

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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APPEAL SUIT No.467 of 2015

Between:

Shaik Jani Begum

...Appellant

and

Shaik Sirajunnisa Begum @ Surya Kumari
and others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: **17.08.2015**

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether his Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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APPEAL SUIT No.467 of 2015

JUDGMENT:

The unsuccessful plaintiff in O.S.No.145 of 2011 on the file of III Additional District Judge, Karimnagar, preferred this appeal against the judgment and decree, dated 23.03.2015.

2. The aforesaid suit was filed declaring that the plaintiff is legally wedded wife of Mahaboob Subhani (hereinafter referred to, as 'Subhani'); and to direct defendants 4 to 8 to pay the death benefits and other benefits of Subhani including family pension, arrears of salary, gratuity, earned leave salary, Provident Fund, Group Insurance, F.D.R. bearing No.839941161 for Rs.1,65,000/- and F.D.R. bearing No.796426736 for Rs.1,50,000/- at Indian Bank, Peddapalli Branch and F.D.R. bearing No.855874352 for Rs.1,60,000/- and F.D.R. bearing No. 741641384 for Rs.1,90,000/- at Indian Bank, Patnam Bazar Branch, Guntur; and to grant permanent injunction restraining defendants 1 to 3 from withdrawing the death benefits and other benefits of Subhani. The trial Court dismissed the suit assigning various reasons.

3. For convenience of reference, the ranks given to the parties in O.S.No.145 of 2011 on the file of III Additional District Judge, Karimnagar, will be adopted throughout the judgment.

4. Plaintiff filed the suit for the aforesaid relief alleging that she is legally wedded wife of Subhani and their marriage was performed on 24.11.2007 at Sangadigunta, Guntur District, as per Muslim customs. Since then, she is living with Subhani at Karimnagar. Prior to her marriage with Subhani, Subhani and the 1st defendant loved each other. The 1st defendant is a Hindu and she converted into Islam religion and married Subhani on 06.06.1982 as per Muslim Law at Mangalagiri, Guntur District. During their wedlock, 1st defendant blessed with two male children, who are defendants 2 and 3. The marriage of 1st defendant with Subhani is not a valid marriage.

5. The 1st defendant used to pick up petty quarrels with Subhani and often used to go to her parents house at Prathipadu Village. In spite of several requests made by Subhani, she did not turn up. In the year 2001, the 1st defendant intentionally and voluntarily left the company of Subhani and started living separately with her sons at Peddapalli of Karimnagar District. Mediation

was held in that regard, but she refused to join with Subhani. Subhani was suffering from heart problem. On 17.08.2007 Subhani sent a legal notice requesting the 1st defendant to come and join with him, but, she did not turn up. Having vexed with the attitude of the 1st defendant, Subhani gave divorce to her on 05.09.2007.

6. After divorce with the 1st defendant, Subhani married the plaintiff on 24.11.2007 as per Muslim Law. On 09.07.2010, Subhani fell down on a road due to heart attack, he admitted in the hospital for treatment, but the Doctors who examined him, declared as dead. The hospital authorities handed over the dead body of Subhani to the plaintiff, who in turn, intimated the same to the relatives of Subhani, Tahsildar of Dharmaram, Revenue authorities and defendants 1 to 3. But, defendants 1 to 3 did not come to the hospital to see the dead body of Subhani. The Tahsildar, Dharmaram, paid an amount of Rs.10,000/- to the plaintiff towards funeral expenses.

7. Defendants 1 to 3 bore grudge against the plaintiff, lodged a false criminal case in Crime No.13 of 2010 for the offences punishable under Sections 379 and 447 IPC. But, after investigation, police referred the matter as 'false'. With the intervention of defendants 1 to 3, the matter was compromised by entering into an agreement. After agreement, defendants 1 to 3 intentionally violated the conditions of agreement and played fraud and taken money from the Indian Bank by submitting Xerox copies of Fixed Deposit Bonds. While denying the status of the plaintiff as wife of Subhani, defendants 1 to 3 claimed the death benefits and other benefits of Subhani as legal heirs. Hence, the suit.

