

KABC0A0019242022



IN THE COURT OF LXXIII ADDL.CITY CIVIL & SESSIONS
JUDGE, MAYO HALL UNIT, BANGALURU. (CCH.74)

P R E S E N T:

Sri.Mallikarjuna, B.Com., LL.M.,
LXXIII Addl.City Civil & Sessions Judge, Mayo Hall Unit,
Bengaluru.

Dated this the 06th day of November, 2023.

P & SC. No.25030/2023

Petitioner No.1: Mrs. Monica Francesca Gaynor,
Aged about 68 years,
D/o late Mr. Henry Thomas Gaynor,
R/at No.213, Karnasree Layout,
Opp: Old Madras Road, Medahalli,
Virgonagar Post,
Bengaluru-560049.

Proposed
Petitioner No.2 **Mrs. Marguerite Catherine Gasper,**
Aged about 72 years,
W/o Anthony Derrick Gasper,
D/o Henry Thomas Gaynor,

R/at No.9C HIG II, Block 1,
Greenwood park new town,
Kolkata, West Bengal.

[By Mr. Syed Jalal - Adv.]

Vs.

Respondent:- Nil

ORDER

This is a petition filed by the petitioners u/s 372 of the Indian Succession Act, 1925

2. Brief facts of the petition averments are as under:-

The petitioner is D/o late Henry Thomas Gaynor, who was working in the office of the Pay & Accounts Office, CGST, Kolkata-1 (One) and retired as Ex-Assistant Collector on 31.01.1984. During his life time he was receiving pension from the department. He died on 19.03.2018 and the mother of the petitioner and divorcee W/o deceased Henry Thomas Gaynor Smt.

Phyllis Marguerite Gaynor died on 30.08.1977. The petitioner got married with one Mr. Anil Edmund D. on 12.12.1983 under the special marriage Act, she was leaving with her husband till 1990, thereafter due to misunderstanding between herself and her husband as per the advice of well wishers and friends of the parties they get divorce in M.C.No.420/1992 before the family court, Bengaluru. The petitioner is the only legal heir of deceased Henry Thomas Gaynor. As per the provisions for grant of family pension to a divorced daughter beyond the age of 25 is entitled to receive pension benefit. Accordingly, present petition is filed, prayed for allowing the same.

3. After filing the petition notice of the same has been duly published in daily news paper, calling objections from interested general public if any. In spite of due publication of the notice no one has appeared nor filed their objections.

4. That to prove the case of the petitioners two witnesses have been examined as PW.1 and 2 got marked 10 documents in support of their oral contentions as Ex.P1 to 10.

5. Heard the arguments, perused the petition and other available materials placed on record.

6. The following points arisen for my consideration:-

1) Whether the petitioners are entitled for the Succession certificate from the hands of this court as prayed for?

2) What order?

7. My findings on the above points are as under:-

Point No.1:- In the affirmative,

Point No.2:- As per final order
for the following:-

REASONS

8. Point No.1:- It is the case of the petitioner that she is the D/o late Henry Thomas Gaynor, who was working in the office of the Pay & Accounts Office, CGST, Kolkata-1 (One) and retired as Ex-Assistant Collector on 31.01.1984. During his life time he was receiving pension from the department. He died on 19.03.2018 and the mother of the petitioner and divorcee W/o deceased Henry Thomas Gaynor Smt. Phyllis Marguerite Gaynor died on 30.08.1977. The petitioner got married with one Mr. Anil Edmund D. on 12.12.1983 under the special marriage Act, she was leaving with her husband till 1990, thereafter due to misunderstanding between herself and her husband as per the advice of well wishers and friends of the parties they get divorce in M.C.No.420/1992 before the family court, Bengaluru. The petitioner is the only legal heir of deceased Henry Thomas Gaynor. As per the provisions

for grant of family pension to a divorced daughter beyond the age of 25 is entitled to receive pension benefit.

Inspite of publication of notice in Kannada Daily News Paper calling objections of general public interested in the matter, no one has appeared nor filed objections, no reason is available to deny the contentions of the petitioners. They themselves examined as PW.1 and 2 in their affidavit filed in the form of examination in chief. They have reiterated the petition averments. In support of their oral contentions they have relied Ex.P1 to Ex.P10. The Ex.P1 is Death certificate of Late Henry Thomas Gaynor. The Ex.P2 is Notarized copy of Smt. Phyllis Marguerite Gaynor. Ex.P3 Certified copy of the Judgment and decree passed in MC No.420/1992, dated 28.08.1993. Ex.P4 Letter dated 10.03.2021. Ex.P5 is Memorandum dated 11.09.2013. The Ex.P6 original letter issued by the

department to the petitioner to furnish the documents as per list for claiming family pension. Ex.P7 Notarized copy of Aadhar card. Ex.P8 is Notarized copy of Passport. Ex.P9 is Notarized copy of Ration card. Ex.P10 is Notarized copy of ID card.

There is no reason to deny the oral testimony of P.W.1 and 2, so also the contents of the documents relied by the petitioners. So taking into consideration of all these facts and circumstances, one point is clear that petitioners have proved above point with cogent and convincing evidence, no reason to deny the same. Hence they have proved point No.1. Accordingly, I have answered it ***in the Affirmative.***

9. POINT No.2: For the various reasons discussed in point No.1 and findings given on it by me, I proceed to pass the following:-

ORDER

The petition filed under sec.372 of the Indian Succession Act, 1925 is hereby allowed.

The office is directed to issue succession certificate in favour of petitioners as prayed for in the petition, by collecting necessary fees.

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(Dictated to the Stenographer, transcribed by her, after online correction by me, printout taken by her and then pronounced by me in the open court on this **the 06th day of November, 2023**).

(MALLIKARJUNA)

**LXXIII Addl. CC & SJ, M.H.Unit,
Bengaluru.**

ANNEXURE**List of witness examined for the petitioner's side:**

P.W.1 - Mrs. Monica Francesca Gaynor

P.W.2 - Mrs. Marguerite Catherine Gasper

List of documents exhibited for the petitioner's side:

- Ex.P1: Death certificate of Late Henry Thomas Gaynor.
- Ex.P2: Notarized copy of Smt. Phyllis Marguerite Gaynor.
- Ex.P3: Certified copy of the Judgment and decree passed in MC No.420/1992, dtd.28.08.1993.
- Ex.P4: Letter dated 10.03.2021.
- Ex.P5: Office Memorandum dated 11.09.2013.
- Ex.P6: Original letter issued by the department to the petitioner to furnish the documents as per list for claiming family pension.
- Ex.P7: Notarized copy of Aadhaar card.
- Ex.P8: Notarized copy of Pass port.
- Ex.P9: Notarized copy of Ration card.
- Ex.P10: Notarized copy of voter ID card.

List of witness examined for the defendant's side:

- N I L -

List of document exhibited for the defendant's side:

- N I L -

(MALLIKARJUNA)

**LXXIII Addl. CC & SJ, M.H.Unit,
Bengaluru.**