

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: January 12, 2017

% *Judgment Delivered on: January 17, 2017*

+ **RSA 403/2015**

CHAMPA DEVI Appellant

Through: Mr.Ravinder Yadav, Advocate

versus

LT GOVERNOR OF DELHI & ORS Respondents

Through: Mr.Ishan Kashyap, proxy counsel for
Mr.Saurabh Chadda, Advocate with
Mr.P.R.Yadav, Legal Assistant, GTB
Hospital for R-1 to R-3

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. This Regular Second Appeal under Section 100 of CPC is filed against the concurrent judgment of the Courts below i.e. of the trial Court dated 17th September, 2013 and of the First Appellate Court dated 25th July, 2015 whereby the prayers of the appellant/plaintiff for a decree of declaration about her status as lawfully wedded wife of late Shri Hari Ram, Ex-Safai Karamchari in G.T.B. Hospital and issuance of direction to the defendant No.2 i.e. Medical Superintendent, G.T.B. Hospital, Shahdara, Delhi-110032 to release the consequential benefit to her and to allow her to join duties, have been declined.

2. The appellant/plaintiff filed the Civil Suit No.364/2013 pleading as under:-

(i) She is widow of late Shri Hari Ram, ex-sweeper in GTB Hospital and on the death of her husband she applied for appointment on compassionate ground. Vide communication dated 10th August, 2001 she was offered

appointment as Safai Karamchari on temporary basis in GTB Hospital.

(ii) On 1st September, 2001 a show cause notice was served on her calling upon her to explain legality and validity of her marriage with late Sh.Hari Ram. She replied the show cause notice submitting that on the date of death of her husband, Hari Ram on 17th February, 1997 she was the only wife left behind by late Sh.Hari Ram. Prior to that his first wife Phoolmati Devi had expired on 11th May, 1994. She has obtained a succession certificate in respect of the benefit payable on the death of late Sh.Hari Ram.

(iii) The appellant/plaintiff married Hari Ram on 2nd June, 1990. After the death of first wife of Hari Ram on 11th May, 1994, they again got married on 2nd June, 1994 at Delhi. Again before the Gram Panchayat of Village Mahabalpur, District Farukhabad, U.P. marriage ceremony was performed on 10th December, 1994.

(iv) On the date of death of Hari Ram on 15th February, 1997 she being the only wife, was entitled to all the benefits payable to his legally wedded wife.

3. The suit was contested by the defendant Nos.1 to 3 i.e. Lieutenant Governor of Delhi, Medical Superintendent, GTB Hospital and Government of NCT of Delhi by filing a joint written statement taking the following pleas:-

(i) The suit has been filed suppressing material facts from the Court and is also barred under Section 52 of the National Capital Territory Act.

(ii) The plaintiff was gainfully employed at the time of applying for appointment on compassionate ground.

(iii) She has misrepresented about being legally wedded wife. As on 2nd June, 1990, when she allegedly married Hari Ram, his first wife Phoolmati Devi was alive.

(iv) As per the office record Hari Ram had only one wife, namely, Phoolmati Devi who expired on 11th May, 1994.

(v) In the writ petition No.8360/2002 filed by her she mentioned about her marriage being solemnized with Hari Ram on 02nd June, 1990 i.e. prior to death of Smt.Phoomati Devi on 11th May, 1994.

(vi) No intimation was ever given by the Hari Ram about his second marriage with the appellant/plaintiff Champa Devi.

(vii) The appellant/plaintiff is changing her track after the decision in the writ petition as the certificate issued by Gram Panchayat is mentioning the date of marriage as 02nd June, 1990 only. There is no mention of remarriage on 02nd June, 1994 at Delhi or on 10th December, 1994 at the village of Late Sh.Hari Ram.

4. The learned Trial Court, after considering the evidence adduced by the plaintiff and the order Ex.DW-1/6 (certified copy) passed by the High Court in Civil Writ petition No.8360/2002 holding that issuance of succession certificate in her favour without impleading class-I legal heirs of late Sh.Hari Ram was of hardly any value, held that she was not entitled to the decree as prayed for.

