

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE P. KESHA RAO

F.C.A.No. 13 of 2012

JUDGMENT: (Per Hon'ble Sri Justice P. Keshava Rao)

Heard the counsel for the appellant as well as the respondents.

2. The present appeal is filed by the appellant who is the petitioner in the Court below aggrieved by the orders passed in O.P.No.658 of 2006 dated 8.09.2011 on the file of the Court of Family Judge, Visakhapatnam in dismissing the petition filed under Section 7(1)(e) of the Family Court Act to declare the appellant herein as the legally wedded wife of one late D.Govinda Rao and for consequential relief that she is entitled to receive pension, family pension and medical benefits and all other emoluments payable by second respondent and first respondent is not entitled to any amounts.

3. Originally the appellant herein filed the above said petition to declare that she is the legally wedded wife of late Govinda Rao whose marriage was performed on 10.05.1985 according to the Hindu Customs and Rights at Visakhapatnam. They had no children. Late D. Govinda Rao was employed as Junior Engineer in the second respondent-Railway Department. Late D. Govinda Rao was a chronic diabetic patient, his leg was amputated below the knee and retired on medical grounds, on 11.11.2000. He executed all necessary documents for family pension nominating the appellant to receive the family pension and he expired on

5.10.2004. When the appellant approached the second respondent, she was surprised to receive a letter from the second respondent dated 26.10.2005 calling upon her to produce the succession certificate. She also said that the marriage between late D. Govinda Rao and the first respondent already ended in divorce and they were living separately since 1975-76. Her marriage with late D. Govinda Rao who belongs to Yadava caste was according to the caste customs. In those circumstances, she filed the petition claiming that she is entitled for the family pension and other retiral benefits from the second respondent-Railway Department and the first respondent is not entitled for any claim.

4. Per contra, the first respondent herein filed a counter denying the material averments made in the petition and contended *inter alia* that she is the legally wedded wife of late D. Govinda Rao. Their marriage was solemnized on 29.10.1976 as per the caste customs at Smhachalam, Visakhapatnam. Out of wedlock, they were blessed with two sons namely Ravi Kumar and Shanker Rao respectively. In the month of August, 1977 when the first respondent was pregnant with the second child, she was beaten up by late D. Govinda Rao and her mother and driven out of the house. Thereafter, she was living with her parents. She filed M.C.No.143 of 1978 for maintenance on the file of the Judicial Magistrate of First Class, Durg District, Bhilai. Whereunder, by orders dated 2.12.1981 maintenance was awarded at Rs.100/- for the first respondent and Rs.75/- per month each to her sons. Later, her husband filed petition in O.P.No.411 of 1995 for dissolution of marriage which was dismissed by orders dt. 3.10.1996 on merits. Aggrieved by the same,

late D. Govinda Rao preferred an appeal in C.M.A.No.1552 of 1996 in this Court and the same was also dismissed on 07.06.2000. The same has become final. She also said that her deceased husband took voluntary retirement on 11.11.2000. Thereafter, he was paid the retiral benefits by second respondent and subsequently, on 5.10.2004 he died leaving behind the first respondent, and their two sons to succeed his estate. The first respondent applied for family pension on 13.10.2004 and got issued a legal notice on 14.03.2005 to respondents 2 and 3 claiming the pension and other benefits. Being the legally wedded wife, it is her specific case that she is entitled for family pension, medical bills and other emoluments from the respondents 2 and 3 and the marriage between the appellant and late D.Govinda Rao is null and void as her marriage with late D.Govinda Rao was subsisting.

5. The second respondent also filed a counter which was adopted by the third respondent, denying material averments made in the petition against them and contended that late D.Govinda Rao took voluntary retirement on 11.11.2000 on medical grounds and he did not submit any nomination in favour of his family members during his life time or at the time of his retirement. He declared in Form No.6 that his wife and children are living separately and their names are not included and hence, pension papers were processed as per rules in the year 2001. However, on 12.08.2004 late D.Govinda Rao submitted a representation to the second respondent-Railway Department requesting to sanction family pension to the appellant on the ground that he married her on 15.03.2001. Later, he never persuaded the matter and

subsequently he died. After his death, the first respondent submitted representation along with the documents to grant family pension to her claiming as widow along with the legal heir certificate and also the copies of the orders passed by the Court below. The appellant gave representation, dated 18.08.2005 seeking family pension being the legally wedded wife of late D.Govinda Rao along with the notarized affidavit said to have been issued by late D.Govinda Rao and copy of the marriage certificate. As they have received two rival claims, the second respondent-Railway Department directed them to produce the succession certificate issued by competent Court of law and till such orders are produced, the pension cannot be processed in favour of any claimant. It is also said in the counter that when the marriage of the first respondent was subsisting with the deceased D.Govinda Rao, the marriage between the appellant and late Govinda Rao though registered under Hindu Marriage Act, is not valid marriage as well as under the Railway Rules since that marriage is a void marriage, the appellant is not entitled to claim any relief.

