

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 9TH DAY OF NOVEMBER 2021 / 18TH KARTHIKA, 1943

WP(C) NO. 20015 OF 2021

PETITIONER

DR.P.C.BEENAKUMARI
AGED 64 YEARS
T.C. 15/788-USRA-117,
UDARA SIROMANI ROAD, VELLAYAMBALAM,
THIRUVAANTHAPURAM-695010.
BY ADVS.
N.NANDAKUMARA MENON (SR.)
P.K.MANOJKUMAR
SMITHA S.PILLAI
ALICE THOMAS
M.C.SINY

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF TREASURIES, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 DIRECTORATE OF TREASURIES
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM-695001.
- 3 THE TREASURY OFFICER
DISTRICT TREASURY, TRIVANDRUM-695001.
- 4 THE TREASURY OFFICER
DISTRICT SUB TREASURY, ALAPPUZHA-688501.

SMT.M.R.SREELATHA SPL.G.P (FINANCE)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09.11.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

[CR]

J U D G M E N T

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Dated this the 9th day of November, 2021

The petitioner, who is the daughter of younger sister of late K.R. Gouri Amma who passed away at the age of 102 years, seeks to issue a writ, order or direction to respondents 2 to 4 to release to the petitioner the Treasury Savings Bank amounts covered by Exts.P5 and P6 Treasury Savings Bank Accounts in the name of late Smt. K.R. Gouri Amma.

2. The petitioner states that late Gouri Amma passed away on 11.05.2021, after a brief illness. She died without any children. Late Gouri Amma executed her last Ext.P2-Will No.40/111/1983 of SRO Alappuzha on 01.09.1983 and bequeathed 19 cents of land and the Treasury Deposits with the Alleppy District Sub Treasury and Trivandrum District

Treasury and also other Bank Deposits, to the petitioner.

3. The petitioner submitted application to the 2nd respondent-Director of Treasuries seeking to release amounts in deposit under Pension Treasury Savings Bank Account in the District Sub Treasury at Alleppey and also in the Savings Bank Account in Trivandrum District Treasury. The petitioner produced Ext.P2 Will also. The 2nd respondent is legally bound to release the amounts in view of Ext.P2 Will. But, the application of the petitioner has been rejected as per Ext.P4 communication of the 2nd respondent on the ground that no nominee has been proposed by late Gouri Amma and the Will has to be probated.

4. The learned counsel for the petitioner argued that the direction contained in Ext.P4 to probate the Will is unsustainable as it goes against the provisions of law contained in the Indian Succession Act relating to the right of inheritance to property of a legal heir of a deceased Hindu woman. The petitioner is entitled to receive the money bequeathed to her on the basis of the registered Will without

probating the same.

5. The 1st respondent resisted the writ petition. The 1st respondent stated that the Kerala Treasury Code Volume II and the Government Savings Bank Act, 1873 contemplate nomination by depositor, of a person to receive the deposit on the death of the depositor. As the petitioner is not a nominee, she was required to get the Will probated. The 2nd respondent has acted in accordance with law. The 1st respondent further submitted that no person other than the petitioner has come forward to claim the amount in the account of late Gouri Amma.

6. I have heard the learned counsel for the petitioner and the Special Government Pleader (Finance) representing the respondents.

7. The testator of the Will is a Hindu Woman. The question is whether the rejection by the 2nd respondent, of the claim of the petitioner to pay the amounts belonging to the Testator and bequeathed to the petitioner by a Will, for the reason that the Will is not probated, is justified. Section 213

of the Indian Succession Act, 1925 provides as to when the right as Executor or Legatee is established. Section 213 of the Indian Succession Act, 1925 reads as follows:

“213. Right as executor or legatee when established. (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans or Indian Christians, and shall only apply—

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such wills are made within the local limits of the ordinary-original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.”

In view of sub-section (2), Section 213 will not apply to Wills made by any Hindu where such Wills are of the classes specified in Clauses (a) and (b) of Section 57.

8. Section 57 of the Indian Succession Act, 1925 which is in Part VI relating to testamentary succession, reads

as follows:

“57. Application of certain provisions of Part to a class of wills made by Hindus, etc.

The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant- Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits, and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b).

Provided that marriage shall not revoke any such will or codicil.”

It is therefore evident that Part VI will apply only to Wills and Codicils made by a Hindu on or after 01.09.1870 within the territories of erstwhile Lt. Governor of Bengal or of High Courts of Judicature at Madras and Bombay, to Wills in respect of immovable property situate within those territories and to Wills made on or after 01.01.1927 to which those provisions are not applied by Clauses (a) and (b). The Will in issue in this case was executed in Cherthala Taluk, which does not fall within

the aforesaid territories.

