in the above petition is pending on the file of the District Court, Thrissur.

2. The respondents in the petition are the sister and mother respectively of the petitioner. Late Unnikrishnan was the owner and manager of a school, namely, Sarvodaya Vocational Higher Secondary School, Aryampadam. In the proceedings for issue of letters of administration in respect of the assets of late Unnikrishnan, the petitioner moved an application for his appointment as manager of the above school. While, the second respondent, mother, supported the petitioner, the first respondent sister resisted the application disputing the genuineness of the will. The learned Additional District Judge after hearing both sides allowed that application appointing the petitioner as the manager of the school subject to a condition that all vital decisions including appointment to any

posts in the school either temporary or permanent can be done only with the concurrence of the court till the disposal of the petition on merits. Pursuant to such order, petitioner approached the District Educational Officer to recognize his appointment as the manager of the school. His application was not considered favourably by the educational authorities, since, Education Rules prohibited the petitioner employed as a clerk in the school to be appointed and recognized as a manager of the school. Petitioner, thereupon moved an application in the pending proceedings seeking a direction to the Education Department to recognize him as the manager granting him exemption for his employment as a clerk of that school. Ext.P5 is the copy of that application. Petitioner also moved another application before the court seeking an order for filling up the retirement vacancy of a teacher in the school. Ext.P4 is the copy of that application. He has filed the above Writ Petition invoking the supervisory jurisdiction vested with this Court under Article 227 of the Constitution of India for issuing direction to the Court below to dispose Exts.P4 and P5 applications expeditiously and to permit the petitioner to appoint teachers to the vacant posts in the school.

3. The first respondent in L.A.O.P.229/2008 in the court below, the sister of the petitioner, has filed the other W.P.(C). No. 29411/2008 under Article 227 of the Constitution of India to quash Ext.P8 order appointing the petitioner in the O.P as the manager of the school by way of an interim arrangement subject to conditions stipulated therein which have been adverted to earlier.

4. I heard the counsel on both sides.

5. The parties are hereinafter referred to as the petitioner and respondents as shown in the W.P.(C). No. 10866/2009. After hearing the counsel at length and having regard to the facts and circumstances presented, I find that the learned District Judge passed Ext.P3 order without taking notice of the limited jurisdiction of a Probate Court in agitating the claim for issue of a probate or letters of administration and its competency to pass interim orders, affecting substantive rights of parties in such proceedings. The Probate Court is not competent to make a declaration that one among the parties shall be a manager of the school either permanently or by way of an interim arrangement, till the disposal of the proceedings. If a probate or letters of administration is sought for in respect of a testamentary disposition made by a testator (deceased) the entitlement of the person to have such a probate or letters of administration to administer the assets of the testator alone emerge for consideration and in which if serious disputes are raised by the opposite party and the proceedings become contentious it has to be converted as a suit and the issues pertaining to the genuineness of the testament have to be adjudicated for the grant of the relief claimed in the proceedings. Whether the proceedings become contentious or not, no question of title as to any office or property can be gone into by the probate court as it falls within the province of the other appropriate forums in accordance with the procedure prescribed for adjudicating such disputes.

6. Without noticing the above aspects on the mere asking of a party on

production of a will purported to have been executed by a person who held the office of the manager of a school, despite execution of the testament seriously disputed by one among the opposite parties, a legal heir of the deceased entitled to inheritance of his assets by intestate succession, the learned District Judge has appointed the petitioner as the manager of the school. Not only that the Probate Court has no jurisdiction to make such an order of appointment, it cannot be done even under the provisions of the Kerala Education Rules. In *Somanatha Pillai Vs. State of Kerala*, , a Division Bench of this Court has held that when a person entitled to run a school in his own right dies, his legal representatives continue in management but they become a corporate educational agency and will not continue as the educational agency. So one among the legal heirs without consent of the others, cannot claim as of right, nor competent to seek as per the Education Rules, any order that he has to be recognized as a new educational agency, as done in the present case. Furthermore, Rule 8(1) of the Kerala Education Rules, 1959 interdicts any person employed in a school to be manager of that institution subject to the exemption under the provisions to that rule, which are found inapplicable to the petitioner. Admittedly, petitioner is employed as a clerk in the school in which he has been appointed as manager by the court under Ext.P1 order as an interim arrangement till disposal of the petition. As already pointed out, when the jurisdiction of the Probate Court is confined to the only question whether the will produced as the last will of the deceased is a genuine one duly executed by him in such a proceeding it is quite alien and more so incompetent and further not sanctioned by law to pass any order affecting the disputed substantive rights of the parties involved, especially of title, which have to be adjudicated and decision arrived at in the appropriate forum.

7. The reliefs claimed by the petitioner in his Writ Petition on Exts. P4 and P5 applications are also found to be outside the purview of a probate court and as such no directions can be given by this Court as urged for in the petition in that matter. Ext.P1 order appointing the petitioner as the manager of the school by way of an interim arrangement by the court below is liable to be set aside, and I do so. Parties have to work out their remedies for the appointment of a manager to the school in accordance with the provisions of the Kerala Education Act and Rules, and not in a probate proceeding before the court under the provisions of the Indian Succession Act.

W.P.(C). No. 10866/2009 is dismissed and W.P.(C). No. 29411/2008 allowed quashing Ext.P1 order. Court below is directed to take note of the observations made above and dispose the petition for letters of administration in accordance with the provisions of the Indian Succession Act.