6. The appellant to substantiate her contention, examined herself as PW-1 and examined two other witnesses as PWs.2 and 3 and marked Exs.A-1 to A-12. On behalf of the respondents, the first respondent herself was examined as RW-1 and Exs.B-1 to B-5 are marked. Though a counter is filed on behalf of the respondents 2 and 3, they have not adduced any evidence on their behalf and no documents are marked on their side. After enquiry, the Court below was pleased to dismiss O.P.No.658 of 2006 by orders dated 08.09.2011 holding that the deceased late D.Govinda Rao is not

competent to nominate the appellant to claim family pension from the second respondent-Railway Department as the marriage between him and the first respondent is subsisting till the death of late D. Govinda Rao.

7. Aggrieved by the above said orders, the present appeal is filed.

8. The learned counsel appearing for the appellant would contend that the appellant's marriage with the respondent was performed on 10.05.1985 as per the Hindu Customs and Rights at Quarter No. RE.3/4 Mairipalem, Visakhapatnam. After the wedlock, they had no children. Since the date of marriage, the appellant was taking care of late D.Govinda Rao and she was serving him althrough till his death. The learned counsel emphasized the aspect that during the trouble period of late D.Govinda Rao when his leg was amputated and when he lost his vision, the appellant alone had served him by taking proper care. Alternatively, he also submitted that since the appellant as well as the first respondent are claiming the family pension and other benefits, this Court, on humanitarian grounds as well as on equities can consider granting of pension to both of them even though the marriage between the appellant and late D.Govinda Rao is not a valid marriage. Further, since she had a long living relationship with him, she is entitled for pension. To substantiate his contentions, he relied on IN RE MATRIMONIAL MATTERS¹ Basing on the said decision, he tried to persuade this court that in the present facts and circumstances of

¹ 2011 (5) ALD 799(DB)

the case, the case of the appellant can be considered based on the guidelines framed therein. This Court can also try for a settlement where the appellant as well as the first respondent may be considered for sanction of pension. He also relied on VIDHYADHARI AND OTHERS v. SUKHRANA BAI AND OTHERS² and the relevant observation in the above said judgment is as under:

“This Court in a reported decision in Rameshwari Devi’s case (supra) has held that even if a Government Servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an application for Succession Certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application under Section 372 of the Indian Succession Act as there is nothing in that Section to prevent such a nominee from claiming the certificate on the basis of nomination. The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his life-time. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his

² (2008) 2 SCC 238

wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the Succession Certificate to the exclusion of legal heirs of Sheetaldeen. 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 the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a Succession Certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had born his four children and had claimed a Succession Certificate on behalf children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.”

Basing on the said judgment of the Apex Court, he contended that in spite of the first respondent being the legitimate wife, yet this Court can grant family pension to both of them basing on the equities as the appellant served and taken care of the deceased late D. Govinda Rao from the date of the marriage i.e. 10.05.1985.

9. The learned counsel for the first respondent contended that the alleged marriage between the appellant and late D.Govinda Rao is not a valid one. The living relationship in treating both the appellant and late D.Govinda Rao as wife and husband is possible only when there is no existing valid marriage between the first respondent and late D.Govinda Rao. He also brought to the notice

of the Court that the marriage of the appellant with late D.Govinda Rao was not performed on 10.05.1985. But, according to marriage certificate Ex.A-1, their marriage is performed only on 15.03.2001 even according to the appellant herself. Therefore, it cannot be presumed that there is a long cohabitation between the appellant and late D.Govinda Rao whereby she can claim the family pension. Further, the maintenance case in M.C.No.143 of 1978 filed by the first respondent against late D.Govinda Rao was ordered on 02.12.1981 awarding maintenance of Rs.100/- and Rs.75/- each per month to herself and her two minor sons. The petition in O.P.No.411 of 1995 filed by late D.Govinda Rao for dissolution of marriage with the first respondent was dismissed by the Family Court vide orders dated 3.10.1996 on merits. The appeal filed against the said orders, vide C.M.A.No.1552 of 1996 in this Court was also dismissed on 7.06.2000 and same has become final. Therefore, the marriage between first respondent and late D.Govinda Rao, was subsisting till the date of his death i.e. 05.10.2004. Therefore, the ³appellant is not entitled for any claim much less the claim as sought for in the present appeal and he prayed to dismiss the same since it is bereft of merits.

