

(2010) 09 MP CK 0052

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 737 of 2003

Smt. Urmila Tiwari and Others

APPELLANT

Vs

Smt. Kanti Devi and Another

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 61(3)
Evidence Act, 1872 — Section 68
Payment of Gratuity Act, 1972 — Section 2, 6(3)
Succession Act, 1925 — Section 276, 63
Transfer of Property Act, 1882 — Section 6

Citation : (2011) ILR (MP) 741

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.—Facts relevant for the purpose of this appeal are that the deceased Harendra Nath Tiwari @ Harendra Kumar Tiwari was an employee of Military Engineering Services (M.E.S.) and was posted as Refrigerator Mechanic in the office of Garrison Engineer, Airforce Station, Maharajpura, Gwalior. He was married to Kanti Devi (respondent No. 1) on 30.05.1983, whose name was entered in the office record, as wife of Harendra Nath Tiwari. He died on 19.04.1995.

2. After death of Harendra Nath Tiwari, applicants/appellants submitted an application u/s 276 of the Indian Succession Act, for grant of probate in respect of the Will alleged to have been executed by the deceased on 11.04.1995 in favour of appellant No. 1. It is alleged in the application that Kanti Devi, respondent No. 1 separated herself from Harendra Nath after 1 ? years from the date of marriage and, thus, they had separated themselves from each other. Harendra Nath, thereafter married to appellant No. 1 on 19.04.1984, according to Hindu customs. Applicants No. 2 & 3 were born to appellant No. 1 from Harendra Nath. Appellant No. 1 resided with Harendra Nath as his wife, since

1984 which was well within the knowledge of respondent No. 1. Appellant No. 1 made an application for release of service benefits of Harendra Nath in her favour, which was not accepted despite her entitlement. Otherwise also, in view of the Will having been executed in favour of appellant No. 1, she is entitled to service benefits of the deceased. Appellants prayed that probate may be issued in their favour in respect of the Will dated 11.04.1995 executed by the deceased Harendra Nath, during his lifetime.

3. Respondent No. 1 submitted her reply refuting thereby the claim of the appellants. She inter-alia stated that she is widow of the deceased. Her marriage with Harendra Nath was not dissolved, at all. It was denied that she separated herself from Harendra Nath. On the contrary, it was stated, in specific, that she has been residing throughout with the in-laws in their native village. It has been denied in the reply that appellant No. 1 was married to Harendra Nath and appellants No. 2 & 3 were born from the relationship of Harendra Nath with appellant No. 1. Alleged Will dated 11.04.1995 has been disputed as a forged and concocted one. It is stated in specific that applicants/appellants are not legally entitled to the service benefits payable to deceased Harendra Nath, and the application for grant of probate is therefore liable to be dismissed.

4. Learned Trial Judge after recording evidence held that Will setup by the appellants is doubtful. Alleged Will dated 11.04.1995 is not found to be proved in accordance with law, therefore, the application for grant of probate has been dismissed by the learned Trial Judge vide impugned judgment dated 29.08.2003.

5. Aggrieved by the aforesaid, present appeal has been preferred, wherein, Shri J.S. Bhati and Shri B.B. Shukla, learned Counsel for the parties made their respective submissions.

6. It is contended by Shri Bhati, learned Counsel for the appellants that the Will (Ex.P-1) has been duly proved in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 and the learned Trial Judge has committed an illegality in holding otherwise. The reasons assigned by the learned Trial Judge for disbelieving the Will according to appellants' learned Counsel are not sustainable in law. Thus, it is submitted that probate ought to have been granted in favour of appellants.

7. Per contra, Shri B.B. Shukla, learned Counsel for the respondent No. 1, it is submitted that the Will (Ex.P-1) has been rightly disbelieved by the learned Trial Court and the reasons assigned by the learned Trial Judge are not liable to be interfered with.

8. Apart from the rival contentions, this Court is of the opinion that the claim setup on the strength of the Will is in respect of service benefits including gratuity and provident fund. Relevant provisions of law governing them are also liable to be taken into consideration while dealing with this matter. Accordingly, appeal is being dealt with.