8. The 1st defendant resisted her claim by filing written statement denying the material allegations in the plaint including the relationship between the plaintiff and Subhani while admitting her marriage with Subhani. She contended that marriage of the plaintiff with Subhani was performed by Khaji and the said marriage is not valid. She further contended that the marriage between her and Subhani is a love marriage and it was performed in accordance with the Muslim law. She denied the allegation of picking up of quarrels, sending of legal notice, dated 17.08.2007 and giving of divorce by way Talaqnam, while contending that she is legally wedded wife of Subhani

and their marriage was subsisting during the lifetime of Subhani. Subhani died due to heart attack on 09.07.2010 but not on 08.07.2010. She further contended that as per Rule 25 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 (for short, 'the Rules') a Government employee has to obtain permission from the authorities concerned to undergo the second marriage during subsistence of first marriage. But, no such permission was obtained by Subhani from the authorities concerned to marry the plaintiff and the said marriage is not valid. She admitted about lodging of complaint and its closure by police after due investigation. She further contended that even in the Service Register of Subhani, her name was shown as nominee and thereby, she is entitled to receive the death benefits and other benefits payable on account of death of Subhani and hence, she prayed to dismiss the suit.

9. Defendants 2 and 3 filed Memo adopting the written statement of the 1st defendant.

10. The 5th defendant filed written statement contending that Subhani died on 09.07.2010 while in service and after his death, he came to know that Subhani married the plaintiff and the 1st defendant. He further contended that as per the Nikhanama, Subhani married Smt Sirajunnisa in the year 1982 and later married the plaintiff, as such the plaintiff is only a second wife and she is not entitled to claim any benefits on account of death of Subhani.

11. The 7th defendant filed written statement contending that while Subhani was working in Revenue Department, he obtained F.D.R. No.839941161 for Rs.1,65,000/- and F.D.R. No.796426737 for Rs.1,50,000/- in Department No.7 branch at Peddapalli. He further contended that on receipt of interim orders, payment under the said F.D.Rs. was stopped.

12. The 8th defendant filed written statement in the same lines of the 7th defendant and contending that Subhani obtained F.D.R. No.855874352 for Rs.1,70,346 and F.D.R. No.741641384 for Rs.2,46,081/- in Department No.8 branch at Patnam Bazar branch, Guntur District. He further contended that on receipt of interim orders, he stopped the payment under the said F.D.Rs.

13. Basing on the above pleadings, the trial Court framed the following

issues:

- 1) Whether the plaintiff is entitled to declare that she is the legally wedded wife of late Mahaboob Subhani and for consequential relief to pay death benefits and other benefits of Subhani to the plaintiff?
- 2) Whether the plaintiff is entitled for perpetual injunction as prayed for?
- 3) To what relief?

14. During trial, on behalf of the plaintiff, P.Ws.1 to 4 were examined and Exs.A.1 to A.38 were marked. On behalf of the defendants, D.W.1 was examined and Exs.B.1 to B.3 were marked. Later, an additional issue was framed, which reads as follows:

‘Whether D.1 is entitled for return of jewellery, cash, service book etc., of Subhani as prayed for?’

15. Upon hearing argument of both the counsel and after considering the oral and documentary evidence on record, the trial Court dismissed the suit, as the marriage between the plaintiff and the defendants is in controversy in view of Rule 25 of the Rules.

16. Aggrieved by the said judgment and decree, the unsuccessful plaintiff preferred the present appeal on various grounds mainly contending that failure to obtain permission as per Rule 25 of the Rules would not invalidate the marriage between the plaintiff and Subhani, but at best it may amount to misconduct under the Rules. Therefore, dismissal of suit on that ground is against the principles of law. It is further contended that the plaintiff produced satisfactory evidence to establish that she is legally wedded wife of Subhani and during the lifetime of Subhani, she proved that Talaq was given to the 1st defendant and the same was communicated to her and receipt of the same was also acknowledged by her. But, on wrong appreciation of facts, the trial Court dismissed the suit and hence, she prayed to set aside the decree and judgment and pass a decree in her favour as claimed.

17. During the course of argument, learned counsel for the appellant almost reiterated the contentions raised before the trial Court, the grounds urged in the grounds of appeal and requested to reappraise the entire evidence. It is specifically contended that failure to obtain permission as

required under Rule 25 of the Rules would not invalidate the marriage between the appellant and Subhani and in case, no permission was obtained as required under Rule 25 of the Rules, it may amount to misconduct. The appellant and Subhani belong to Muslim religion where plural marriages are permitted. Therefore, marriage of the appellant with Subhani was not in controversy as per the Muslim Law. Apart from that, there is clear evidence on record to establish that marriage between the 1st respondent and Subhani was dissolved by Talaq. But, the trial Court did not consider this aspect of the case on proper perspective and committed error in dismissing the suit. Finally, he prays to allow the appeal by setting aside the judgment and decree under challenge and pass a decree as claimed by the appellant.