5. Feeling aggrieved by the order of the learned trial Court the appellant filed RCA No.01/14 which has also been dismissed by the First Appellate Court for the reasons recorded in para No.7 of the impugned decision extracted hereunder:-

“The contention of the counsel for the appellant is that Ld. Trial court has not appreciated the oral and documentary evidence on record but this contention appears to be attractive but is fallacious in as much as no documentary evidence or oral evidence has been lade by the appellant/plaintiff even to infer that appellant/plaintiff was a legally wedded wife of Late Sh. Hari Ram. It is admitted fact that appellant/plaintiff

as per her own case got married with deceased Hari Ram during the life time of first wife of Hari Ram therefore, that marriage was perse illegal. The case of the appellant/plaintiff is that she again got married with Late Hari Ram on 02.06.1994 and thereafter, in December, 1994 in the presence of Gram Panchayat. The appellant/plaintiff has not placed on record any documentary evidence to infer that she got married with the Late Hari Ram or cohabited with Late Hari Ram as no rationcard/other ID proof has been placed on record nor any neighbour, where the appellant alongwith deceased Hari Ram was residing has corroborated the testimony of PW1 that she alongwith Hari Ram is living as husband and wife. The case law relied upon by counsel for the appellant are distinguishable in as much as in all of the case law, there is some evidence that the parties therein were residing as husband and wife but in the present case no such evidence has come on record. It may be noted here that in case titled as R P Panditrao Mali (supra) there was positive evidence on record that parties were living as husband and wife and defendant (therein) admitted said fact and thereafter rebuttable presumptions of marriage as claimed by the parties was accepted by the Hon'ble Supreme Court but in the present case there is no iota of evidence to infer that the appellant had ever been married with Late Sh. Hari Ram or she cohabited with Late Sh. Hari Ram. Similarly, the ratio of Tulsa (supra) is that marriage can be presumed from common course of natural events and conduct of parties as borne out from the facts of particular case. But in the present case not even a single fact has been proved so as to infer that the appellant was residing with Late Hari Ram as husband and wife. Therefore, conduct of the appellant did not provide any help in drawing any presumption that she got married with the deceased Hari Ram. In S.P.S. Balasubramanyam (supra), there was positive evidence on record that the parties therein were residing as husband and wife for number of years under the same roof and cohabited as husband and wife and PW6/DW4 (therein) did not deny the said fact but in the present case there is no such evidence on record. In Shobha Gupta (supra) case the husband was proceeded as exparte and the affidavit filed by wife remained un rebutted. Therefore, marriage was

presumed from the averments of the affidavit of wife. Therefore, these case laws are not applicable to the facts of the present case. Ld. Trial court has rightly held that PW2 is unworthy of credit as despite being friend of Late Hari Ram he was oblivious to the marital status of his friend Late Hari Ram. Otherwise also, it was not the case of the appellant before Hon'ble High Court of Delhi in writ petition filed by her that she got married with Late Hari Ram after the death of his first wife. This improvement in the pleadings of the appellants also lead to infer that the alleged fact stated by the appellant in her pleadings that she got married twice with the deceased Hari Ram after the death of his first wife is an exaggeration by appellant so as to make her marriage with deceased Hari Ram as legal one."

6. Mr.Ravinder Yadav, learned counsel for the appellant has submitted that though the appellant/plaintiff solemnized the marriage with late Sh.Hari Ram on 2nd June, 1990 she came to know about he being already married only at a later stage. He further submitted that on the death of Phoolmati Devi, first wife of Hari Ram, the parties again got married on 2nd June, 1994 and to prove this fact PW-2 Sh.Ram Naresh has been examined who was a friend of Hari Ram and also the witness of the marriage solemnized. Not only that at the village of late Sh.Hari Ram also the marriage was performed on 10th December, 1994. Thus, on the date of death of late Sh.Hari Ram there was a valid subsisting marriage between the parties which entitled the appellant/plaintiff to seek all the benefits as widow of late Sh.Hari Ram.

7. Learned counsel for the appellant has also relied on the decision reported as S.P.S. Balasubramanyam Vs. Suruttayan @ Andali Padayachi & Others, AIR 1992 SC 756 and Ranganath Parmeshwar Panditrao Mali & Anr. Vs. Eknath Gajanan Kulkarni & Anr., AIR 1996 SC 1290 and submitted that presumption of marriage has to be drawn in favour of the appellant, in the given facts and circumstances.