9. Will dated 11.04.1995 is on record as Ex.P-1. It is a notarially registered document with attestation by Umesh Kumar Sharma and Parmanand Gupta. The Will is stated to have been drafted by Jagdish Prasad Sharma, Advocate, as revealed in the Will itself. Appellants have examined scribe, namely, Jagdish Prasad Sharma (PW-1), Parmanand Gupta and Umesh Kumar Sharma as it's attesting witnesses. Ex.P-1 contains a photograph pasted on it which is stated to be of Harendra Nath Tiwari, which has not been disputed by respondent No. 1. Jagdish Prasad Sharma, Advocate-cum-scribe has stated on oath that the Will in question was prepared by him according to instructions of the person whose photograph is affixed on the Will. He was not acquainted with Harendra Nath who was introduced to him by another acquaintance, namely, Anil Sharma. At that time Harendra Nath was admitted in Cure Well Hospital at Deendayal Nagar, Morar, Gwalior. The scribe came from the Hospital after receiving instructions in details from deceased Harendra Nath. Accordingly, he prepared the Will (Ex.P-1). He again went to the Hospital accompanied by Notary. Will was read over to Harendra Nath, which was also read by Harendra Nath Tiwari himself. Thereafter, Harendra Nath put his signature on the Will in the presence of Umesh Kumar Sharma and Parmanand Gupta, who also put their signatures in attestation of the Will in presence of the testator as well as each other. The scribe put his own signature and it was registered notarially at about 4:30 PM. He has further stated on oath, that Harendra Nath was in sound condition of mind while giving instructions at the relevant time. Nothing could be pointed out in the cross-examination which would make the aforesaid statement unbelievable.

10. Attesting witness Parmanand Gupta (PW-2) has stated on oath that he was colleague of Harendra Nath Tiwari and was working in the same office as Pump Operator. He visited Harendra Nath in the Cure Well Hospital, before proceeding for the office. He was asked by Harendra Nath to remain present at 4 PM, since he wished to execute a Will. Accordingly, this witness again went to the Hospital in the evening at about 4:20 PM. Will was read by Jagdish Prasad Sharma, Advocate in his presence. It was again read by Harendra Nath and was executed in the presence of himself and another attesting witness Umesh Kumar Sharma. Jagdish Prasad Sharma and Notary were also present. Attestation was made by him and Umesh Kumar Sharma, in presence of testator and each other and also the scribe and Notary. Like wise, another attesting witness Umesh Kumar Sharma (PW-3) had also stated on oath about the execution of the Will by the testator in the presence of the aforesaid persons. He too, stated about the attestation by him and Parmanand Gupta in presence of all.

11. Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act 1872, are relevant for the purpose of this appeal and hence reproduced below:

Section 63. Execution of unprivileged Wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged] or a mariner at sea, shall execute his Will according to the

following rules:

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

xxx xxx xxx xxx Section 68 Proof of execution of document required by law to be attested.-If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

12. On perusal of the statements of the Scribe Jagdish Prasad Sharma and the attesting witnesses Parmanand Gupta and Umesh Kumar Sharma, it is clear that compliance of the aforesaid two provisions has been duly made. This Court in the case of Poonjibai (Smt.) v. Smt. Kewalbai 1999 (1) MPWN 102 held that if Will is duly proved to be executed by testator and attested by the attesting witnesses and physical and mental sound condition of the testator is also proved, the Will can be held to be duly proved, in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act 1872.

13. Learned Trial Judge vide paragraph 9 of the impugned judgment has doubted the Will (Ex.P-1) on the ground that natural heir i.e. respondent No. 1 has been deprived of succession.

Hon"ble Supreme Court of India, in the case of Sadhu Singh v. Gurdwara Sahib Narike and Ors. 2006 (3) SC 3282 has clearly held that an owner of property has normally the right to deal with the property including the right to devise or bequeath the property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Accordingly, he may execute a Will even in favour of third person depriving natural heir.

Hon"ble Supreme Court of India in the case of Rabindra Nath Mukherjee and another Vs. Panchanan Banerjee (dead) by L.Rs. and others, , has clearly held that the deprivation of the natural heirs by the testatrix is itself no reason to raise suspicion. It has been observed in paragraph 4:

4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially....

14. This apart, it may be seen that reason for depriving respondent No. 1 is implicit in paragraphs 1 & 2 of Ex.P-1, wherein, it has been mentioned that the testator was not having good and cordial relations with respondent No. 1, and was residing separately. Therefore, it cannot be said that respondent No. 1 has been deprived for no reason. This being so, reason assigned in paragraph 9 of the impugned judgment for doubting the Will is not acceptable.

15. Learned Trial Court has further mentioned in paragraph 10 that the appellant No. 1 has not claimed the immovable property situated in village Dumaria, which has been bequeathed to her by the Will (Ex.P-1). This reason is also not sustainable because it seems from the record that appellant No. 1 was residing with the deceased from 1984 and has given birth from him to appellants No. 2 & 3. Respondent No. 1 being duly wedded wife of the deceased was residing with other family members of the deceased in the native village Dumaria. It seems that both the ladies knew the said state of affairs and had virtually accepted each other as fate. If the appellant No. 1 did not interfere with the user of immovable property, this is no reason to disbelieve the Will.

16. Application u/s 276 of the Indian Succession Act, has been submitted for issuance of probate in respect of the Will (Ex.P-1). Probate is a certification that the testator has executed a Will in question as his last Will in sound condition of mind. When the appellant No. 1 approached the office of deceased for release of service funds, her claim was not accepted, which forced her to seek grant of probate. Thus, non-mentioning of other assets of the deceased could not have been made a ground by the learned Trial Judge to dispute the Will as per paragraph 11 of the impugned judgment.

17. Learned Trial Judge has disbelieved the Will also on the ground that appellant No. 1 has stated that the deceased Harendra Nath during his lifetime informed the lawyer that he wanted to make a provision for the children i.e. appellants No. 2 & 3. His this version is also reflected in paragraph 5 of the Will, wherein it has been mentioned that appellant No. 1 would deposit Rs. 20,000/- each in the names of children from the amount received from the funds. Thus, the Will executed Ex.P-1 could not have been doubted for the reasons assigned in paragraph 13 of the impugned judgment. Both attesting witnesses Parmanand Gupta and Umesh Kumar Sharma are also colleagues of the deceased-testator

and were working in the same department of the deceased himself. Thus, attestation by them could not have been treated as a ground to disbelieve the Will as revealed in paragraph 14 of the impugned judgment.

18. It has been submitted by learned Counsel for respondent No. 1 that despite the Will (Ex.P-1) having been executed in the Hospital, no doctor has been examined about the sound condition of mind of the testator nor medical certificate in respect of the testator was placed on record.

I am not impressed with this submission in view of the following passage from the Apex Court decision in the case of Madhukar D. Shende Vs. Tarabai Aba Shedage, wherein it has been observed:

...There is no rule of law or of evidence which requires a doctor to be kept present when a will is executed. In short, the courts below have allowed their findings to be influenced by such suspicion and conjectures as have no foundation in the evidence and have no relevance in the facts and circumstances of the case and unwittingly allowed their process of judicial thinking to be vitiated by irrelevant reasonings and considerations....

19. This Court has gone through the entire evidence available on record. Will is found to be duly proved in accordance with Law. There is no evidence that the testator was not having sound condition of mind at the time of execution of the Will. Minor discrepancies referred to in the impugned judgment are not sufficient to discard their testimony. Deceased Harendra was admittedly married to respondent No. 1. It is proved from the material on record that appellant No. 1 resided with him since 1984 as his wife and appellants No. 2 & 3 were born to him from the deceased-testator. Thus, there is nothing unnatural if the Will is executed in favour of appellant No. 1 in order to make provision for all the three appellants, more so, when the respondent No. 1 being legally wedded wife was residing in the native village with the in-laws of the deceased.

Hence, the Will being duly proved, cannot be disbelieved on the basis of minor discrepancies in view of the Apex Court decisions in the cases of S. Sundaresa Pai and Others Vs. Sumangala T. Pai and Another, and Hazara Bradri and Others Vs. Lokesh Dutta Multani,

Accordingly, it is held that the Will (Ex.P-1) is duly proved and contrary finding about the same by the learned Trial Judge is hereby set-aside.