18. Per contra, learned counsel for the respondents submitted that as per Rule 25 of the Rules, the appellant is entitled to claim the death benefits of Subhani and supported the judgment of the trial Court in all respects and prays for dismissal of the appeal by confirming the decree and judgment passed by the trial Court.

19. Considering rival contentions and perusing the oral and documentary evidence including the decree and judgment under challenge, the points that arise for consideration are:

- 1) Whether marriage of the plaintiff with Subhani was without obtaining prior permission as per Rule 25 of the Rules, if so, whether it invalidates the marriage between the plaintiff and Subhani?
- 2) Whether the plaintiff is entitled to declare that she is legally wedded wife of Subhani?
- 3) Whether the 1st respondent is a nominee to receive death benefits of Subhani, if so, she is entitled to enjoy the death benefits and other amount?
- 4) Whether the plaintiff is entitled to withdraw the death benefits and other amount lying in F.D.Rs.?

20. **Point No.1:**

Admittedly, Subhani is a Muslim by religion and the marriage between the 1st respondent and Subhani was also not in dispute. During their wedlock, they blessed with two sons. However, marriage of the appellant with Subhani was also not in dispute. Since the appellant and respondents 1 to 3 are governed by Muslim law, plural marriages are permissible under Muslim law. Definition of Marriage is defined under Section 250 of Mahomedan Law, which

reads as follows:

“Marriage (*nikah*) is defined to be a contract which has for its object the procreation and the legalizing of children.”

21. Section 252 of Mahomedan Law reads as follows:

Essentials of a marriage: It is essential to the validity of a marriage that there should be a proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence and hearing of two male or one male and two female witnesses, who must be sane and adult Mahomedans. The proposal and acceptance must both be expressed at one meeting; a proposal made at one meeting and an acceptance made at another meeting do not constitute a valid marriage. Neither writing nor any religious ceremony is essential.

From the above provision, it is clear that there should be a proposal made and accepted in the presence of two male or one male and two female witnesses.

22. Section 255 of Mahomedan Law permits a Mahomedan to have four wives at the same time, but not more. If any Mahomedan marries a 5th wife, when he has already four, the marriage is not void, but merely irregular.

From the above provision, it is clear that Mahomedan Law permits more than one marriage up to the limit of four marriages. Hence, the marriage between the plaintiff and Subhani is permitted as per Section 255 of Mahomedan Law.

23. The respondents disputed the marriage of the appellant with Subhani and the trial Court also disbelieved the same on the ground that the appellant did not disclose the name of Qazi, who performed the marriage and also failed to produce any proof except the certificate issued by the Wakf Board. Proof of marriage depends upon various circumstances and in **Syed Amaullah Hussain (Died) and others V. Rajamma (Died) and others**^[1], this Court held as follows:

“Marriages may be established by direct proof or by indirect proof, i.e., by presumption drawn from certain factors. It may be presumed from prolonged cohabitation combined with other circumstances or from acknowledgment of legitimacy in favour of a child or the fact of the acknowledgment by the man of the woman as his wife. It is true that the presumption does not apply if the conduct of the parties is inconsistent with the relationship of husband and wife.

But if there is no impediment for a lawful marriage, such presumption will be raised by the aforesaid circumstances. In *Abdool Razak v. Aga Mohomed* (18940 21 Ind App 56 (PC)) the Privy Council observed that if the conduct of the parties were shown to be compatible with the relation of husband and wife, every presumption ought to be made in favour of the marriage when there is lengthened cohabitation. In that case, however, it was found that the conduct was incompatible with that relation and, therefore, it was held that the presumption did not apply. In *Ghazanfar v. Kaniz Fatima*, (1910) 37 Ind App 105 (PC), as the woman was a prostitute before the marriage, the Court refused to draw the presumption. But normally, cohabitation for a long time and living together as husband and wife would raise a presumption of marriage. As far as legitimacy of the child is concerned, it may be presumed from circumstances from which the marriage itself between its parents may be presumed. It was held in *Zamin Ali v. Azizun-Nisa* MANU/UP/0297/1932 that the statement by a Subhani father that he was married to the mother is evidence of marriage from which the legitimacy of the child may be presumed. Apart from this, where paternity of a child cannot be proved by establishing a marriage between the parents, Mohemmodan Law recognises 'acknowledgment' 'as a method whereby such marriage and legitimate descent can be established as a matter of substantive law for purposes of inheritance.' This doctrine does not apply to a case where illegitimacy of the child is proved and established either because the lawful union between the parents of the child is impossible or the marriage itself being disproved. The doctrine applies only to a case where the fact of marriage is not proved, as distinguished from disproved. In other words it applies to cases of uncertainty. The acknowledgment may be express or implied. It may be presumed from the fact that the person was habitually and openly treating another as his legitimate child. In Mulla's principles of Mohamedan Law (16th Edition) in Section 344, the conditions of valid acknowledgment are set out. The acknowledgment must be made in such a way that the acknowledger meant to accept the other not only as his child but as his legitimate child. The ages of the parties must be such as to admit of the acknowledger being the father of the person acknowledged. The person acknowledged must not be the offspring of Zina, that is, adultery, incest or fornication. The person acknowledged must not be known to be the child of another man. The acknowledgment must not have been repudiated by the person acknowledged. If these conditions are satisfied, the acknowledgment raises a presumption of marriage also. In other words, the marriage also would be held to be proved and the legitimacy established."

