

(2013) 06 GAU CK 0030

Gauhati High Court (Aizawl Bench)

Case No: Regular Second Appeal No. 10 of 2012

R. Lalhmingliana

APPELLANT

Vs

Lalnunpari

RESPONDENT

Date of Decision: June 3, 2013

Citation: (2013) LabIC 3000

Hon'ble Judges: Ujjal Bhuyan, J

Bench: Single Bench

Advocate: Zochhuana, Lalchhanliana Khiangte, R. Zothansanga and Ms. Melody L. Pachuau, for the Appellant; L.H. Lianhrima, for the Respondent

Final Decision: Allowed

Judgement

Ujjal Bhuyan, J.

Heard Mr. Zochhuana, learned counsel for the appellant and Mr. L.H. Lianhrima, learned counsel for the respondent. This second appeal is directed against the judgment and order dated 13.07.2012 passed by the learned Addl. District Judge-I, Aizawl Judicial District, Aizawl in RFA No. 5/2012.

2. Appellant was the plaintiff and the respondent was the defendant.

3. Appellant as the plaintiff had filed an application before the learned Civil Judge-I, Aizawl Judicial District, Aizawl for issuance of heirship certificate in respect of family pension and other benefits of her late husband R. Lalruata, who was Junior Engineer in the Power & Electricity Department. Government of Mizoram. The application was registered as Heirship Certificate Case No. 289/2008.

4. Case of the plaintiff was that she had married R. Lalruata as per Mizo Customary Law on 26.05.2006. Her relationship with her-in-law was not cordial as they did not like her. Therefore, plaintiff and her husband intended to live separately and before living separately, she with the consent of her husband started living with her parents family. Unfortunately, plaintiff's husband died on 28.12.2007. They did not have any issue.

5. After the death of her husband, the defendant who is, the father of her husband and other family members of her late husband made a fake letter of divorce dated 21.09.2007 with a view to appropriate all the service benefits due to her late husband. When she applied before the departmental authorities for the service benefits of her late husband, the Executive Engineer, Power & Electricity Department, Kolasib Division rejected her claim on the ground that she was not the nominee of her late husband and also that her husband had divorced her under the customary law.

6. Defendant entered appearance and contested the claim of the plaintiff by filing written statement. According to the defendant, the deceased had nominated his son to receive Death-Cum-Retirement Gratuity (DCRG) and both his son and daughter as nominees to receive GPF and in case of any contingency, the parents to receive the GPF amount. The son and daughter referred to are the children of R. Lalruata from his first marriage. R. Lalruata had first married Lalhlupuii but after divorcing her, he had married the plaintiff. It was further stated that plaintiff did not live as a decent wife of her husband and also did not care for the children. Plaintiff was divorced on 21.08.2007 and the letter of divorce by way of "Mak" i.e. Mizo Customary Law was made on 22.09.2007 in the presence of 2 reliable witnesses, Therefore, plaintiff was not entitled to the relief claimed.

7. Learned trial Court framed the following issues for consideration.

1. Whether the deceased R. Lalruata included the plaintiff Lalnunpari as his wife in the family declaration?

2. Whether the deceased Government servant nominated the plaintiff in respect of GPF, DCRG etc?

3. Whether the plaintiff was divorced by her husband R. Lalruata during his lifetime?

4. Whether the plaintiff is entitled to receive the relief claimed by her and if so, to what extent? If not, who will inherit the service benefits of Late R. Lalruata?

8. In the trial, plaintiff examined herself as plaintiff witness and the defendant examined himself and 2 other witnesses to support his case.

9. After considering the evidence adduced and other relevant materials On record, learned trial Court decided all the issues in favour of the defendant and rejected the claim of the plaintiff vide the judgment and order dated 15.02.2012.

10. Aggrieved by the aforesaid, plaintiff filed appeal before the District Court at Aizawl. It was registered as RFA No. 5/2012. The appeal was heard and decided by the learned Addl. District Judge-I, Aizawl. Learned lower appellate Court allowed the appeal and decreed the suit holding that plaintiff would be entitled to receive 50 percent of the service benefits as a nominee of her late husband R. Lalruata.

11. Hence, this second appeal by the defendant.

12. Mr. Zochhuana, learned counsel for the defendant/appellant submits that plaintiff was divorced by her husband during his lifetime as per Mizo Customary Law and, therefore, she is not entitled to the terminal benefits of her deceased husband. He submits that the finding of the learned lower appellate Court is vitiated by perversity and, therefore, substantial question of law arises out of the judgment under appeal for consideration by this Court. In support of his submission, learned counsel has placed reliance on a decision of the Hon'ble Supreme Court in the case of [Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others,](#).