In the case of Ramkishan v. Jankidevi 1988 MPWN 19, Will was executed and got registered in the hospital. There was no certificate of fitness by the doctor. This Court while dealing with it has observed the following while upholding the Will:

Indeed there is nothing to suggest that the testator lacked mental capacity in any manner to understand the content of the document executed and registered or the effect of execution or registration of the Will. Though the testator was an indoor patient in the hospital there is nothing to show that she was seriously ill or that she was counting her last hours and was on the verge of death.

20. Respondent No. 1 has objected to the grant of probate on the ground that the respondent No. 1 being un-divorced legally wedded wife of the deceased, the applicants/appellants are not entitled to the said service benefits on the strength of the alleged Will. Learned Trial Judge is not found to have adverted himself to this crucial aspect of the matter.

Now, the crucial question in this matter is that whether the appellants are entitled to service benefits including gratuity and provident fund on the basis of Will in question.

21. Section 6 of the Payment of Gratuity Act, 1972 obliges an employee that he shall make within such time, in such form and in such manner as may be prescribed, nomination for the purpose of the Act. Sub-section (3) further obliges that in case of having a family by an employee at the time of making a nomination, the nomination shall be made in favour of one or more members of his family and any nomination made by such employee in favour of a person who is not a member of his family, shall be void.

22. Word "Family" has been defined in Clause (h) of Section 2 of the said Act. Relevant definition for the purpose of the appeal of the said Clause (h) of section 2 of the Act is reproduced below:

(h) "family" in relation to an employee, shall be deemed to consist of-

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents [and the dependent parents of his wife and the widow] and children of his predeceased son, if any,

(ii) ...

23. Likewise Section 61 of the Employees Provident Funds Scheme, 1952 provides for nomination. Sub-section (1) of Section 61 makes it obligatory to make a nomination in declaration Form 2, conferring the right to receive the amount that may stand to his credit in the fund in the event of his death before the amount standing to his credit has become payable, or where the amount has become payable before payment has been made. Sub-section (3) further makes it obligatory to make nomination in case of employee having family at the time of making nomination in favour of one or more persons belonging to his family. It further lays down that any nomination made in favour of a person not belonging to his family shall be invalid.

24. Family has been further defined in Clause (g) of the said scheme. Relevant portion for the purpose of this appeal is reproduced below:

(g) "family" means -

(i) in the case of a male member, his wife, his children, whether married or unmarried, his dependent parents and his deceased son's widow and children:

Provided that if a member proves that his wife has ceased, under the personal

law governing him or the customary law of the community to which the spouses belong, to be entitled to maintenance she shall no longer be deemed to be part of the member's family for the purpose of this Scheme, unless the member subsequently intimates by express notice in writing to the Commissioner that she shall continue to be so regarded; and

(ii) ...

25. Kanti Devi, respondent No. 1 has placed on record the wedding invitation card of her with Harendra Nath (Ex.D-2) and voter list Ex.D-1 showing her as wife of Harendra at Sl. No. 424 of village Dumwaliya (native village of the deceased). Ex.D-3 is a document pertaining to family register of village Dumwaliya describing her as wife of Harendra. She has also placed on record Ex.D-5 which is a letter written by the office of the deceased certifying that as per the records in respect of MES-420389 Shri Harendra Nath Tiwari, Refg/Mech maintained by his office, Smt. Kanti Devi's name is only mentioned in the nomination form furnished by the individual as his wife. Though, the employer of the deceased Harendra is arrayed before this Court as respondent No. 2, none has appeared on its behalf despite service to assist the court.

