

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Civil Miscellaneous Appeal No.904 of 2011

JUDGMENT: *(per Hon'ble Sri Justice V. Ramasubramanian)*

The present appeal is filed by the wife, challenging a decree of divorce granted by the Senior Civil Judge, Kavali, in a petition for dissolution of the marriage filed by the respondent-husband.

2. Heard Sri Praveen Kumar Challa, learned counsel for the appellant.

3. It appears that the respondent died on 27.05.2013 during the pendency of the above appeal. Therefore, it may not be technically feasible for this court to adjudicate the matter on merits, in the absence of the respondent. But adjudication has become necessary in this case, in view of the fact that the respondent was employed in South Central Railways and therefore, if the appellant succeeds in the above appeal, she may be entitled to family pension.

4. Under normal circumstances, it is not possible to implead the other legal heirs of the respondent, as we would do in the normal civil cases, since the case on hand is a matrimonial dispute, for dissolution of the marriage, that took place between the respondent and the appellant. At the same time, any decision in the above appeal in favour of the appellant, would have a direct impact upon the appellant's entitlement to a share in the properties (other than the family pension) left behind by the respondent-husband. Therefore, to the extent of safeguarding their shares in the properties left behind by the respondent, his other legal heirs may acquire a limited right to contest the above appeal.

5. But the above problem was resolved by the appellant by filing an affidavit to the effect that her interest in pursuing the above appeal, is limited only to a claim for payment of family pension. She has made a categorical assertion that she will not made any claim upon the other properties left behind by the respondent.

6. Paragraphs 2 and 3 of the affidavit filed by the appellant, is extracted as follows:

“2. I submit that, I am the 2nd wife of the respondent herein and after the death of 1st wife the respondent married me in the year 1983 as per Hindu rites and Customs. It is further submitted that, I have no issues with the respondent and the 1st wife of my husband is having 2 children namely Korsapati Basireddy and Subhashini and both were already married long back.

3. It is submitted that, I confined myself to the extent of family pension only and further I confirmed that I won't make any claim in property of respondent herein in future. I submit that, as per the directions of this Hon'ble court I am giving this undertaking that not to make any future claims regards to the respondent property except family pension. Hence, this affidavit.”

7. In the light of the above, we are of the considered view that the appeal can be disposed of with a limited direction holding that the decree of divorce granted by the trial court has not attained finality and that on the date of death of the respondent, the status of the appellant, was the subject matter of a dispute. In such circumstances, the appellant should be treated, by the employer of the respondent, as legally wedded wife of the respondent, for the purpose of family pension, since the decree of divorce did not attain finality on the date of death of the respondent.

8. With the above clarification, the civil miscellaneous appeal is disposed of. There is no order as to costs. Miscellaneous petitions pending if any in this appeal, shall stand closed.

V.RAMASUBRAMANIAN, J

A. SHANKAR NARAYANA, J

Date: 05.07.2016

BSS

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

30

C.M.A. No.904 of 2011
(per Hon'ble Sri Justice V.Ramasubramanian)

-
-
-
-
-
-
-
-
-
-
-
-

Date: 05.07.2016

BSS