

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

OP(C).No. 3453 of 2013 (O)

IA.1492/2013 IN OP (SUCCESSION) NO. 33/2012 OF IST ADDITIONAL SUB COURT,
THIRUVANANTHAPURAM

PETITIONER(S):

K.K.ALAMELU, AGED 63 YEARS,
111/29, ANANTHAM, M.L.A.ROAD,
CHOTTANIKKARA, ERNAKULAM DISTRICT.

BY ADVS.SRI.BABU CHERUKARA
SRI.SEVI VARGHESE
SMT.ROSAMMA MATHEW
SRI.P.A.SALIM
SRI.ANZAR BASHEER
SRI.K.S.GIREESAN

RESPONDENT(S)/PETITIONERS/1ST COUNTER PETITIONER:

1. L.PUSHKALA,
S.P. XVII/236, ABILASH, KARIYAM KATTIL LANE,
SREEKARYAM P.O., THIRUVANANTHAPURAM, PIN - 695 017.
2. ABILASH,
S.P. XVII/236, ABILASH, KARIYAM KATTIL LANE,
SREEKARYAM P.O., THIRUVANANTHAPURAM, PIN - 695 017.
3. ANAND,
S.P.XVI/236, ABILASH, KARIYAM KATTIL LANE,
SREEKARYAM P.O., THIRUVANANTHAPURAM, PIN - 695 017.
4. SANDHYA,
S.P. XVII/236, ABILASH, KARIYAM KATTIL LANE,
SREEKARYAM P.O., THIRUVANANTHAPURAM, PIN - 695 017.
5. S C T I M S T,
(SREE CHITRA TIRUNAL INSTITUTE OF MEDICAL SCIENCE
AND TECHNOLOGY), REPRESENTED BY THE DIRECTOR ,
THIRUVANANTHAPURAM, PIN - 695 001.

R1-R4 BY ADVS. SRI.P.V.ANIL
SRI.M.ANILPRASAD
R5 BY ADV. SRI.T.R. RAVI, SC

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 24-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

OP(C).No. 3453 of 2013 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE PHOTOSTAT COPY OF THE NOMINATION DONE BY THE DECEASED ON 13/3/2012 INCORPORATING THE NAME OF THE PETITIONER BEING THE NOMINEE.

EXHIBIT P2: TRUE PHOTOSTAT COPY OF THE NOMINATION DONE BY THE DECEASED ON 13/3/2012 INCORPORATING THE NAME OF THE PETITIONER BEING THE NOMINEE IN G S L I S.

EXHIBIT P3: TRUE COPY OF THE COVERING LETTER DATED 23/11/2012 RECEIVED BY THE PETITIONER BY RTI ACT.

EXHIBIT P4: TRUE COPY OF THE DEATH CERTIFICATE DATED 12/7/2012 ISSUED BY THE CORPORATION OF COCHIN.

EXHIBIT P5: TRUE COPY OF THE SUCCESSION OP NO.33/2012 OF THE SUB COURT, THIRUVANANTHAPURAM DATED 12/11/2012.

EXHIBIT P6: TRUE COPY OF THE OBJECTION FILED BY THE 5TH RESPONDENT IN THE SUCCESSION OP 33/2012 DATED 3/1/2013.

EXHIBIT P7: TRUE COPY OF THE ADDITIONAL COUNTER FILED BY THE 5TH RESPONDENT IN THE SUCCESSION OP 33/2012 DATED 18/1/2013.

EXHIBIT P8: TRUE COPY OF THE APPLICATION IA NO.1492/2013 FILED BY THE PETITIONER IN THE SUCCESSION OP 33/2012 DATED 20/3/2013.

EXHIBIT P9: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDEDNTS 1 TO 4 IA NO.1492/2013 IN THE SUCCESSION OP 33/2012 NIL DATE.