26. Judge has to act judiciously while deciding a matter. His position is not akin to Umpire or Referee, who is under an obligation to ensure compliance of the rules of the game and further to point out the fault of the player. A Judge is obliged to keep in mind that he has to act judiciously while imparting justice. In a case of present nature when it has been contended by respondent No. 1 that she being legally wedded wife of Harendra Nath is alone entitled to service benefits of the deceased, learned Trial Judge was required to decide the said contention after taking into consideration the law governing the situation. He cannot be permitted only to decide the question of due execution of the Will in question. Illustratively, suppose, a Will is executed in respect of Archaeological Fort and an objection is raised that the beneficiary on the strength of such Will would not be entitled to such benefit, the question is, obviously, to be dealt with by the Court.

27. Learned Counsel Shri J.S. Bhati appearing for the appellants submitted, firstly that the nominee is merely a trustee who does not get absolute right merely on the basis of nomination. He placed reliance in the case of Smt. Sarbati Devi and Another Vs. Smt. Usha Devi,

Case of Smt. Sarbati Devi (supra) was relating to nomination under the Insurance Act, 1938 which does not contain a mandatory provision for nomination in favour of members of family as it exists in the Payment of Gratuity Act, 1972 and Employees Provident Funds Scheme, 1952, therefore, the appellants do not get any assistance from the case of Smt. Sarbati Devi (supra).

28. It has been further contended by Shri Bhati, learned Counsel on behalf of the appellants that jurisdiction of the Civil Court u/s 276 is confined to a decision on the question of due execution of the Will alone. Will (Ex.P-1) having been duly

proved, probate ought to have been granted in favour of the appellants. For this purpose, he placed reliance in the case of Smt. Suraj Devi Vs. Smt. Sita Devi, wherein, it has been observed in paragraphs 15 & 16:

15. Then the learned Counsel submitted that the Gratuity and Pension are not property as contemplated by Sec. 6 of the Transfer of Property Act. In his submission, pension payable to a Government Servant is not a property which can be transferred and Gratuity is a mere possibility of or chance of receiving the same. This submission is illfounded. Payment of Gratuity is made under the provisions of the Payment of Gratuity Act and Gratuity is payable according to those provisions as a preliminary benefit. Gratuity can be a mere possibility of getting legacy only when the man seeks to transfer it prior to his becoming eligible thereto under the provisions of the Payment of Gratuity Act. In the present case, Sohanlal served the Rajasthan Electricity Board for several years and has superannuated before his death. The Gratuity payable to him was, therefore, certainly a property within the meaning of Sec. 6. It must, further be noted that what is denied by Sec. 6 of the Transfer of Property Act is property which can be transferred and property described in Clauses (a) to (i) are not considered to be property but only rights. Those are made non-transferable by the provisions of Sec. 6. Even if the contention is accepted, which we do not accept, that Gratuity is not transferable, the transfer will become void. If that is so, the bequest cannot become void for that reason. Even if one of the bequest becomes void by operation of law, it cannot be a ground for refusal of Probate u/s 276 of the Indian Succession Act and hence, it becomes irrelevant whether the property sought to be bequeathed under the Will is not transferable. A property can be untransferable under the provisions of any given law but that cannot render grant of Probate of a Will which seeks to bequeath such property bad. There is, therefore, no substance in this contention raised for the first time in this appeal and the same is rejected.

16. The submission that Pension is not transferable is also unsustainable in law. What is provided by Section 6, Clause (g) is that stipends allowed to Military, Naval, Airforce and Civil Pensioners to the Government and Political Pensioners cannot be transferred. What is made non-transferable is, therefore, stipend paid to Civil Pensioners and not the Pension of that Civil Pensioner. On the face of it, the submission is unacceptable. It is, therefore rejected.

29. In the case in hand, it has already been found that respondent No. 1 was duly wedded wife of the deceased-testator and was not divorced, in accordance with law. In the case of Gettem Israil Vs. M. Siromani and Another, it has been held in paragraphs 13 & 14:

...If the plaintiff and 1st defendant, during the subsistence of their marriage, think it fit to live with some other man and woman respectively, without obtaining a divorce from the Court as contemplated by law, their marriage would not get dissolved automatically. Even assuming that Jhansi is not the daughter of the 1st defendant, then also the marriage between the plaintiff and 1st

defendant would not automatically get dissolved. Plaintiff or 1st defendant have to approach a competent court, and obtain a decree for dissolution of their marriage, and till such time as they get their marriage dissolved, it subsists, irrespective of the fact whether they are faithful to each other or not, are living a life on their own. With some other man or woman respectively, and so it has to be held that plaintiff continues to be the wife of 1st defendant.