13. On the other hand, Mr. Lianhrima, learned counsel appearing for the plaintiff/respondent submits that there is no infirmity in the judgment passed by the learned lower appellate Court. The learned Court below had arrived at a finding of fact on due consideration of all relevant materials. He contends that no substantial question of law arises out of the judgment under appeal and, therefore, the instant appeal should be dismissed. He has placed reliance on a decision of the Hon'ble Supreme Court in the case of [State Bank of India and Others Vs. S.N. Goyal,](#).

14. Submissions made have been considered.

15. To consider the rival submissions, let us examine as to how the learned Court below decided the issues framed by the learned trial Court. The first issue framed was whether the deceased had included the plaintiff as his wife in the family declaration. As already noticed above, this issue was decided against the plaintiff by the learned trial Court, as it was found that the name of the plaintiff was not included as a family member in the family declaration submitted by the deceased. Learned lower appellate Court found from the record that deceased R. Lalruata was appointed as Junior Engineer on 25.01.1989. After his appointment, he made the family declaration wherein the name of the plaintiff was not included in the family declaration as at that point of time, the deceased had not yet married the plaintiff. Learned lower appellate Court also found that after the marriage, the deceased had made another family declaration on 9.11.2006 indicating therein that the plaintiff was one of the family members. Accordingly, the finding of the learned trial Court on this issue was reversed and it was decided in favour of the plaintiff.

16. Regarding issue No. 2 which was whether the deceased had nominated the plaintiff to receive GPF, DCRG etc, learned lower appellate Court found that the earner family declaration and the nomination papers were made before he had married the plaintiff. Therefore, in those papers, name of the plaintiff was not found as a nominee to receive such benefits. After he married the plaintiff, the deceased had submitted fresh nomination papers where he nominated the plaintiff as a nominee to receive 50 percent of GPF and DCRG Learned lower appellate Court also found that the deceased had nominated the plaintiff to receive 50 percent of the insurance amount under the State Employees Group Insurance Scheme, 1992. Accordingly, the decision of the learned trial Court on this issue was reversed by the learned lower appellate Court and answered in favour of the plaintiff.

17. The third issue was whether the plaintiff was divorced by her husband R. Lalruata during his lifetime. Learned trial Court had decided this issue in favour of the defendant as it was found that there was sufficient evidence that the deceased R. Lalruata had divorced his wife (plaintiff) by way of "Mak". Learned lower appellate Court after referring to the Mizo Customary Law on divorce held that if the wife wants to divorce her husband, she has to return the marriage price paid by the husband and if the husband wants to divorce his wife, he has to tell her that he had divorced her in Mizo language and if the bride price had not been paid in full at the time of marriage, the balance amount has to be paid. No letter of divorce is made. But in this case, there was a letter of divorce and though it contained the signatures of the witnesses, it was found that the signatures were not made in the presence of each other. Learned lower appellate Court came to the conclusion that the letter of divorce dated 21.09.2007 was not proved as it was very doubtful. Though the plaintiff and her husband might not have been living together at the time of the death of the husband, it cannot be said that the deceased had divorced his wife (plaintiff). On careful examination of the evidence adduced and other materials on record, learned lower appellate Court had come to the conclusion that the letter of divorce could not be relied upon.

18. Coming to the last issue i.e. entitlement of the plaintiff to the reliefs claimed, learned trial Court held that in the absence of any nomination, plaintiff was not entitled to the reliefs claimed. Learned lower appellate Court found from the record that the deceased had nominated the plaintiff to receive 50 percent of GPF, DCRG and Group Insurance. This was not paid to the plaintiff because of the letter of divorce. In view of the findings arrived at in respect of the other issues, learned lower appellate Court decided the last issue in favour of the plaintiff by declaring that she would be entitled to receive 50 percent of the service benefits of her late husband as nominated by him.

19. The decision in Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others, was rendered in a totally different context and is not at all applicable to the facts of the present case. In State Bank of India and Others Vs. S.N. Goyal, , the Hon"ble Supreme Court has explained as to what can be a substantial question of law. Following the principle laid down therein, I find that the findings arrived at by the learned lower appellate Court are findings of facts and no substantial question of law arises therefrom.

20. Accordingly, this Court finds no merit in the appeal. Appeal is dismissed. Parties to bear their own cost.