



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

FA No. 2 of 2021

Date of Decision: 20.11.2024

Smti. Mecilda Lyngdoh
W/o (L) Francis Wahlang
R/o Nongkhlaw Syiemship,
P.O. Mairang, West Khasi Hills
District, Meghalaya

:::Appellant

-Vs-

Smti. Jacinta Jyrwa
W/o (L) Francis Wahlang
R/o Mawiong, Shillong
East Khasi Hills District, Meghalaya

:::Respondent

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. A.R. Passah, Adv.
Mr. S. Syiem, Adv.

For the Respondent(s) : Mr. K.S. Kharshiing, Adv.



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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER

1. This Appeal has been filed under Section 384 of the Indian Succession Act, 1925, for setting aside and quashing the order dated 06.08.2021, passed by the learned Judge, District Council Court, in Succession Case No. 174 of 2012, granting a Succession Certificate in favour of the respondent No. 1, with regard to the debts and securities left behind by the appellant late husband namely Francis Wahlang.

2. The appellant is stated to be the legally wedded wife of (L) Francis Wahlang, who were married on 28.11.1983, under the Christian Marriage Act, but however, there were no children born out of the wedlock. On the death of (L) Francis Wahlang, the appellant had approached the office of the Bharat Sanchar Nigam Limited (BSNL), where the deceased was working, to claim the debts and securities left behind by her late husband, and was instructed to obtain a Succession Certificate as there were other claimants. The appellant then came to learn that the respondent No. 1, had already obtained a Succession Certificate from the learned Court below



vide order dated 06.12.2012, with regard to the debts and securities left behind by her deceased husband.

3. The appellant then applied for revocation of the Succession Certificate issued to the respondent No. 1, whereafter the Court below by order dated 17.05.2013, was pleased to stay the operation of the Succession Certificate issued to the respondent No. 1. Thereafter, the respondent No. 2, who claimed to be the sister of the deceased also filed an application for revocation of the Succession Certificate, on the ground that the same had been fraudulently obtained. The matter then proceeded for trial and issues were framed, witnesses examined, and hearing was concluded. Thereafter by order dated 06.08.2021, the revocation petition filed by the appellant was rejected and the Succession Certificate granted in favour of the respondent No. 1 vide order dated 06.12.2012, upheld.

4. Being aggrieved thereby the appellant has preferred the instant Appeal on and amongst others the following grounds.

- a) That the learned Court below failed to appreciate the fact that the appellant was the legally wedded wife of the deceased (L) Francis Wahlang.
- b) That the learned Court below erred in law in holding that despite the appellant being the legally wedded wife of the deceased, she was not entitled to the debts and securities.



- c) That the learned Court below failed to appreciate the fact that she was still the legally wedded wife, even if the deceased may have cohabited with the respondent.
- d) That as the deceased and the respondent No. 1 were not legally married, it is not the respondent No. 1 who shall be entitled to the debts and securities, but only the children of the respondent No. 1 would be entitled to share the same.
- e) That the learned Court below failed to appreciate that since the appellant and the deceased are legally married, the debts and securities left behind by the deceased husband should be shared equally between the appellant and the children of the respondent No. 1.

5. When the matter was taken up for hearing, the respondent No. 2, through her counsel has submitted that she was not interested or inclined to contest the matter, and it was prayed that her name be struck off from the array of parties, which was allowed by this Court vide order dated 30.08.2022.

6. It has been submitted by Mr. A.R. Passah, learned counsel for the appellant that the appellant had established the fact before the Lower Court that she was the legally wedded wife, inasmuch as, the respondent herself



had admitted the same in her evidence. A Marriage Certificate he submits existed which had been tendered in her evidence and marked as Papermark 2, and the marriage was corroborated by the other witnesses and by the findings of the Court below, that the appellant is the legally wedded wife. It is further submitted that despite the Court below, returning of finding that the appellant is the legally wedded wife of the deceased, the dismissal of the revocation application on the ground that the appellant never took care or looked after her deceased husband is perverse, moreso, as there was no issue framed on this point and in absence of such issue, the parties had not led evidence in support of their case on this issue.

7. On another issue, it is submitted by the learned counsel that though the children from the second wife, even if there is no marriage contracted, would be entitled to debts and securities, the question of whether the respondent had children from the deceased is questionable, inasmuch as, all the Birth Certificates had been obtained after the demise of (L) Francis Wahlang. The learned counsel submits that even PW2, one Smti. Bity Jyrwa, had deposed before the Trial Court that the eldest daughter of the respondent is not the daughter of (L) Francis Wahlang, which therefore cast serious doubts on the parentage of the children, and this aspect was never dwelt upon by the Court below and no findings were returned in this regard.



