

(1992) 11 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 9094 of 1988

Suseela and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-11-1992

Acts Referred:

Citation : (1993) 1 ILR (Ker) 725 : (1993) 1 LLJ 573

Hon'ble Judges : Mathew P. Muricken, J

Bench : Single Bench

Advocate : S. James Vincent, for the Appellant; A.V.M. Salahuddin, Govt. Pleader, for the Respondent

Judgement

Mathews P. Mathew, J.—The Original Petition is filed by the 1st petitioner along with her children claimed to have been born out of her wedlock with the deceased S. Sahadevan who was a Police constable under the State Government. The 4th respondent is stated to be the 1st wife of deceased S. Sahadevan and respondents 5, 6 and 7 are the children of deceased Sahadevan born out of the first wedlock, Sahadevan died in harness on March 18, 1982. On the demise of Sahadevan, both petitioners and respondents 4 to 7 claimed terminal benefits under the service rules. As a matter of fact, respondents 4 to 7 have filed a suit, namely O.S. 424/86 before the Munsiffs Court, Trivandrum for a declaration that they are respectively the legal wife and children of deceased Sahadevan. Petitioners were defendants 1 to 3 in the said suit. That suit ended in compromise as evidenced by Ext. P1 copy of the compromise decree. The compromise decree provides inter alia that:

"(1) the 4th respondent is the legally wedded wife of the deceased and respondents 5 to 7 their legitimate children,

(2) the 5th respondent Saji on attaining majority shall be entitled to the death-in-harness employment,

(3) the petitioners will be entitled to the DCRG and GPF benefits of Rs. 7,688/-

and 876/- respectively, and to family pension at the rate of Rs. 248/- per mensem, including arrears from 1982, and

(4) out of the arrears of family pension, the 4th respondent shall be entitled to an amount of Rs. 5,000/-"

However, the 1st respondent refused to disburse the terminal benefits of the deceased Sahadevan either to the petitioners or respondents 4 to 7, because none of them produced documents to show that they are the legal heirs of the deceased. It is contended by the 1st respondent that the Government was not a party to the suit that culminated in Ext. P1 decree and as such the Government is not bound by Ext. P1.

2. The learned counsel appearing for the petitioners drew my attention to the judgment reported in Biju, P.A. Vs. Director, Printing and Stationery and Others, wherein it was held that if there is a decision by a competent court granting succession certificate, the result of any enquiry conducted by an administrative authority under the service rules would not get any precedence over the enquiry conducted by the judicial authority. In that case, the finding entered by the executive authorities contrary to what was decided by the court in the proceedings for the grant of succession certificate was held to be unsustainable on the ground that if it is a question of choice between the judicial decision in proceedings initiated under the Indian Succession Act and the administrative determination without notice to the parties which a revenue officer conducted, it is the former which was invariably to be respected. It was argued that in the light of Ext. P1 compromise decree granted by a court of law, the Government may be directed to abide by the decision" of the court and disburse terminal benefits of the deceased government employee in the proportion determined as per Ext. P1 compromise decree.

3. I am in respectful agreement with the dictum laid down in Biju, P.A. Vs. Director, Printing and Stationery and Others, . However that decision is not applicable to the facts of the present case. That was a decision favouring the findings of the civil court entered in proceedings under the Indian Succession Act for the issuance of a succession certificate to that of an administrative authority in an enquiry without notice to all concerned. Proceedings under the Indian Succession Act for the issuance of succession certificate contemplates notice by due publication as prescribed by law to all parties interested in the estate of the deceased. In the present case, the petitioners seek to rely on a decree passed by the civil court in a suit between two sets of rival claimants which culminated in a compromise decree. Ext. P 1 cannot be taken to be a decision rendered by a civil court with notice to all interested in the estate of the deceased person. No enquiry by the court as to the true legal heirs of the deceased preceded the passing of Ext. P 1 decree. Even collusion between interested parties to the detriment of genuine successors-in-interest of the deceased cannot be ruled out with certainty in such a case. Therefore a compromise decree passed in a suit between two sets of rival claimants to the estate of a deceased person cannot be

equated with the findings of a civil court in a proceedings under the Indian Succession Act for the issuance of a succession certificate. As such Ext.P 1 cannot be said to be having precedence over any specific enquiry that may be conducted in the matter by the administrative authority in accordance with law. Therefore it would be open to the Government to decide, in compliance with the procedure laid down, as to who are the true legal heirs to whom the terminal benefits of the deceased government servant should be disbursed.

4. However, the fact that there was a dispute between rival claimants is no justification for the 1st respondent-Government to keep the matter pending for unduly long time. More than a decade has elapsed since the demise of the Government servant and the legal heirs have not yet received the benefits. Therefore, I direct the 1st respondent to complete the procedure prescribed by law at the earliest, at any rate, within three months from the date of receipt of a copy of the judgment and disburse to the legal heirs the terminal benefits of the deceased Government servant Sahadevan. The claimants shall co-operate with the administrative authorities in the expeditious disposal of the matter by furnishing necessary information and documents in support of their claim.

5. Before parting with the case, the counsel for the petitioners wanted me to direct the 1st respondent to disburse the amounts, in the absence of any other claimants, as per Ext. P1 decree which is binding on the petitioners and respondents 4 to 7. Suffice it to observe that if any one of them receives the entire terminal benefits as legal heirs of Sahadevan, the other parties to the suit will have a claim to part of the amount as per Ext. P1 decree. However, it is for the parties to work out their remedies in this regard in appropriate proceedings. In a petition filed under Article 226 of the Constitution, this court would not be justified in issuing any direction regarding the proportionate disbursement of the amount as per Ext P 1 decree.

6. Counsel for the petitioners further submits that in view of the inordinate delay in the disbursement of the terminal benefits, directions may be issued for payment of interest on the amounts due. The learned Government Pleader would point out that the delay was caused solely due to the failure on the part of the claimants to produce the relevant documents. It is for the legal heirs of the deceased Government servant to make representation in this regard, if they so desire, to the 1st respondent, which I am sure will be treated with due sympathy it deserves.

7. The Original Petition is disposed of as above.

8. Issue photo copy on usual terms.