8. This litigation initiated by the appellant is mainly directed to get an appointment on compassionate ground as well the financial benefits payable to LRs of late Shri Hari Ram on his death.

9. Perusal of the LCR disclose the following facts being proved by the respondents/defendants by leading documentary evidence:-

(i) Ex.DW1/1 is the attestation form submitted by deceased Hari Ram on 22nd October, 1998 wherein in column No.5 while giving details of his family members he has mentioned Smt.Phoolmati Devi to be his wife.

(ii) Ex.DW1/2 is a letter addressed by Smt.Mohini, daughter of late Sh.Hari Ram through her advocate to the Medical Superintendent, G.T.B. Hospital claiming herself to be the only surviving legal heir of late Sh.Hari Ram as well requesting for the details required to be furnished by her for obtaining succession certificate in her favour.

(iii) Ex.DW1/3 is a show cause notice issued by the Medical Superintendent, G.T.B. Hospital to the appellant herein informing her that as per the office record Smt.Phoolmati Devi was the only legal wedded wife of Hari Ram. Being Government servant he could not have married during the lifetime of his first wife and there was no proof of late Sh.Hari Ram having sought divorce from his wife Phoolmati Devi. Further late Sh.Hari Ram never informed about entering into second marriage with the appellant Champa Devi on 2nd June, 1990 as claimed by her which otherwise was not a valid marriage being solemnized during the lifetime of his first wife. Thus she was directed to show cause in respect of the above facts along with the relevant documents, if any, failing which her appointment would be cancelled.

(iv) Ex.DW1/4 is the reply dated 5th September, 2001 given by the present appellant to the show cause notice wherein she has explained that the

attestation form was furnished before marrying her and that she has obtained a succession certificate which should be considered sufficient to establish her status as legally wedded wife of Late Sh.Hari Ram and entitled to receive all the benefits on the death of Sh.Hari Ram.

(v) Ex.DW1/5 is the copy of the writ petition No.8360/2002 filed by the appellant, Champa Devi impleading Lt.Governor of Delhi, Medical Superintendent of G.T.B. Hospital and Government of NCT of Delhi as the respondent No.1, 2 & 3 respectively. Prayer made in the writ petition was to issue appropriate writ or direction thereby quashing the show cause notice dated 1st September, 2001 as well directing the respondents to appoint her to the post of Group-D (non-peon). In the said writ petition, Ground B has been taken as under:

“B. Because the petitioner is a legally wedded wife by said late Shri Hari Ram and her marriage was solemnized way back in the year 1990. The late husband of the petitioner had also sworn and declared on affidavit that the petitioner is his lawful wife. The marriage deed dated 2nd June, 1990 was also duly entered into between the petitioner and her late husband and as such the respondent have not right to call any question and/or challenge the lawful marriage of the petitioner and her late husband in any manner whatsoever.”

10. It may be noted here that while filing Civil Writ petition No.8360/2002, the appellant/plaintiff did not take any plea that after the death of Smt.Phoolmati on 11th May, 1994, her marriage with Sh.Hari Ram was solemnized as per Hindu rites on 02nd June, 1994 at Delhi and on 10th December, 1994 at the village of Sh.Hari Ram.

11. While dismissing the Writ Petition No.8360/2002 vide order dated 04.03.2005 Ex.DW1/6, the High Court made observation on her claim based on the succession certificate obtained by her as well her right to seek

appointment on compassionate ground. The relevant paragraphs of the order read as under:-

'On a reading of the counter-affidavit it is manifestly clear that the petitioner was well aware of the fact that one Smt.Mohini has claimed that she is the daughter of late Shri Hari Ram from his first marriage. The respondents had, therefore, required the furnishing of a Succession Certificate. Admittedly, Smt.Mohini has not been impleaded as one of the legal heirs of late Shri Hari Ram. The Administrative Sub-Judge could not be expected to know of this state of affairs on his own. The Succession Certificate, therefore, becomes of little value since the petitioner ought to have impleaded Smt.Mohini who is also a Class I heir along with the petitioner and her children. Since she has not been arrayed as an heir, the Court had no need to return a finding on this vital issue.

