

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CIVIL MISCELLANEOUS APPEAL NO.764 OF 2008
AND
SECOND APPEAL NO.857 OF 2008

C O M M O N J U D G M E N T
(Per Sri Justice Sanjay Kumar)

G.Pushpalatha filed O.S.No.40 of 2002 before the learned Senior Civil Judge, Nizamabad, seeking a declaration that she was the legally wedded wife of late G.Sadhu Jag Raj (*hereinafter*, 'the deceased') and that she was entitled to his service benefits. G.Mamatha was arrayed as defendant 1 in the suit and the plaint averments were to the effect that the deceased had developed contact with her and begot two daughters and a son. Defendants 2 to 4 were officials of the Telecommunications Department, the employer of the deceased. By judgment dated 02.07.2007, the trial Court decreed the suit. In appeal, in A.S.No.49 of 2007 filed by G.Mamatha before the learned VIII Additional District Judge, Nizamabad, the judgment of the trial Court stood confirmed. Aggrieved thereby, G.Mamatha filed S.A.No.857 of 2008 before this Court. By order dated 05.08.2008, this Court granted interim stay of execution of the judgment and decree in O.S.No.40 of 2002.

While so, G.Mamatha, along with her two daughters and son, filed O.P.No.155 of 2002 before the learned VIII Additional District Judge, Nizamabad, under Section 372 of the Indian Succession Act, 1925 (*hereinafter*, 'the Act of 1925') for grant of a succession certificate declaring them as the successors of the deceased so as to enable them to receive his monetary and death benefits. The officers of the Telecommunications Department (Bharat Sanchar Nigam Limited) were arrayed as respondents 1

and 2 in this O.P., while G.Pushpalatha was shown as respondent 3. By order dated 03.06.2008, the Court below dismissed the O.P. on the ground that G.Pushpalatha had secured a declaration that she was the legally wedded wife of the deceased in O.S.No.40 of 2002 on the file of the learned Senior Civil Judge, Nizamabad, and despite the fact that the said judgment had not attained finality, the Court below opined that G.Mamatha could not claim to be the legally wedded wife of the deceased as long as the decree in O.S.No.40 of 2002 was not set aside. Though the deceased had furnished a nomination in his service register (Ex.X1) in favour of G.Mamatha, the Court below was of the opinion that the same was insufficient to infer that she was his legally wedded wife. It was on the strength of this reasoning that the Court below dismissed the O.P. Aggrieved thereby, G.Mamatha, along with her two daughters and son, filed C.M.A.No.764 of 2008 before this Court under Section 384 of the Act of 1925.

By order dated 12.09.2008, this Court clubbed the CMA and the Second Appeal for joint hearing.

By order dated 30.11.2016 passed in CMA MP No.1074 of 2015 in CMA No.764 of 2008, this Court added Rahul, the son of G.Pushpalatha and the deceased, as respondent 4 in the CMA.

Heard Sri K.Rama Subba Rao, learned counsel for G.Mamatha and her progeny, and Sri V.Ravi Kiran Rao, learned senior counsel representing Sri Y.Neelakanta Reddy, learned counsel for G.Pushpalatha and her son.

Sri K.Rama Subba Rao, learned counsel, would contend that dismissal of O.P.No.155 of 2002 in its entirety is erroneous in law as not only G.Mamatha but also the children that she begot from

the deceased sought grant of a succession certificate in relation to his estate and that the Court below completely overlooked the legal position as to their entitlement. Sri V.Ravi Kiran Rao, learned senior counsel, fairly conceded this point.

It is not in dispute that the deceased begot two daughters and a son from G.Mamatha. G.Pushpalatha herself admitted this fact in her plaint in O.S.No.40 of 2002. It is also an admitted fact that G.Pushpalatha begot a son from the deceased. There is a dispute as to which of the two ladies married the deceased earlier. However, once it is admitted that both of them begot children from him, Section 16 of the Hindu Marriage Act, 1955 would be attracted and irrespective of the status of their individual relationship with the deceased, their children are deemed to be legitimate. Therefore, for all practical purposes, the children of the deceased, be it through G.Pushpalatha or G.Mamatha, stand on par with each other so far as succession to his estate is concerned. All of them would therefore be entitled to the monetary and death benefits due from the employer of the deceased, the Telecommunications Department.

Sri K.Rama Subba Rao, learned counsel, would state that once the interest of her children is protected, his client is not desirous of pursuing the second appeal in so far as her marital status is concerned.

In that view of the matter, S.A.No.857 of 2008 is dismissed as not pressed in so far as this aspect is concerned. The finding as to her exclusive entitlement to the service benefits of late G.Sadhu Jag Raj is however set aside. Interim order dated 05.08.2008 shall

stand vacated. Pending miscellaneous petitions, if any in this second appeal, shall also stand dismissed.

In the light of the finding of this Court in relation to the entitlement of all the children of the deceased, the order in O.P.No.155 of 2002 is also set aside. As the son of G.Pushpalatha has now been made a party to this appeal, he shall also be added as respondent 4 in the O.P.

The Civil Miscellaneous Appeal is therefore allowed holding that appellants 2, 3 and 4 and respondent 4 are entitled to grant of a Succession Certificate under Section 377 of the Act of 1925 in relation to the service and death benefits due to late G.Sadhu Jag Raj from the Telecommunications Department. The learned VIII Additional District Judge, Nizamabad, shall accordingly issue the succession certificate to them in the prescribed form.

To sum up, the Second Appeal is dismissed in part and the Civil Miscellaneous Appeal is allowed in part. In the circumstances, there shall be no order as to costs.

SANJAY KUMAR, J.

M.S.K.JAISWAL, J

23rd DECEMBER, 2016.

PGS