

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

FA No. 2 of 2019

Date of Decision: 01.12.2022

Freshmi D. Momin

Vs.

Swellish M. Sangma

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Ms. S. Bhattacharjee, Adv.

For the Respondent(s) : Mr. K.C. Gautam, Adv.

- | | | |
|-----|-----------------------------------------------------|--------|
| i) | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER

1. The appellant who is stated to be the widow of one (L) Lookingbirth M. Marak, an employee of Irrigation Department, Government of Meghalaya is before this Court by the instant appeal under Rule 3 of the Meghalaya High Court Jurisdiction over District Council Court Order, 2014 read with Rule 6 and Section 384 of the

Indian Succession Act, 1985. In a short compass, the appellant is aggrieved with the rejection of her application for revocation of Succession Certificate granted on 09.06.2015 in favour of the respondent. The grounds for challenge as indicated in the memo of appeal, is that the Succession Certificate had been obtained by suppression of material of facts, and that the evidence on record indicated that the appellant was entitled to the Succession, as she and the deceased employee had minor children born out of their cohabitation. The further ground taken is that the impugned order was passed in total violation of Garo Customary law.

2. The learned Court below by judgment and order dated 23.07.2019, after examining witnesses and considering the law as prevalent came to a finding that sufficient cause had not been made out to recall the earlier order dated 09.06.2015, and accordingly dismissed the application for revocation.

3. Ms. S. Bhattacharjee, learned counsel on behalf of the appellant has submitted that the Court below had fallen in error, in dismissing the revocation application, as it failed to consider the fact that the appellant was the second wife of the deceased employee having two issues who are still minors. She submits that if due consideration had been given to this aspect, notwithstanding the fact that the

respondent was the first legally married wife, the appellant and her children were at least entitled to a certain percentage of the terminal benefits of the deceased employee. In support of her submissions, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court reported in *(2008) 2 SCC 238 (Vidhyadhari & Ors vs. Sukhrana Bai & Ors.)*, wherein she submits it has been held that the children born out of the second union though the second marriage itself may be void, would be entitled to some benefit.

4. Mr. K.C. Gautam, learned counsel for the respondent on the other hand, submits that the respondent was the legally married wife of (L) Lookingbirth M. Marak, and had 9 children from the wedlock. He submits that the deceased employee and the respondent were not divorced, and apart from this fact, had also nominated the respondent in his Service Book, and though staying separately, was paying maintenance to the respondent. He further submits that according to Meghalaya Civil Service (Pension) Rules, 1983, only a legally wedded wife will come within the definition of 'Family'. He then submits that the alleged marriage of appellant and (L) Lookingbirth M. Marak, not having been proved or substantiated in any manner, the appeal is without any merit.

5. I have heard the learned counsels for the parties and examined the lower Court case records. Without going into the details, the findings arrived at from the depositions and the evidence tendered by the witnesses in the proceedings below, in summary it is noted as follows:-

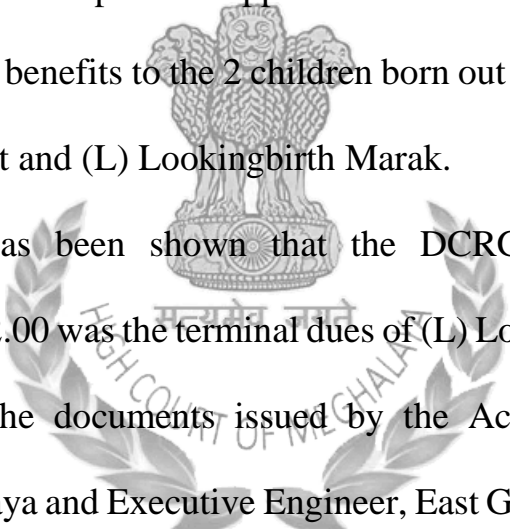
- (i) The fact that the respondent was legally married to the deceased employee could not be disproved and was substantiated, as also the fact that from the said marriage there were 9 children. It was also proven that there was no document showing that the respondent was divorced from (L) Lookingbirth M. Marak.
- (ii) The appellant could not substantiate her claim to be legally married to (L) Lookingbirth M. Marak, and on the issue as to whether there were 2 children out of the said relationship between the appellant and (L) Lookingbirth M. Marak, it was noted in the findings, that for the first daughter, whose date of birth is 01.07.2001, the father's name recorded therein is of (L) Lookingbirth M. Marak, but the no clear finding has been arrived at with regard to the second daughter and the present status of the children, as it appears sufficient evidence was not led in this regard .

6. The learned Lower Court while arriving at a concrete finding about the status of the respondent being the legally wedded wife of (L) Lookingbirth M. Marak, however did not render any finding as to whether the children born out of the union with the appellant were entitled to any relief.

7. In this context therefore, this Court while re-appreciating the materials, notes that 2 birth certificates had been produced by the appellant in the Revocation proceedings, that of Ms. Tangsil D. Momin and Ms. Rani Dokua D. Momin, born on 01.07.2001 and 14.04.2004 respectively, wherein the father's recorded name is of (L) Lookingbirth M. Marak. These 2 birth certificates which have been issued by the Registrar Births and Deaths, East Garo Hills, it is observed, did not receive due consideration by the learned Lower Court, while rejecting the revocation application even though they had been in the list of documents before the Learned Lower Court.

8. It is now a settled proposition of law, that though a second wife not being a legally wedded wife, the children born out of such union, were legitimate for the purpose of a share in the terminal dues of their deceased father. The judgment of the Hon'ble Supreme Court in the case of (*Vidhyadhari & Ors vs. Sukhrana Bai & Ors.*) (supra) has on this very point, held that the children of such union, would be entitled

to a share of their late father's employment dues. In the instant case, as it is evident from the birth certificates issued by a competent authority, the fact that 2 children were born out of this union has not been disproved or has been discussed by the learned Lower Court, in accordance with law. In view of these circumstances this Court deems it fit to balance the equities, to order as follows:-

- 
- (i) The matter shall stand remanded to the learned Lower Court on the limited point of apportionment of a percentage of the terminal benefits to the 2 children born out of the union of the appellant and (L) Lookingbirth Marak.
 - (ii) As it has been shown that the DCRG amount of Rs. 7,87,632.00 was the terminal dues of (L) Lookingbirth Marak, as per the documents issued by the Accountant General, Meghalaya and Executive Engineer, East Garo Hills Division, the learned Lower Court shall modify the Succession Certificate No. 25/2015 issued on 09.06.2015 to accord a share of Rupees One Lakh of the said amount to the two children.

9. The parties are put to notice to appear before the learned Lower Court on 01.02.2023, and it is expected that the proceedings

shall be completed within a period of 4(four) months from the date
aforementioned.

10. This appeal is accordingly disposed of in terms of the
directions contained above.

11. Lower Court records be transmitted back immediately.

JUDGE

Meghalaya
01.12.2022
"V. Lyndem-PS"