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I have already held in the cases of Vishal Redhu v. Union of India and another in W.P.(C) No.1278/2004 decided on 27.1.2005, Kamla Devi vs. Union of India & Ors. in W.P.(C) No.1749/2005 decided on 2.2.2005, Tanveer Hasan v. Chief Secretary Govt. of NCT of Delhi in W.P.(C) No.2159/2002 decided on 3.2.2005, Amit Kumar v. N.D.M.C. in W.P.(C) No.13687/2004 decided on 7.2.2005 and Nandan Singh & Anr. v. I.I.P.A. in W.P.(C) No.5260/2001 decided on 18.2.2005 that compassionate appointment runs contrary to the principles of equality enshrined in the Constitution. I have considered this question in detail in the case of Municipal Corporation of Delhi vs. Shir Vir Mohd. 94 (2001) DLT 746, which had been dismissed by me.

I find the respondent cannot be faulted for revoking the compassionate appointment.'

12. The appellant Champa Devi filed another Writ Petition bearing No.8027/2006 which was allowed to be withdrawn with liberty to approach

the civil Court for seeking declaration as to her status as a legally wedded wife of late Sh.Hari Ram.

13. Since inception the contention of the appellant had been that her marriage with Sh.Hari Ram on 2nd June, 1990 was performed by way of execution of a marriage deed and an affidavit. It is not disputed by her that late Sh.Hari Ram had a living spouse Smt.Phoolmati Devi on 02nd June, 1990 and she expired on 11th May, 1994.

14. Under Hindu Law, marriage is a sacrament and not a contract which can be entered into by execution of a marriage deed. On 02nd June, 1990 Sh.Hari Ram was having a living spouse.

15. For the first time while filing Civil Suit No.364/2013, just to improve her case, the appellant claimed to have got married to Sh.Hari Ram as per Hindu rites and ceremonies on 2nd June, 1994 at Delhi and again on 10th December, 1994 at the village of Sh.Hari Ram after the death of his first wife Smt.Phoowati Devi. When she applied for succession certificate or sought appointment on compassionate ground, she did not plead that marriage ceremonies were performed twice in the year 1994 i.e. on 2nd June, 1994 at Delhi and on 10th December, 1994 at the village of Sh.Hari Ram. Even in the year 2002 while filing Civil Writ petition No.8360/2002 no such claim was made.

16. Both the courts below have examined the legal position in correct perspective and have rightly considered the evidence adduced before learned trial court while returning the finding that the appellant/plaintiff, Champa Devi was not legally wedded wife of late Sh.Hari Ram thus not entitled to any declaration as prayed.

17. It is settled legal position that in second appeal, High Court cannot set aside concurrent finding of fact given by the Courts below. The second

appeal can be entertained only if a substantial question of law is raised. The rationale behind is that appreciation and reappraisal of an evidence must come to an end with the first appeal.

18. It has been consistent view that High Court has no jurisdiction to entertain second appeal merely on the plea that another view is possible on appreciation of relevant evidence available on record. However, if the findings of fact are vitiated by total non-consideration of the evidence available on record or by illegal approach in matter, the second appeal can be entertained.

19. The Courts below have rightly held that the appellant/plaintiff cannot claim the status of a legally wedded wife of Sh.Hari Ram on the strength of alleged marriage dated 02nd June, 1990. The solemnisation of marriage thereafter on 02nd June, 1994 at Delhi and on 10th December, 1994 at the village of Sh.Hari Ram was also not proved by leading satisfactory evidence to this effect. Even the certificate issued by the Gram Panchayat and submitted to M.S., Guru Teg Bahadur Hospital contained the date of marriage to be 02nd June, 1990 with no reference to remarriage on 02nd June, 1994 or 10th December, 1994.

20. The concurrent findings of facts by both the Courts below can neither be termed as illegal nor perverse.

21. Substantial question of law is answered against the appellant.

22. RSA No.403/2015 is dismissed.

23. No cost.

24. LCR be sent back alongwith copy of this order.

PRATIBHA RANI
(JUDGE)

JANUARY 17, 2017/ 'pg'