10. To support his contention, learned counsel for the respondent relied on the judgment of this Court reported in **GETTAM ISRAIL v. M. SIROMANI AND OTHERS**⁴. In the judgment of this Court, was pleased

⁴ AIR 2002 A.P. 279

to consider a similar issue cropped up in the facts and circumstances of that case and observed as under:

“Lot of oral and documentary evidence was adduced by the parties with regard to the marriage between the 1st defendant and Koteswaramma, and also the paternity of Jhansi, the daughter of the plaintiff and wife of DW.6 and the plaintiff living with M.Radhakrishna Murthy. All that evidence is of little relevance for determining the status of the plaintiff vis-vis the 1st defendant. The fact that the plaintiff is shown as the wife of M.Radhakrishna Murthy in the Service Register maintained by 2nd defendant and in the wedding card printed at the time of the marriage of Jhansi, the daughter of plaintiff with DW.6, is also not relevant for deciding the question whether the plaintiff is the wife of 1st defendant or not. If the plaintiff and 1st defendant, during the subsistence of their marriage, think it fit to live with some other man and woman respectively, without obtaining a divorce from the Court as contemplated by law, their marriage would not get dissolved automatically. Even assuming that Jhansi is not the daughter of the 1st defendant, then also the marriage between the plaintiff and 1st defendant would not automatically get dissolved. Plaintiff or 1st defendant have to approach a competent Court, and obtain a decree for dissolution of their marriage, and till such time as they get their marriage dissolved, it subsists, irrespective of the fact whether they are faithful to each other or not, or are living a life of their own, with some other man or woman respectively, and so it has to be held that plaintiff continues to be the wife of 1st defendant. The point is answered accordingly.”

Since plaintiff continues to be the wife of 1st defendant and since as per the Regulations of the 2nd defendant, family members can only be nominated to receive the death or retiral benefits, 1st defendant nominating Koteswaramma as his wife is not proper. The 1st defendant, after taking steps to get the marriage between him and the plaintiff dissolved, only can make such a nomination, but till such time as the marriage between him and the plaintiff is subsisting, he cannot nominate a woman who is not his wife or a family member to receive the death or retiral benefits.”

11. He also relied on a decision in SMT. DALJIT KAUR ALIAS TONY v. SMT. AMARJIT KAUR AND OTHERS⁵ and the relevant observation is as under:

“During the subsistence of a marriage, a second marriage, whatever be the circumstances, is barred under the provisions of the Hindu Marriage Act. Appellant No.1 has failed to adduce any evidence, much less prima facie, to suggest that Mohinder Singh obtained a decree of divorce, prior to his marriage to her. The documents Ex.D-1 to D-3 and the birth of Sukhbir Kaur would not by themselves negate Amarjit Kaur’s marriage with Mohinder Singh. A decree of divorce can only be granted by a court of competent jurisdiction, exercising powers under the Hindu Marriage Act. The mere fact that a woman is abandoned by her husband or that a woman after being abandoned by her husband live with another man, would not raise an inference that their marriage stands dissolved.”

12. Perusal of the contents of the petition as well as counters filed by the parties and the material placed on record, the undisputed facts are that the marriage of the first respondent was performed with late D. Govinda Rao on 29.10.1976 as per the Hindu Caste Customs and Rights at Simhachalam, Visakhapatnam. Out of the wedlock, they were blessed with two sons. Since the first respondent was driven out of the matrimonial house, when she was pregnant with the second child, she filed maintenance case as stated above, resulting award of maintenance in her favour and her two minor sons. That apart, the proceedings initiated by late D. Govinda Rao for dissolution of marriage between him and the first respondent vide O.P.No.411 of 1995, was dismissed and the appeal filed against the said orders was also dismissed by this Court on 07.06.2000. These facts clinchingly prove that the marriage between first respondent and late D.Govinda Rao was subsisting till

