

Title Suit No. 272/2010

HIGH COURT FORM No.(J) 2

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District...Kamrup

In the Court of Munsiff No.3, Guwahati

Present :- Mrs Audri Bhattacharyya
Tuesday, the 23rd Day of May, 2011

Title Suit NO.272 of 2010

Smti Amba KaibatraPlaintiff(s)/Petitioner(s)

-Versus-

Union of India and others.....Defendant(s)/Opp. Party(ies)

Title Suit No. 272 of 2010

Give dated or dates This Suit/Case coming on for final

hearing on 26-04-2011 in the presence of

Shri Gautam Jyoti Saikia..... Advocate(s) for Plaintiff.

Mr. Motin Md- Din Ahmed.....Advocate(s) for Defendant.

and having stood for consideration to this day, the Court

delivered the following judgment:

JUDGMENT

This is a suit for declaration that the husband of the Plaintiff is dead and the Plaintiff is entitled to receive all death cum retirement gratuity/pensionary benefits and other benefits.

The case of the Plaintiff is that the husband of the plaintiff namely Hemkanta Kaibarta was serving in the Department of Central Public Works Department as Upper Division Clerk, posted at Borjhar, Kamrup, Guwahati-15, Assam. On 02-01-2002 at about 9.30 A.M., the husband of the plaintiff Hemkanta Kaibarta left for his office at Kahikuchi but unfortunately, he never returned home. On that very day as Hemkanta Kaibatra did not return home after the office hour, as he usually do,, the plaintiff along with other family members as well as neighbours went out in seearch of him ti all possible places but all in vain. Thereafter on enquiry on the next day it comes to the knowledge of the plaintiff that he had not reached his office on 02-01-2002. The plaintiff on 03-01-2002 intimated the Borjhar Police Outpost about the missing of her husband and the police entered it as Borjhar O.P. GDE No. 48 dated 03-01-2002. Thereafter the plaintiff along with other family members scarched for the whereabouts of her husband , but in vain. The plaintiff also published an advertisement in Assamese local daily newspaper named "Asomiya Pratidin" seeking the information of Hemkanta Koibatra. On 07-02-3002, the Officer –in –charge of the Azara Police Station gave a police report to the effect that the husband of the plaintiff was missing and after searching all possible places, they could not trace him out. The police failed to trace out even the body of the husband of the plaintiff. Finnally on 29-12-2009, the Officer –in –charge of Azara

Police Station, Guwahati finally issued a police report stating in details the status of investigation and enquiry wherein it is found that the police had not received an information about the husband of the plaintiff. It is further submitted in the plaint that due to the missing of her husband of the plaintiff, she is not getting any benefit from the department which otherwise she would have received if her husband is declared to be dead. The plaintiff is facing severe financial hardship. So, it is prayed that the husband of the plaintiff, Hemkanta Kaibatra is dead and the plaintiff is entitled to receive all death cum retirement gratuity/pensioner benefits and other benefits.

The defendant No. 1 and 2 filed written statement jointly while defendant No. 3 filed written statement separately. The suit proceeded ex-parte against the defendant No. 4.

The defendant No. 3 in his written statement rather admitted the fact that Hemkanta Kaibatra was in the service in the Department of Central Public Works Department , Kahikuchi Borjhar, and a missing information was lodged by Smti Amba Kaibatra at Borjhar O.P. on 03-01-2002 regarding the fact that her husband, Hemkanta Kaibatra went to his office on 02-01-2002, but did not return home. The defendant no. 3 did not deny the statements stated in the plaint.

The Defendant No. 1 and 2 in their written statement stated that Hemkanta Kaibatra was serving in Guwahati Electric Division –II , CPWD, Guwahati-15 , as upper divisional clerk and after 02-01-2002, Shri Kaibatra did not report for duty in his office. The defendant No. 1 and 2 in their written statement stated that police report dated 01-05-2002 and 07-02-2003

was received by the office and the same was intimated to the higher authority. It is further submitted in their written statement that all pensioner benefits as per the CCS Pension Rule has been allowed to the plaintiff. The defendant no. 1 and 2 further stated that the allegation of the plaintiff that she is not getting any benefits from the department is false. Only the group insurance has not been allowed as per the provision of group insurance schemes, para 11.4 and 11.5. It is prayed in the written statement to dismiss the suit with cost.

Upon the pleadings of both the parties, the following issues are framed:-

- i) Whether the plaintiff is entitled for a decree of declaration that Hemkanta Kaibatra is presumed to be dead?
- ii) Whether the plaintiff is entitled for the decree as prayed for in the plaint?
- iii) To what relief is the plaintiff entitled to?

The Plaintiff adduced evidence of one witness who was cross examined . The defendant side did not adduce any evidence. The Plaintiff exhibited certain documents. Learned Counsel on behalf of both the sides were heard on the point of argument.

DISCUSSIONS, DECISION, AND REASONS THEREOF:

I have carefully examined the evidence and perused the documents. The defendant side though filed written statement, did not adduced evidence in their support. My decision on the above issues are as follows:-

ISSUE NO. 1

This issue relates to whether the plaintiff is entitled for a decree of declaration that Hemkanta Kaibatra is presumed to be dead.

In this respect PW-1 Smti Amba Kaibarta deposed in her evidence on affidavit that husband of the plaintiff namely Hemkanta Kaibarta on 02-01-2002 at about 9.30 A.M., left for his office at Kahikuchi but unfortunately, he never returned home. The plaintiff along with other family members as well as neighbors went out in search of him in all possible places but all in vain. The plaintiff on 03-01-2002 intimated the Borjhar Police Outpost about the missing of her husband and the police entered it as Borjhar O.P. GDE No. 48 dated 03-01-2002. The plaintiff also published an advertisement in Assamese local daily newspaper named "Asomiya Pratidin" seeking the information of Hemkanta Koibatra. Thereafter on 07-02-2003, the Officer –in –charge of the Azara Police Station gave a police report to the effect that the husband of the plaintiff was missing and after searching all possible places, they could not trace him out. The police failed to trace out even the body of the husband of the plaintiff. Finally on 29-12-2009, the Officer –in –charge of Azara Police Station, Guwahati finally issued a police report stating in details the status of investigation and enquiry wherein it is found that the police had not received an information about the husband of the plaintiff.