8. It has also been contended that the claim of the respondent on the basis of cohabitation and customary practice that once a man and a woman cohabit together for long period, a presumption of marriage can be drawn will not be applicable in the instant case, as the appellant was the surviving spouse of the deceased and that even among the Khasis bigamy is a practice frowned upon. He therefore submits that the appellant is entitled to the family pension and the respondent has no right over the same. In support of his arguments, the learned counsel has relied upon the following cases:

- i) ***Rajkumari & Anr. vs. Krishna & Ors. reported in (2015) 14 SCC 511***
- ii) ***Smti. Mahalakshamma vs. The Secretary Department of Rural Development & Ors. (Karnataka High Court) 2023 Kar 447***
- iii) ***Judgment dated 07.05.2015, of the Gauhati High Court passed in Intest Case No. 8 of 2006.***

9. Mr. K. S. Kharshiing, learned counsel on behalf of the respondent has at the outset submitted that the purported marriage between the deceased and the appellant/objector Smti. Mecilda Lyngdoh, is not proved, inasmuch as, the original certificate of marriage was never produced in evidence. He further submits that the appellant had admitted that she had



no issue from the deceased (L) Francis Wahlang, and also that she was not living together with him nor did she take care of him during his illness till his demise, nor did she perform his last rites. In her cross-examination he submits, the appellant was not able to prove any of her assertions, even of her marriage and about the situation and condition of the deceased. He submits that the appellant did not know the date, time or place of death of the deceased and whether the deceased was cremated or buried. On the other hand he submits, the respondent was residing with her deceased husband since the year 1991, and that as per Khasi custom, a man and woman residing together with children born out of this cohabitation are considered a married couple, and the children legitimate.

10. The learned counsel submits that the respondent had proved by evidence both oral and documentary that since 1991, she had cohabited with the deceased as husband and wife, and that the four children for which Birth Certificates have been exhibited, were born out of this union. It is also submitted that the respondent had performed the last rites of her deceased husband and the cremation was supervised by her mother-in-law, and all the funeral expenses were borne by the respondent and the mother of the deceased. He therefore contends that, the appellant has miserably failed to prove her case and as such, is not entitled to any relief as claimed. In support of his case, the learned counsel has placed reliance on the



decision rendered in the case of ***Vidhyadhari & Ors. vs. Sukhrana Bai & Ors.*** reported in ***(2008) 2 SCC 238***.

11. Heard the learned counsel for the parties. A perusal of the impugned judgment under appeal shows that both the appellant and the respondent had tendered oral and documentary evidence along with other witnesses, and from a re-appreciation of the evidence, apart from the fact that the copy of the original Marriage Certificate was never produced, the other contentions that has been put forward by the respondent, as can be seen from the findings of the learned Court below stand unrebutted. These are the factum of cohabitation of the respondent and the deceased since the year 1991, the fact that the respondent and the deceased had two sons and two daughters, for which Birth Certificates have been produced and that the respondent performed the last rites along with the mother of the deceased.

12. The picture that emerges therefore, is that though the appellant is the legally wedded wife, their marriage being solemnized on 28.11.1983, they however, ceased to cohabit after a certain period of time, and it has been established by evidence that the deceased then cohabited with the respondent from the year 1991 onwards, till his demise on 03.01.2012, and out of this union, four children were born. The learned Court below after digesting the evidence, then held that simply by the solemnization of marriage, when the parties had separated and were not living together as



husband and wife, the same will not be a license for inheriting the debts and securities left behind by the deceased. Further on the finding that the respondent had taken care of the deceased during his illness, and also performed the last rites, the learned Court below allowed the Succession Certificate granted in favour of the respondent on 06.12.2012 to stand.

13. In this backdrop on the findings of the learned Court below, this Court is to examine whether on these sets of facts, the appellant could be considered ineligible to inherit the debts and securities left behind by the deceased. It is now settled law that a legally wedded wife will not automatically be entitled to a Succession Certificate to the exclusion of the second defacto wife and her children, who are legitimate for the purpose of a share in the debts and securities. However, the fact that a legally wedded wife would also be entitled, notwithstanding the fact that they may, or may not have been cohabiting as long as the same has not been annulled, cannot be ignored. This Court therefore, in view of the fact that both of the parties herein have a valid claim on the debts and securities of the deceased, and to balance the equities on the said rival claims, in the facts and circumstances as they prevail, hereby orders as follows:-

- 1) As the appellant is the legally wedded wife of the deceased, who will have the first claim on the family pension, it is ordered that the appellant shall be entitled to the family



pension of the deceased commencing from the month of January, 2025.

- 2) The respondent who also holds a valid claim through the children shall be entitled to the terminal benefits, as has been given in the schedule of debts and securities of the application for Succession Certificate, which includes DCRG, leave encashment, GPF, GSLI and shall also be allowed to draw the accumulated arrears of family pension from the date of the demise of the deceased till December, 2024.

14. The above directions have been given notwithstanding the fact that family pension and its entitlement thereto, is governed by applicable rules and does not form a part of terminal benefits of the deceased person, for which Succession can be applied for. However, the family pension being a part of the employment dues payable to the legitimate heirs, as earlier observed, this order has been passed to balance the equities.

15. The impugned order, in view of the discussions made herein above, is set aside.

16. The instant Appeal resting on different facts and circumstances, from the cases cited by the parties, the same are not elaborated.

17. The instant Appeal accordingly stands closed and disposed of.



18. Lower Court records to be transmitted back.

Judge

Meghalaya
20.11.2024
"D.Thabab-PS"