9. In the judgment in ***Clarence Pais and others v. Union of India*** [AIR 2001 SC 1151], the Hon'ble Apex Court held that:

“A combined reading of Ss.213 and 57 of the Act would show that S.213 (1) which contains the restrictions prohibiting recognition of rights as an executor or legatee under a will without production of a probate, is applicable to Parsis after the amendment of the Act in 1962 and to Hindus who reside within the territories which on 01.09.1870 were subject to the Lt. Governor of Bengal or to areas covered by original jurisdiction of the High Courts of Bombay and Madras and to all wills made outside territories and limits so far as they relate to immovable property situate within those territories and limits.”

10. The issue of probating wills was examined by this Court in ***Kurian @ Jacob v. Chellamma John and others*** [2017 (5) KHC 257] and this Court held that:

“Viewed in a historical perspective, initially, the rights of the Hindus and the Muslims in British India were severely restricted in the matters of testamentary disposition. So it was inconsequential whether their wills were probated or not. But the Christians could Will away their entire property; the Legislature in its wisdom, then, thought that their Wills should be probated. It may be noted that the Wills of the Hindus, the Muslims, and others were also to be probated if it dealt with immovable property in the Presidency Towns, where the value of the property, usually, was high. In other

words, probate is unnecessary unless clauses (a) and (b) of Section 57 of the Act are attracted.”

11. The Hon’ble Apex Court considered Section 213(2) of the Indian Succession Act, 1925 in **Kanta Yadav v. Om Prakash Yadav and others** [(2020) 14 SCC 102] and held that :

“The statutory provisions are clear that the Succession Act is applicable to wills and codicils made by any Hindu, Buddhist, Sikh or Jain, who were subject to the jurisdiction of the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay – [Clause (a) of Section 57 of the Act]. Secondly, it is applicable to all wills and codicils made outside those territories and limits so far as relates to immovable property within the territories aforementioned – Clause (b) of Section 57. The Clause (c) of Section 57 of the Act relates to the wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which provisions are not applied by Clauses (a) and (b). However, Sub-Section (2) of Section 213 of the Act applies only to wills made by Hindu, Buddhist, Sikh or Jain where such wills are of the classes specified in Clauses (a) or (b) of Section 57. Thus, Clause (c) is not applicable in view of Section 213(2) of the Act.

A combined reading of Sections 213 and 57 of the Succession Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(a) and (b), Section 213(2) of the Succession Act applies and Section 213(1) has no application. As a consequence, a probate or letters of administration will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories.”

Therefore, it is evident that the requirement of probating a Will is applicable to Wills and codicils made by Hindus who were subject to the jurisdiction of the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay.

In the circumstances, the stand of the 2nd respondent that the amounts left behind late Gouri Amma and bequeathed to the petitioner cannot be paid to the petitioner without probating the Will, cannot be sustained. Respondents 2 to 4 are therefore directed to release to the petitioner the Treasury Savings Bank amount covered by Exts.P5 and P6 in the name of K.R. Gouri Amma.

Sd/-
N. NAGARESH, JUDGE

aks/06.12.2021

APPENDIX OF WP(C) 20015/2021

PETITIONER'S EXHIBITS

- Exhibit P1 THE PHOTOSTAT COPY OF THE DEATH CERTIFICATE DATED 17/05/2021, ISSUED BY THE GOVERNMENT OF KERALA, DEPARTMENT OF PANCHAYATS/URBAN AFFAIRS.
- Exhibit P2 THE PHOTOSTAT COPY OF THE REGISTERED WILL DATED 1/9/1983 EXECUTED BY DECEASED K.R.GOURI AMMA.
- Exhibit P2 (A) THE PHOTOSTAT LEGIBLE COPY OF THE WILL DATED 1/9/1983 EXECUTED BY DECEASED K.R. GOURI AMMA.
- Exhibit P3 THE PHOTOSTAT COPY OF THE REPRESENTATION DATED 23.06.2021 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT FOR THE RELEASE OF THE FAMILY PENSION.
- Exhibit P4 THE PHOTOSTAT COPY OF THE COMMUNICATION NO.2052/2021-F3/TRY DATED 1/7/2021 ISSUED BY THE DIRECTOR, TREASURY DIRECTORATE, TVM.
- Exhibit P5 THE PHOTOSTAT COPY OF THE TRUE EXTRACT OF THE TREASURY SAVINGS BANK ACCOUNT DATED 1/5/2019.
- Exhibit P6 THE PHOTOSTAT COPY OF THE TRUE EXTRACT OF THE TREASURY SAVINGS BANK PASS BOOK IN THE DISTRICT TREASURY TRIVANDRUM.

RESPONDENT'S EXHIBITS NIL