14. Since plaintiff continues to be the wife of 1st defendant and since as per the Regulations of the 2nd defendant, family members can only be nominated to receive the death or retiral benefits, 1st defendant nominating Koteswaramma as his wife is not proper. The 1st defendant, after taking steps to get the marriage between him and the plaintiff dissolved, only can make such a nomination, but till such time the marriage between him and the plaintiff is subsisting, he cannot nominate a woman who is not his wife or family member to receive the death or retiral benefits....

30. There is a provision for nomination in the Central Civil Services (Pension) Rules, 1972 in favour of widow/widower. Hon"ble Supreme of India has held in the case of (1999) 5 SCC 237, G.L.Bhatia v. Union of India that where the rights are governed by statutory provision, the nomination contrary to the said statutory provision would not be operative. Conclusively, it has been held in paragraph 5:

5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant....

31. Likewise the Apex Court in the case of Rampyari Bai v. Municipal Corporation, 1987 (Supp) SCC 263 has held:

The SLP is against the judgment of the High Court of M.P. at Jabalpur. The question was whether the petitioner Rampyari Bai was valid married wife of Mannulal. According to the plaintiff she had married Mannulal about 30 years prior to his death and had been living with him as his wife. Ramdulari Bai has not been living with him. It has been held by the first appellate court that the factum as well as the validity of the plaintiff's marriage with Mannulal has not been proved and, therefore, there could not be any valid nomination made in her favour by Mannulal, according to the rules applicable to the payment of family pension. The first appellate court on facts found that there was no marriage. In appeal the High Court of M.P. affirmed the decision of the first appellate court and negatived the claim of the petitioner. Having considered the facts and circumstances of the case we do not see any reason to interfere with the decision of the High Court. There is no merit in this case. The SLP is accordingly dismissed.

32. I may also refer to the case of Smt Violet Issac and Others Vs. Union of India (UOI) and Others, , wherein, widow of the deceased-railway employee was found entitled notwithstanding the Will alleged to have been executed by the deceased. I may successfully quote paragraphs 4 & 6 of the said decision:

4. The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules, 1964 provide for the sanction of family pension to the survivors of a Railway employee. Rule 801 provides that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or gets married, whichever is earlier. The Rules do not provide for payment of family pension to brother or any other family member or relation of the deceased Railway employee. The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

6. We, accordingly hold that Mrs. Violet Issac the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased on September 9, 1984 in favour of his brother Elic Alfred. As regards appellants 2 to 6 are concerned, it has been stated on behalf of the Railway administration that they are not minors, therefore, under the Rules they are not entitled to any family pension. We, accordingly allow the appeal, set aside the order of the Tribunal and direct the respondent Railway administration to sanction family pension in accordance with the Rules to appellant 1 and to pay the arrears within two months. The respondent's suit, so far as it relates to the family pension cannot proceed but we do not express any opinion with regard to other claims raised therein.

33. In view of the law enunciated by Hon''ble Supreme Court of India in the cases cited herein above, it is held that the appellants on the strength of the Will (Ex.P-1), will not be entitled to provident fund as well as gratuity in view of the specific provisions contained in Payment of Gratuity Act, 1972 and Employees Provident Funds Scheme, 1952, referred to herein above despite proof of the Will (Ex.P-1) in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act 1872.

34. In the result, appeal is allowed in part. Will (Ex.P-1) dated 11.04.1995 is found to have been duly proved. Since, the Will in question contains a provision also for other items, learned Trial Judge is hereby directed to grant probate in accordance with law, however, with a specific mention that the appellants will not be entitled to receive dues of gratuity as well as provident fund on the strength of the probate. Needless to say that the parties may avail other legal recourses permissible to them in law for seeking relief in respect of Gratuity and/or Provident Fund. They may also seek declaration about status and entitlement in respect of deceased's property with consequential relief from competent court of law.

No order as to costs.