The pw1 submitted the following documents in support of her case:-

- i) Intimation to the Borjhar Police Station dated 03-01-2002
- ii) Copy of newspaper advertisement.
- iii) A copy of police report dated 07-02-2003(Exhibit 3)
- iv) A copy of Police report dated 29-12-2009.(Exhibit4)
- v) A copy of Registration receipt (Exhibit 5).

The defendant No. 3 in his written statement admitted that the Plaintiff on 03-01-2002 lodged missing information that her husband did not return home after going to office on 02-01-2002. The matter was enquired and search was made but clue about his whereabouts could not be ascertained. The defendant no. 3 also did not deny the newspaper publication b the plaintiff and clearly stated in his written statement that it is a fact that the husband of the plaintiff was missing since 02-01-2002.

The defendant No. 1 and 3 also did not object to the fact that the husband of the plaintiff namely, Hemkanta Kaibatra was missing since 02-01-2002. Rather they submitted in their written statement intimation regarding newspaper publication was received by them and police report dated 07-02-2003 was received regarding the missing of Hemkanta Kaibatra.

In this respect I have gone through Section 107 of the Indian Evidence Act which reads as follows:-

"107. Burden of proving death of person known to have been alive within thirty years.

When the question is whether a man is alive or dead and it is known that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it."

"108. Burden of proving that person is alive who has not been heard of for seven years. Provided that when the question is whether a man is alive or dead and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. "

Section 107 of the Indian Evidence Act provides that if a question whether a man is dead or alive is raised and if such person was alive within 30 years of the question being raised, the burden of proving that he is dead is on the person, who affirms it. In other words, Section 107 permits a presumption to be drawn that such a person is alive. On the other hand, Section 108 of the Act provides that when such a question is raised and if it is proved that the person in question has not been heard of for 7 years by those who would have naturally heard of him if he had been alive, the burden of proving that the person is alive is shifted to the person who affirms it. A reading of the two provisions of the Indian Evidence Act as noted above, would go to show that Section 108 really carves out an exception to the rule laid down in Section 107 of the Act. The presumption that the person is alive permissible under Section 107 of the Act will cease to operate if such person has not been heard of for a period of 7 years and in such a situation a presumption in law will arise that the person is dead,

which presumption, however, can be rebutted by proof being laid that the person is alive.

In the instant case, none of the defendants stated that the husband of the plaintiff is alive after 02-01-2002 or that he was seen by anyone after 02-01-2002. Under the above circumstances, it can be presumed that Hemkanta Kaibatra is dead.

Hence the plaintiff is entitled for a decree of declaration that Hemkanta Kaibatra is dead.

This issue is decided in affirmative.

ISSUE NO. 2

This issue relates to whether the plaintiff is entitled for the decree as prayed for in the plaint.

In this respect it is seen from the plaint that the plaintiff has made two prayers in the plaint :

i) For a declaration that the husband of the plaintiff, Hemkanta Kaibatra is dead

ii) For a declaration that the plaintiff is entitled to receive all death cum retirement gratuity/pensioner benefits and other benefits.

So far as the first prayer is concerned, it is already discussed in issue No. 1 and decided in favour of the plaintiff.

So, far as the second prayer of the plaintiff is concerned, I have gone through the following case law in this respect:

2006 (1) GLT 604

AMRANA BEGUM MAZUMDAR. . . PETITIONER

--VS--

STATE OF ASSAM and ORS. . . . RESPONDENTS

W. P. (C) 4133 Of 2001

Decided On : FEBRUARY 1, 2006

It is held in the said judgment of the Hon'ble High Court that Widow of a person not heard of for seven years would be entitled to the family pension with effect from the expiry of the seven years period- After the expiry of seven years the onus is on the respondents to prove that such a person is alive in order to deny family pension to his widow-Widow however not held entitled to claim salary of her husband for seven years period as a matter of right-Question of paying salary to the widow for seven years period left to be decided on the discretion of the respondents.

In view of the above discussion , it is held that the plaintiff is entitled to entitled for the decree as prayed for in the plaint.

This issue is decided in affirmative.

ISSUE NO. 3:-

The plaintiff is entitled to the relief as ordered below.

ORDER

The suit is decreed on contest. Considering the facts and circumstances of the case, the parties are directed to bear their own cost.

The plaintiff is entitled to decree as prayed for. It is hereby declared that that the husband of the plaintiff, Hemkanta Kaibatra is dead and that the plaintiff is entitled to receive all death cum retirement gratuity/pensioner benefits and other benefits which are not drawn by the plaintiff.

Prepare decree accordingly.

Given under my hand and the seal of this Court on this 23rd day of May , 2011.

Mrs Audri Bhattacharyya,
Munsiff No.3,Kamrup

ANNEXURE

Name of Plaintiff witness:-

1. Smti Amba Koibatra.

List of plaintiff document:-

- i) Intimation to the Borjhar Police Station dated 03-01-2002
- ii) Copy of newspaper advertisement.
- iii) A copy of police report dated 07-02-2003(Exhibit 3)
- iv) A copy of Police report dated 29-12-2009.(Exhibit 4)
- v) A copy of Registration receipt (Exhibit 5).

Mrs Audri Bhattacharyya,
Munsiff No.3,Kamrup