In view of the principle laid down in the above decision, marriage can be proved by direct proof or indirect proof and attending circumstances of the case. By applying the principle laid down in the above decision, it can be presumed that the appellant is legally wedded wife of Subhani. Ex.A.33 is the original marriage certificate issued by the Government Khaji, Guntur, dated

16.07.2014 and if that is taken into consideration, certainly the marriage between the appellant and Subhani is to be accepted. But, for the reasons best known to her, she did not disclose the name of Khaji, who performed the marriage. Therefore, finding of the trial Court cannot be sustained. However, voluminous documentary evidence produced before the trial Court establishing that Subhani treated the appellant as wife. Taking into consideration the various attending circumstances including Ex.A.33-marriage certificate issued by the Government Khaji, Guntur, it can safely be concluded that the appellant is legally wedded wife of Subhani. On wrong appreciation of law, the trial Court rejected the claim of the appellant and declined to declare that she is legally wedded wife of Subhani.

24. The only ground, on which the trial Court declined to declare the appellant as legally wedded wife of Subhani, is that while Subhani was working as Government servant, he did not obtain permission from the authorities concerned under Rule 25 of the Rules, which reads as follows:

“Bigamous marriages: (1) No Government employee who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him:

[Provided that where the personal law provides for second or subsequent marriage, the Government employee shall while seeking permission to contract another marriage, produce documentary evidence in support of “Divorce or Talaq” in respect of previous marriage and the manner in which the same was secured or pronounced and intimated to the first or former wife].

[(2) No female Government servant, whether un-married or widowed or divorced, as the case may be, shall marry any person who has a wife living without first obtaining the permission of the Government, though the parties are governed by the personal law which otherwise permits contracting more than one marriage while the prior marriage is subsisting.]”

25. As per the said Rule, if a Government employee marry another person during subsistence of earlier marriage, shall seek permission from the authorities concerned. But, among Hindus marrying another woman during subsistence of first marriage amounts to Bigamy and it is an offence punishable under Section 494 of the Indian Penal Code, whereas in Muslims plural marriages are permissible as per Section 255 of Mahomedan Law.

Even then permission is required to be obtained, otherwise it will amount to misconduct as per Rule 25 of the Rules. But, such failure to obtain permission as required under Rule 25 of the Rules would not invalidate the marriage between the appellant and Subhani. The only reason for obtaining permission under Rule 25 of the Rules is to prevent bigamous marriages as a condition of public service has relation with the integrity of a Government servant. It need not necessarily be direct and proximate. Having two or more wives at a time may result into large family. When a Government servant is torn between his loyalty to his service and an imperative need to maintain a large family, he may compromise with his integrity and resort to questionable means to meet the needs of maintaining his growing family. Such a situation will lead to impairment of his loyalty and efficiency. The need to find out alternative sources of income, otherwise lawful, is also likely to derogate from his single minded devotion to duty. Therefore, it is difficult to say that a rule relating to prevention of bigamous marriage can never be "condition of service".

26. The Rule is enacted to prevent bigamy marriages, only to prevent the Government servants to find out illegal means to maintain large family etc., not otherwise. Therefore, failure to obtain permission under Rule 25 of the Rules would not invalidate the marriage, which performed strictly complying Section 252 of Mahomedan Law. Hence, rejection of claim of the appellant on the ground that Subhani did not obtain prior permission as per Rule 25 of the Rules is not a valid reason and it will not stand on legal scrutiny. Therefore, the finding of the trial Court is hereby set side declaring that the appellant is legally wedded wife of Subhani during subsistence of the first marriage since it is permissible under Section 255 of Mahomedan Law.