EXHIBIT P10: TRUE COPY OF ORDER IN NO.1492/2013 IN SUCCESSION OP 33/2012 DATED 12/7/2013.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

[CR]

B. KEMAL PASHA, J.

.....
O.P.(C) No.3453 of 2013

.....
Dated this the 24th day of July, 2015

J U D G M E N T

An application for succession certificate was filed by the legal heirs of deceased Venkiteswaran, who was working as an employee at the Sree Chithira Thirunal Institute of Medical Sciences and Technology, Thiruvananthapuram. He died while in service. He has nominated his sister, who is the petitioner herein, as the person entitled to receive his gratuity.

2. An application for succession certificate was filed by the wife and children of the deceased for availing the death cum retirement benefits of the deceased. The petitioner filed IA 1492 of 2013 in the succession OP for getting herself impleaded as the additional 2nd respondent. Through

Ext.P10 order, the court below has dismissed the IA. The said order is under challenge.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. According to the learned counsel for the petitioner, the 1st respondent/wife was leading an adulterous life and thereby the marital life of deceased Venkiteswaran and the first respondent fell apart. Thereafter, he was residing along with his sister, who is the petitioner herein, and he has changed the nomination to the person to whom the gratuity has to be paid, into the name of the petitioner. Therefore, according to the learned counsel for the petitioner, the legal representatives have no role in the matter and the application for succession certificate itself is not maintainable, when the petitioner has been nominated as the nominee to receive the amount.

5. *Per contra*, the learned counsel for the respondents has argued that the nominee can only collect

the amount at the most, and cannot appropriate it. Even if a valid nomination is made, the nominee can only collect the amount and has to pay the amount to the concerned persons who are entitled to succeed the deceased. Over and above it, it has been pointed out that in this case, the nomination of the petitioner itself is not valid. As per Section 6 of the Payment of Gratuity Act, 1972, if an employee has a 'family' at the time of making a nomination, the nomination shall be made in favour of one or more members of his 'family'. 'Family' is also defined under Section 2(h), which says:

“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.”

In this particular case, there is no case for the petitioner that

a valid divorce was effected by dissolving the marriage of the deceased and the first respondent. Even though they were allegedly residing separately, the status of the first respondent as the wife of the deceased still continues. As far as the children are concerned, nobody can say that they are not members of the family of the deceased.

6. The question as to whether the deceased was being looked after and maintained by the wife and children, does not assume any importance at all. Even if it is admitted that the deceased was not being looked after and maintained by his wife and children, the right to succession cannot be denied to the wife and children.

7. The learned counsel for the respondents has relied on the decisions in ***Sarbati Devi and another v. Usha Devi***[AIR 1984 SC 346] and ***Vishin N. Khanchandani and another v. Vidya Lachmandas Khanchandani and another***[(2000) 6 SCC 724] wherein the question relating to nomination was considered. In the aforesaid cases it was

held:

“The nominee of the National Savings Certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succession applicable in the case.”

8. The law is that a nominee does not acquire any right to appropriate the amounts; whereas the nominee can only collect the amount for and on behalf of the legal representatives of the deceased. A nominee cannot appropriate the amount unless the nominee is the sole legal representative or the nominee is given a right to have testamentary succession. In cases wherein the nominee is one of the legal representatives of the deceased, such a nominee can collect the amount for and on behalf of the legal representatives of the deceased, and can appropriate the share of such a nominee alone. In case of a Will in

favour of a nominee, thereby bequeathing the amount to the nominee, in such cases, the nominee can appropriate the amount. In other cases, the nominee can collect the amount for and on behalf of the legal representatives or for the benefit of the legal representatives, and has to disburse the amount to the legal representatives. Matters being so, the petitioner cannot claim any substantive right over the amount involved and therefore, she is not a necessary party to the proceedings in the OP. Therefore, Ext.P10 order does not suffer from any illegality, irregularity or jurisdictional error and hence the same is not liable to be interfered with.

In the result, this Original Petition is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge