

SUPREME COURT OF INDIA

Geevarghese Aleyamma

Vs.

Vimala Mathew

S.L.P. (C) No. 8415 of 2002

(P. Venkatarama Reddi and P. P. Naolekar JJ.)

17.09.2004

JUDGMENT

P. Venkatarama Reddi, J.

1. Leave granted.

2. The appellant filed a suit for maintenance impleading the legal representatives of her deceased brothers Devassia and Mathew. The heirs of Devassia are defendants Nos. 1 to 6 in the suit. The heirs of Mathew are defendants Nos. 7 to 12 in the suit and they are the respondents before us. The maintenance was claimed by the appellant on the basis of the Will executed by her late father in the year 1965 by which the father bequeathed certain properties to his two sons while imposing an obligation to maintain the appellant in the manner stated in the Will. The relevant portion of the Will reads as follows:

" My Son Devassia shall pay Rs.100/- per mensem and 100 Kalloorakaran Paras of Paddy annually to my unmarried daughter Aleyamma for her necessities.

I further provide that my daughter Aleyamma will have the full freedom to reside in the family house along with other members in the same way as my son Mathew have the freedom to do so. It is further provided that my son shall look after the needs of Aleyamma in the matter of food and others according to her liking, like other members of the family as also the other needs of her which she feels necessary by spending from the family. In case my daughter Aleyamma resides separately from the house either for treatment or rest, my son Mathew shall also pay Rs.100 per month and also necessary paddy or rice annually to her"

3. The appellant's contention has been that the amount of Rs.100/- per mensem ought to be enhanced in view of the long passage of time and that the terms of the Will do not come in the way of such enhancement. However, the trial Court did not accept the appellant's claim. The following is the decree passed by it:

"1. The defendants 1 to 6 will give Rs. 12640/- and defendants 7 to 12 will give Rs.11940/- with 12% future interest from the date of suit till realization. They will also continue to pay at this rate after the suit, during the lifetime of plaintiff.

2. The defendants 1 to 6 will also give Rs.100/- from 1.10.1985 till 30.4.1986 and 100 paras of paddy per year or its equivalent market value at that time.

3. The defendants 7 to 12 will give Rs.100/- from 1.10.1985 till 30.4.1986 and para 80 paras paddy per year or its equivalent market value at that time."

4. The first clause of the decree, it is stated, relates to past arrears relating to admitted maintenance.

5. Aggrieved by the decree limiting the maintenance to Rs.100/- and 100/80 paras of paddy per year, the appellant preferred an appeal to the High Court. Learned Single Judge of the High Court dismissed the appeal. However, it is to be noticed that during the pendency of the appeal, a compromise was entered into between the appellant and the branch of Devasiya i.e. defendants Nos. 1 to 6 and they agreed to pay Rs.750/- per mensem as maintenance to the appellant. Learned Single Judge affirmed the judgment and decree of the trial Court. A further appeal to the Division Bench of High court was dismissed. The High Court observed as follows:

"The question therefore to be considered is whether defendants 7 to 12 can be compelled to make the payment of Rs.750/- per month as the equivalent value of Rs.100/- as stipulated in the Will executed by Geevarghese. It is not disputed that as per Ex.A1, there is no stipulation for payment of equivalent value of Rs.100/- as and when the amount falls due to the plaintiff. Since what is stated is only for payment of Rs.100/- per month, it is not possible to give a decree or equivalent value of money according to the rate of inflation. Merely because defendants 1 to 6 have agreed to pay at the rate of Rs. 750/- per mensem, since they can afford for the same, the court cannot compel the legal heirs of Mathew who are defendants 7 to 12 to do the same unless the will contains a specific direction for fixing and paying the equivalent value of money every year. The learned counsel for the appellant submitted that the money value has gone down and the plaintiff may not be able to purchase the same commodities for Rs.100/- in 1965 and in 1987 for Rs.100/-. In the absence of any provision in the Will to pay at the enhanced rate according to the fall in value of money this Court is not in a position to grant a decree as prayed for by the plaintiff."

6. It is against this judgment, the present appeal is filed. We are of the view that the terms of the Will, construed reasonably, and in conformity with the intent of the testator, spell out an obligation to cater to the reasonable needs of the appellant. The amount of maintenance of Rs.100/- and delivery of paddy/ rice annually is the minimum that has been prescribed in case the appellant resides separately. It is not disputed that the appellant who is now aged 70 years, has been residing separately. We feel that it is not proper to give a restricted

interpretation to the Will to hold that the sum of Rs.100/-, mentioned in the Will, is the maximum and that there is no legal obligation to pay anything more than that. # Such an interpretation of the Will goes contrary to the other recitals in the Will, which make it fairly clear that Mathew has to look after her needs in regard to food etc. The Will has to be read as a whole. There is no warrant for the restricted interpretation that the figure of maintenance of Rs. 100/- is invariable. Now, the question of quantum. Instead of remitting the matter to the lower Court for determination of quantum and thereby prolonging the litigation, we consider it expedient to fix a reasonable sum towards maintenance. On a consideration of the submissions made by the learned counsel on both sides in regard to financial capacity of the parties and taking into account the compromise which has been entered into with defendants Nos. 1 to 6, we consider it just and proper to fix the maintenance at Rs.750/- per month instead of Rs.100/- payable from the date of the order of the learned Single Judge of the High Court from 1-1-1997. The appeal is disposed of accordingly without costs. Clause (3) of the decree of trial Court shall stand modified accordingly.

7. We may also record that we have given sufficient opportunity to the respondents to settle the matter amicably However, the learned counsel for the respondents reported that they are not agreeable for settlement.