27. One of the contentions of the appellant is that Subhani sent a divorce to the 1st respondent in writing by way of legal notice. But, it is not a valid Talaq as per Mahomedan Law for the reason that a divorce must be pronounced orally in the presence of witnesses and a Talaq communicated in writing is not valid unless husband is in capable of pronouncing it orally. Moreover, the appellant/plaintiff did not lay the claim on the basis of divorce. Hence, it is difficult to hold that the 1st respondent is divorced wife of Subhani. Therefore, in view of my foregoing discussion, I hold that the appellant is legally wedded wife of Subhani and she is also entitled to claim the death benefits and other

benefits of Subhani on par with the 1st respondent.

28. **Point No.2:**

The main contention of the 1st respondent is that as per the Service Register, the 1st respondent was appointed as nominee and therefore, she alone is entitled to withdraw the death benefits and other benefits payable on account of death of Subhani. Even according to the material available on record, the 1st respondent alone is nominee, but, she is not entitled to appropriate the same for herself or for her family. Similar question came up before the Honourable Apex Court in a judgment reported in **Smt.Sarwati Devi and another V. Smt. Usha Devi**^[2], wherein the Honourable Apex Court held that:

“The summary of the relevant provisions of Section 39 establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy holder. If that is so, on the death of the policy holder, the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a ‘statutory testament’. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. The language of Section 39 is not capable of altering the course of succession under law.

As seen from the principle laid down by the Apex Court which is binding precedent, the nominee is entitled to receive the amount and the legal heirs are also entitled to claim share according to the law of succession which the parties governed. It will not disinherit the legal heirs to claim any share in the amount received by nominee and it would not confer exclusive right to the nominee. Her role is only to receive the amount as an agent of all the legal heirs of Subhani. Therefore, the legal heirs of Subhani are entitled to claim share as per law of Succession.

29. Similarly, in another judgment reported in **K.Suramma V. K.Ramayamma and others**^[3], this court held at para 10 as follows:

“Coming to the nomination made by Subhani of the 1st respondent as the person entitled to receive amounts under A.P.G.L.I

policy, nomination by itself does not create a right in favour of the 1st respondent to have the benefit of the entire amount received by her under that policy. It is well settled that the nominee receives the amount from the insurer for and on behalf of all the heirs of the insured, and the amount received by the nominee is liable to be distributed among all the heirs of Subhani insured as per their share entitlement. Since amount due under the A.P.G.L.I. being contributed by Subhani, was paid to the 1st respondent as per the nomination, it is open to the appellant to recover her share of the amount therefrom as per law, if so advised.”

The principle laid down in the above decision is almost identical to the decision of the Honourable Apex Court reported in **Vidyadhari and others Vs. Sukhrana Bai and others** ^[4], wherein the Honourable Apex Court while deciding the appeal against grant of succession certificate held as follows:

“The claimant, nominee of Subhani, who married with him during subsistence of earlier marriage, could not claim status of legally wedded wife. The claimant continued to stay with Subhani as his wife for long time and was a person of confidence for Subhani who had nominated her for his Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues. She was not only a nominee but also was the mother of four children of Subhani who were the legal heirs of Subhani and whose names were also found in the declaration form of Subhani during his lifetime. The claimant nominee made claim for succession certificate in regard to death benefits arising out of employment of Subhani. Thus she can always file an application for succession certificate under S.372 of Indian Succession Act as there is nothing in that section to prevent such a nominee from claiming the certificate on the basis of nomination. In the circumstances she was always preferable even to the legally wedded wife who had never stayed with Subhani as his wife and who had gone to the extent of claiming the succession certificate to the exclusion of legal heirs of Subhani. In the grant of succession certificate the Court has to use its discretion where the rival claims, as in this case, are made for the succession certificate for the properties of Subhani. She was the legally wedded wife merely because of her legal status would not be entitled to a succession certificate in comparison to claimant nominee who all through had stayed as the wife of Subhani, had born his four children and had claimed a succession certificate on behalf children also. Therefore, grant of claim of legally wedded wife to the exclusion not only of the nominee of Subhani but also to the exclusion of his legitimate legal heirs would be illegal. However, legally wedded wife is also being one of the legal heirs and besides the four children

she would have the equal share in Subhani's estate which would be 1/5th. To balance of equities, therefore, Court granted succession certificate to nominee of Subhani but with a rider that she would protect the 1/5th share of legally wedded wife in Subhani's properties and would hand over the same to her."