⁵ AIR 2009 PUNJAB AND HARYANA 118

he died on 05.10.2004. Basing on the same, the contentions advanced by the appellant that her marriage with late D.Govinda Rao was performed on 10.05.1985 when the marriage between late D.Govinda Rao and first respondent is subsisting, is a void marriage and it has no sanctity in the eye of law. However, as pointed out by the counsel for the first respondent that even according to Ex.A-1 the marriage certificate produced by the appellant herself, the marriage between the appellant and late D.Govinda Rao was performed only on 15.03.2001. Ex.A-1 being a public document, it belies the contention raised by the appellant that her marriage with late D.Govinda Rao was performed on 10.05.1985. Even in the counter filed by the second respondent-Railway Department, it is brought on record that late D. Govinda Rao retired voluntarily on 11.11.2000 on medical grounds and he did not submit any nomination in favour of his family members during his life time or at the time of his retirement. In fact, in Form No.6 he declared that his wife and children are living separately since 1977, hence their names are not included in the pension papers which were processed as per rules in the year 2001. On 12.08.2004, he submitted representation to the second respondent-Railway Department requesting to sanction family pension to the appellant claiming that he married her on 15.03.2001 which matter was never persuaded till he died. Immediately thereafter, the first respondent has submitted a representation to the second respondent-Railway Department along with relevant documents claiming the family pension. Thereafter, the appellant submitted her representation on 18.08.2005 seeking sanction of family pension claiming that she is

the legally wedded wife of late D. Govinda Rao along with notarized affidavit alleged to have been given by late D. Govinda Rao. Basing on the averments in the counter filed by the Railway Department, it can be safely inferred that even according to late D. Govinda Rao, he married the appellant only on 15.03.2001 as mentioned in Ex.A-1. This fact totally negated the arguments advanced by the counsel for the appellant that the appellant married late D. Govinda Rao on 10.05.1985 and since then she was taking care and served him when he was suffering with acute diabetic resulting in amputation of leg and when he was blind.

13. Even the contention raised on behalf of the appellant that her marriage with late D. Govinda Rao was a valid one, since the marriage was performed as per customs of Yadava community is not correct for the reason that the customs cannot have precedence over the established principles of law. In the absence of law, long practice of following family traditions and other ceremonies prevalent in their community since time immemorial will be treated as custom and have the force of law and is relevant. Any activity taken up as per the said usage have got the validity and sanctity of law in the form of custom. But, in the case on hand, when the marriage of the first respondent was subsisting with late D. Govinda Rao, the appellant's marriage with late D. Govinda Rao is void and she is not entitled to claim any relief much less the relief as sought in the petition on the ground that she is the wife of late D. Govind Rao. That apart, in the cross-examination also PW-1 has categorically admitted that her marriage with late D. Govinda Rao was performed on 15.03.2001 contrary to the fact mentioned in the

petition that the marriage took place on 10.05.1985. In Ex.A-3 the copy of the letter sent to the second respondent-Railway Department by the appellant, she mentioned the date of marriage as 01.04.2004 leading to give three different dates in three different proceedings by the appellant herself. This fact itself proves that the appellant has not come to the court with clean hands and with true version. Therefore, the case set up by the appellant cannot be believed. Ex.A-1 which is a public document has got creditworthiness and is reliable. It gives the date of marriage as 15.03.2001. If the same is taken into consideration, the contention of the appellant that she was serving late D. Govinda Rao from 10.05.1985 cannot be accepted and the same is hereby rejected. Therefore, the judgments relied on by the appellant, are not applicable to the facts of the present case.

14. It is relevant that during the subsistence of marriage, a second marriage in whatever be the circumstances whether customary marriage or a legally contracted marriage, is barred under the provisions of the Hindu Marriage Act. The appellant failed to produce any evidence much less prima facie to suggest that the marriage between first respondent and late D. Govinda Rao has been dissolved. On the other hand, the evidence let in by the first respondent would clinchingly prove that the proceedings initiated by late D. Govinda Rao to dissolve his marriage with the first respondent, ended in dismissal by this Court vide C.M.A.No.1552 of 1996 and their marriage is subsisting. Therefore, the mere fact that a woman abandoned by her husband because of the fact that she was necked out of the house by him or with another woman living

with him would not lead to an inference that the marriage between the first respondent and late D. Govinda Rao was dissolved and the marriage between the appellant and late D. Govinda Rao, gets validated. In these circumstances, we do not find any merits in the appeal and the same is liable to be dismissed.

15. Accordingly, the family court appeal is hereby dismissed.

There shall be no order as to costs.

Interim order, if any, shall stand vacated.

Miscellaneous petitions, if any, shall also stand closed.

Date: 29.12.2017
ccm



SURESH KUMAR KAIT, J

P. KESHAVA RAO, J

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE P. KESHA RAO



F.C.A.No. 13 of 2012
(Judgment of the Bench delivered by the
Hon'ble Sri Justice P. Keshava Rao)

Date:29.12.2017

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