

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.373 OF 2014

Sushila w/o Vistari Madavi

... Appellant

-vs-

Laxmibai w/o Vistari Madavi

... Respondent.

Shri H. Bobade, Advocate for appellant.

Shri A. Kinkhede, Advocate h/f Shri R. R. Vyas, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : September 13, 2017

P.C.

The appellant is the original non-applicant in the proceedings initiated by the respondent under Section 372 of the Indian Succession Act, 1925 (for short, the Act of 1925) seeking issuance of succession certificate.

2. It is the case of the respondent that she was married with one Vistari Madavi on 25/04/1984. It is her further case that her husband was employed with the Tribal Development Corporation and he expired on 04/01/2009. With a view to receive his service benefits, an application under Section 372 of the said Act was filed by the respondent.

3. The appellant, pursuant to the public notice raised an objection to the entitlement of the respondent on the ground that she had performed customary marriage with said Vistari Madavi. According to her the parties belonged to Gond community and such marriage was duly recognised by the community. She was therefore also entitled for the service benefits.

4. The trial Court allowed the application and granted succession certificate to the respondent by holding that she was the sole heir of the deceased. The appellate Court has confirmed this adjudication.

5. Shri H. Bobade, learned counsel for the appellant submitted that the parties belonged to Gond community and as per provisions of Section 2(2) of the Hindu Marriage Act, 1955 (for short, the Act of 1955), the provisions of the Act of 1955 were not applicable to Gonds. It was submitted that the customary marriage performed by the appellant was valid as per custom and therefore the appellant was also entitled for equal share in the service benefits. He referred to the documents placed on record in that regard.

6. Shri A. Kinkhede, learned counsel for the respondent supported the impugned order. According to him both the Courts

rightly held in favour of the respondent. The proceedings under Section 372 of the Act of 1925 are summary in nature and substantive rights cannot be decided in these proceedings. He submitted that the respondent was validly married with the deceased and they were following Hindu customs. In terms of provisions of the Act of 1955, the second marriage with the appellant was void.

7. I have heard learned counsel for the parties and I have considered the respective submissions. The proceedings initiated are under Section 372 of the said Act of 1925 for grant of succession certificate. As per provisions of Section 373(1) of the said Act, the proceedings are to be decided in a summary manner. As per Section 373(3) of the Act if the entitlement to the succession certificate requires determination of questions of law or fact which appears to be intricate and difficult for determination in summary proceedings, the Judge may grant certificate to the applicant if he appears to be a person having prima facie the best title thereto. As per Section 373(4) of the Act of 1925, on contest for grant of succession certificate, the Court may consider the extent of interest and fitness in other respects of the applicants.

8. According to the respondent she being the legally wedded wife

of the deceased, she was entitled for his service benefits. The appellant by claiming to belong to Gond-Scheduled Tribe sought to rely upon the custom prevailing in that tribe to justify her customary marriage. Considering the summary nature of the proceedings and the evidence on record, it has been rightly found by both the Courts that the respondent being the legally wedded wife was entitled to claim the service benefits. The finding that the respondent was the legally wedded wife is arrived at on the basis of material placed on record. In absence of any evidence as to customary marriage of the appellant being recognized, her claim cannot be allowed. Hence the impugned adjudication does not call for any interference.

9. It is open for the appellant to have her claim of being the legally wedded wife of the deceased determined in appropriate proceedings if so advised. It is clarified that the present adjudication is summary in nature and the substantive proceedings if filed shall be determined on their own merits. The appeal is dismissed. No costs.

JUDGE