

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 290 OF 2017

Smt. Meera Laxman Dolas and othersAppellants

V/s.

Smt. Shashikala Laxman Dolas and othersRespondents

WITH
SECOND APPEAL NO. 289 OF 2017

Smt. Meera Laxman Dolas and othersAppellants

V/s.

Smt. Shashikala Laxman Dolas and othersRespondents

Mr. Sagar Kasar i/b Mr. Amol Wagh for appellants.
Mr. Sachin Gite for respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : DECEMBER 6, 2017.

P.C.

Since the proceedings in both the second appeals are arising out of the claim put forth for issuance of succession certificate pursuant to part 10 of the Indian Succession Act, 1925, particularly sections 370, 371 & 372 in relation to one Laxman who died on 19/02/2002 leaving behind two wives Shashikala

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& Meera and two sons born out of the wedlock with Shashikala, two daughters born out of the wedlock with Meera are disposed of by this common judgment. The facts necessary for deciding present second appeals are as under:

2 Laxman was married to Shashikala in the year 1981 and was blessed with two sons, Rajendra and Narendra. Without divorcing Shashikala, he married with Meeraa on 15/10/1998 from which marriage, daughter Tejaswini and Shweta were born.

3 Laxman was employed with department of Railway and expired on 19/02/2002. Since the amount of Rs. 2,98,101/- remains to be apportioned among the legal heirs which were the dues payable to successor of Laxman by the employer, both Shashikala and Meera initiated proceedings pursuant to section 372 of the Indian Succession Act, 1925 seeking a succession certificate. So far as the proceedings initiated by Shashikala is concerned, same was numbered as Civil Misc. Application no. 13 of 2004 before the Court of Civil Judge Senior Division, Nashik. In the said proceeding, apart from employer and her two sons included Meera and her two daughters as respondents. In the said application it was claimed that her marriage with deceased Laxman was in accordance with the rituals and customs of the Hindu religion, performed on 11/05/1981 and two sons namely Rajendra and Narendra were born. It is claimed that deceased Laxman was employed in Central Railway, Karshan Machine Workshop, Nashik Road. The amount of

Rs. 2,98,101/- towards gratuity, group insurance and arrears of salary remained to be paid. A flat is also claimed to have been left by deceased Laxman at Shivai Apartment, Swami Samarth Nagar, Nashik Road.

4 It is also brought on record that out of marriage with Meera on 15/10/1998, two daughters namely Tejaswini and Shweta were born on 17/11/1999 and 25/12/2000 respectively. It is claimed that the proceedings 390 of 1997 was for dissolution of marriage with Shashikala. It is further urged that 40% share was given to Meera while submitting nomination and as such a claim to that effect is made in M.A. no. 95 of 2004.

5 So far as M. A. No. 95 of 2004 is concerned, same was initiated by Meera in the Court of Civil Judge Senior Division, Nashik along with minor daughters as applicants claiming similar set of facts. The learned Court in both these applications framed issues at Exhibit 42 and Exhibit 29 respectively and the learned Trial Court directed issuance of succession certificate in the name of Shashikala to the extent of 75% of the share out of the amount of 2,98,101/- and 25% of the amount was ordered to be kept in the name of two minor daughters Tejaswini and Shweta in nationalized bank to be paid to them after attaining majority. Similar order was passed by the learned Civil Judge Senior Division on the proceedings initiated by Meera.

6 Meera, feeling aggrieved preferred two appeals, one refusing succession certificate in her favour and another against an order of granting

succession certificate in favour of Shashikala and her two sons. Regular Civil Appeal No. 233 of 2013 and Regular Civil Appeal no. 234 of 2013 are finally disposed of by common judgment by the learned District Judge vide order dated 09/10/2015 as such these second appeals.

7 Heard respective counsel at length.

8 The learned counsel for the appellant while trying to make out a case for showing indulgence would urge that the Court below have committed an error apparent on the face of record in ignoring the provisions of section 15 of the Hindu Succession Act. A submission is also made that the material brought on record in regard to proving the marriage between deceased Laxman and applicant Meera is not properly considered. An additional submission is sought to be made with the judgment of both the Courts below is contrary to the provisions of Indian Evidence Act particularly section 112. The learned counsel then would urge that though the daughters are given limited share, however, appellant Meera is not given any share in the amount to which Laxman was entitled as she was duly nominated to get the amount to the extent of Rs. 40% by deceased Laxman. The submission is canvassed that both appeals needs to be allowed.

9 *Per contra*, the learned counsel for the respondent would urge that the appeal against concurrent findings is liable to be dismissed as there is no substantial question of law involved. A submission is made that marriage of

deceased Laxman with Meera was not proved as neither any oral nor documentary evidence to that effect brought on record. It is further urged that the marriage of deceased Laxman with Shashikala was never dissolved or decree for divorce was passed. As such the marriage if any with Meera is void/voidable marriage. A submission as such is made that during subsistence of first marriage with Shashikala with deceased Laxman, since Meera claimed to have married, she is not entitled for any relief much less a succession certificate as prayed.

10 Considered rival submissions. The initial marriage of deceased Laxman with Shashikala in 1981 is not an issue in dispute so did two sons Rajendra and Narendra born out of said wedlock.

11 It is claimed by the appellant that she got married with deceased Laxman on 15/10/1998, that being so, it is required to find out whether the marriage of appellant with that of deceased Laxman was after dissolving the marriage with respondent -1 Shashikala. In the oral evidence brought on record, the witness of the appellanat had admitted that the marriage between the deceased Laxman and Shashikala was never dissolved. Apart from above, the appellant has failed to demonstrate that marriage between the appellant and Laxman took place after dissolution of marriage of respondent with that of Laxman through an independent witness. As a consequence, the claim of the appellant that by virtue of provisions of Hindu Succession Act particularly section 15, she is entitled for succession certificate, cannot be allowed

particularly when the law does not recognize any such right in favour of the appellant.

12 The submission of learned counsel for the appellant that two daughters appellant nos. 2 & 3 were born during the marriage and as such the same is conclusive proof of legitimacy of birth of these two appellants is required to be examined in the light of language of section 112 of the Evidence Act.

Plain reading of section 112 contemplates that birth of a person during continuance of a valid marriage between mother viz. appellant no. 1 and man viz. late Laxman is to be appreciated. As observed herein before there is hardly any material on record to infer the marriage of appellant no. 1 with that of deceased Laxman was a valid marriage as neither any marriage registration certificate or any decree for dissolution or divorce of marriage between Laxman & Meenaxi is produced on record. In the wake of same, the claim that there is legitimacy about the birth of appellant nos. 2 & 3 born out of marriage of appellant no. 1 with Laxman is also liable to be rejected.

However, it is required to be noted that it is brought on record through evidence, that appellant no. 1 was nominated for entitlement to 40% of the service benefits for which succession certificate is claimed. The Trial Court awarded 25% benefit in favour of appellant nos. 2 & 3. Neither any appeal nor any cross objection is preferred by respondent no. 1 or respondent nos. 2 & 3 questioning the said finding. As such it is a case of acquiescence on the part of respondent nos. 1, 2 & 3 *qua* entitlement of benefits payable to legal heirs.

13 Considering the same, the first Appellate Court enhanced the same in favour of appellant nos. 2 & 3 to the extent of 20% each out of the total entitlement. Even against the said verdict also no cross appeal or second appeal is preferred by respondent no. 1 till date and as such it has to be presumed that respondent no. 1 has accepted the verdict of the Appellate Court.

14 In view thereof, in my opinion, no substantial question of law is involved in the appeal. Both appeals lack merit, dismissed.

[NITIN W. SAMBRE, J.]