30. In another judgment reported in **State of Chhattisgarh and others Vs.**

V.Dhirjo Kumar Sengar^[5], while deciding grant of succession certificate held as follows:

"A succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable to Subhani to his heirs and legal representatives. He does not derive any right thereunder. The succession certificate merely enabled him to collect the dues of Subhani. No status was conferred on him thereby. It did not prove any relationship between Subhani and the applicant. Even otherwise, the respondent and his father were entitled to the said dues being his heirs and legal representatives. The very fact that the respondent had filed an application for grant of succession certificate along with his father, showing themselves to be the heirs and legal representatives of Subhani, is itself sufficient proof to show that he did not claim any benefit in regard to the debts of Subhani as his adopted son or otherwise."

31. Similarly, another judgment reported in **Shipra Sengupta Vs. Mridul**

Sengupta and others^[6], wherein the Honourable Apex Court held at para 10 as follows:

"During the pendency of the said civil revision, Niharbala Sengupta died and her other son Mridul Sengupta was substituted in her place on the basis of an alleged will executed by her prior to her death in favour of Mridul Sengupta. The will expressly dealt with the amount which she was entitled to receive as a consequence of the grant of a succession certificate. Pushpal Sengupta did not challenge the will by which he was affected. Therefore, the position that emerged was that the Court must presume for the purpose of this revision that will is validly executed in favour of Mridul Sengupta."

In view of law laid down in the above decisions, nominee i.e., the 1st respondent alone is entitled to receive the death benefits of Subhani in the event of his death, but not otherwise. Such nomination will not confer any legal right on the 1st respondent to appropriate the entire amount for herself or to her

family. Therefore, the 1st respondent is entitled to withdraw the amount, however, the appellant being the second wife, respondents 2 and 3, being the children of Subhani, are entitled to claim share as per the Succession governing the Muslim.

32. According to learned counsel for the respondents, the appellant is entitled to 1/8th share in the death benefits and other F.D.Rs. amount being the second wife of Subhani under Mahomedan Law. On the other hand, learned counsel for the appellant also admitted about the entitlement of 1/8th share by the appellant. Therefore, the appellant is entitled to claim 1/8th share in the amount payable on account of death of Subhani and F.D.Rs. amount lying with respondents 7 and 8. Hence, I hold that the 1st respondent is entitled to withdraw the amount, but the amount withdrawn by her shall be distributed according to the Rules governing the Succession and according to Mahomedan Law, the appellant is entitled to 1/8th share only in the amount withdrawn by her. Accordingly, point No.2 is decided.

33. **Point Nos.3 and 4:**

In view of my finding on point No.2, though the appellant is the legally wedded wife, she is not entitled to withdraw the amount, in view of nomination of the 1st respondent to receive the death benefits of Subhani. But, the appellant is entitled to 1/8th share in the death benefits payable on account of death of Subhani and also the amount payable under F.D.Rs. lying with the respondents 7 and 8. Accordingly, the points are decided.

34. In view of my foregoing discussion, the judgment and decree, dated 23.03.2015 in O.S.No.145 of 2011 passed by the III Additional District Judge, Karimnagar, are erroneous and not supported by any legal reasoning and it is totally in ignorance of Muslim law and the Rules governing Succession under Mahomedan Law they are liable to be set aside.

35. Accordingly, the Appeal is allowed and consequently, the suit O.S.No.145 of 2011 is decreed in part declaring that the appellant/plaintiff is legally wedded wife of Subhani. The 1st respondent, being a nominee, is entitled to receive the death benefits and F.D.Rs. amount lying with respondents 7 and 8 and distribute the same among the legal heirs including

respondents 2 and 3 and the appellant. The appellant is entitled to 1/8th share in the death benefits and F.D.Rs. amount. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

AUGUST 17, 2015
YVL

THE HON’BLE SRI JUSTICE M.SATYANARAYANA MURTHY

APPEAL SUIT No.467 of 2015

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Dt: 17.08.2015

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- [\[1\]](#) AIR 1977 AP 152
[\[2\]](#) AIR 1984 SC 346
[\[3\]](#) 2002 (2) ALT 65 (DB)
[\[4\]](#) AIR 2008 SC 1420
[\[5\]](#) AIR 2009 SC 2568
[\[6\]](#) (2009) 10 SCC 680