

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

Mat.Appeal.No. 731 of 2013 ()

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AGAINST THE ORDER DATED 31-05-2013 IN OP 1050/2011 of
FAMILY COURT, ALAPPUZHA**

APPELLANT:

**SOUTHERN RAILWAY
REPRESENTED BY ITS DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, TRIVANDRUM DIVISION
THIRUVANANTHAPURAM-14.**

BY ADV. SRI.C.S.DIAS,SC, RAILWAYS

RESPONDENTS:

**1. OMANA,
AGED 60 YEARS,
FATHER'S NAME NOT KNOWN, RESIDING AT THENGU VILAYIL
CHERUKUNNAM MURI, KURATHIKAD.P.O., THEKKEKARA VILLAGE
ALAPPUZHA DISTRICT, PIN CODE-690 107.**

**2. ARUNDEVI.T.P,
AGED 56 YEARS, FATHER'S NAME NOT KNOWN
RESIDING AT AYIKKARATHARAYIL, KURIKKAD, KANDIYOOR
MAVELIKKARA, ALAPPUZHA DISTRICT, PIN CODE-690 103.**

**R1 BY ADVS. SRI.P.SREEKUMAR
SRI.P.S.SIDHAN
SRI.V.K.RAJANANDAN
SRI.K.N.SATHEESAN
SRI.T.SUKUMARA PILLAI
R2 BY ADVS. SRI.S.K.BALACHANDRAN
SRI. S.K.BALACHANDRAN**

**THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 07-07-
2015 ALONG WITH MAT. APPEAL 127/2014 THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

AMG

C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.

Mat. Appeal No. 731 OF 2013
&
Mat. Appeal No. 127 OF 2014

DATED THIS THE 7th DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

2nd respondent in OP 1050/2011 is the appellant in MA No.731/2013. 1st respondent in the same OP was the appellant in Mat. Appeal No.127/2014.

2. The OP 1050/2011 was filed by the 1st respondent in both the appeals for declaration that she is legally wedded wife of late Sri.K. Sukumaran and entitled to get family pension and benefits from the 2nd respondent Railway with whom, deceased Sukumaran was working earlier and retired from service. According to the 1st respondent she is the legally wedded wife of late Sri. Sukumaran and they were residing together. While so, he had some connection with the 2nd respondent in the petition and at the time of his death, he was residing with her. In fact Sri. Sukumaran married the 1st respondent on 15-11-2008 and any relationship of 2nd respondent in the OP with said Sri.

Sukumaran will not give any legal right to claim any benefit as his legally wedded wife. He retired from Southern Railway, Ernakulam as a Senior Technician and after his death she is the only person entitled to get the family pension as widow of the deceased. So she filed the above suit for a declaration that she is entitled to get the pensionary benefits of late Sri. Sukumaran from the 2nd respondent railways.

3. During the pendency of the proceedings the matter was settled between the petitioner and the 1st respondent in the lower court and on the basis of that, they filed I.A 1200/2013 for record compromise and dispose of the case in accordance with the compromise. Accordingly the Family Court had passed a decree on the basis of that application stating that the pensionary benefits of late Sukumaran shall be shared between the petitioner and the 1st respondent in the lower court in equal share and the amount in credit towards the retirement benefits of Sukumaran in State Bank of Travancore, Mavelikkara shall also be shared between the petitioner and the 1st

respondent in the lower court equally and in the event of death of either party the whole amount shall be paid to the survivor and directed the 2nd respondent railways to disburse the retirement benefits to the petitioner and 1st respondent in the proportion as indicated above.

4. Aggrieved by the same the 2nd respondent in the OP filed Mat. Appeal No.731/2013. In that appeal they have contended that as per the Pension Rules only legally wedded wife is entitled to get the amount and there is no provision for sharing the pensionary benefits among the wives as done in this case. Further as per the records the 2nd respondent was declared as nominee as wife of Sri. Sukumaran and unless the status of the parties is declared by the court, it is not possible for the railways to give the amount as per the decree now stands as it will be against the Rules. Further they were not parties to the compromise as well.

5. The 1st respondent also filed an appeal as Mat. Appeal 127/2014 since the railways raised objection regarding the payment of the amount claiming that she is

the person entitled to get the amount as per the nomination given by the deceased to the railways as wife.

6. Heard the counsel for the appellants in both these cases and the respondents.

7. The counsel for the 1st respondent in these appeals and petitioner in the lower court submitted that if there is a compromise decree agreeing to share the amount, there is no difficulty for the the railways to pay the amount as they are bound by the decree.

8. On the other hand the counsel for the railways submitted that as per the Pension Rules, there is no provision for sharing the pensionary benefits among the wives and he had relied on the decision reported in **2000 KHC 507 (Rameshwari Devi V. State of Bihar)** and **2002 KHC 1003 (Sitabai Sinodia V. Regional Provident Fund Commissioner)**.

9. The counsel for the appellant in Mat. Appeal No.127/2014 submitted that the appeal may be allowed and remanded to the court below for fresh disposal

10. As per the allegations in the Original Petition before the court below the 1st respondent in the appeal claimed to be the legally wedded wife of late Sri. Sukumaran who had worked as a Technician in the 2nd respondent establishment and retired from there as a Senior Technician. There is inter se dispute between the 1st respondent and the petitioner in the lower court as to who is the legally wedded wife of late Sukumaran who is entitled to claim the pensionary benefits from the 2nd respondent. Without considering that controversy, they have entered into a settlement whereby they have decided to share the pensionary benefits between themselves equally and further agreed that in case of death of one of them the survivor will get the entire amount. It was on that basis the court below had decreed the suit and directed the 2nd respondent railways to disburse the pensionary amount.

11. In the decision reported in Rameshwari Devi's case and in Sitabai Sinodia's case, the Supreme Court has held that after the coming into force of the Hindu marriage Act, only a legally wedded wife is entitled to claim the

pensionary benefits. The person whose marriage is void under Section 5 read with Section 11 of the Hindu Marriage Act is not entitled to get the pensionary benefits. If that be the case without resolving the dispute between the petitioner and the 1st respondent in the lower court, as to who is the legally wedded wife of late Sukumaran it is not proper for the court direct the railways to share the pensionary benefits as agreed between the parties which will be against the law. So under the circumstances decreeing the suit on the basis of the compromise entered into between the petitioner and the 1st respondent in the lower court which is against law has to be set aside and the matter has to be remitted to the court below for fresh disposal in accordance with law giving opportunity to the parties to adduce evidence to declare their status in the manner known to law and then pass a decree directing the 2nd respondent to whom the amount will have to be paid. So the decree and judgment passed by the court below on the basis of the compromise is set aside and the matter is remitted to the court below for fresh disposal in accordance

with law. Considering the fact that the case is of the year 2011 the Family Court, Alappuzha is directed to expedite disposal of the case as expeditiously as possible, at any rate within 6 months from the date of receipt of the judgment of this court. Accordingly Mat. Appeal No.731/2013 is allowed and remanded to court below for fresh disposal. In view of the fact that appeal is allowed, no separate order need be passed in Mat. Appeal No.127/2014, since the decree and judgment passed by the court below were set aside and remitted to the court below for fresh disposal.

12. The Family Court, Alappuzha is directed to transfer the case to the Family Court having jurisdiction to decide the case if additional family court is established in that area and that court can consider and dispose of the case within a time frame fixed by this court.

The appeals are disposed of accordingly.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

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P.A. to Judge