

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.880 OF 2012

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment dated 15.06.2012 in A.S. No.36 of 2011 on the file of the I Additional District Judge, Anantapur (for short, 'first appellate court'), wherein the first appellate court set aside the dismissal order dated 28.02.2011 passed in O.P. No.115 of 2005 on the file of the Principal Senior Civil Judge, Anantapur (for short, 'the trial court'), and granted succession certificate in favour of the respondents 1 to 3 herein to receive all the amounts payable to the deceased-Ramesh Babu and further granted permission to the appellant herein, having served the deceased-Ramesh Babu on humanitarian condition, to withdraw a lump sum amount of Rs.4,00,000/- from and out of the arrears of pension amount as per the calculation memo filed by the 4th respondent herein.

2. The appellant herein is the 1st respondent, respondent Nos.1 to 3 herein are the petitioners and respondent Nos.4 and 5 herein are respondent Nos.2 and 3 before the trial Court in the original petition.

3. Heard Sri E.Peddanna, learned counsel for the appellant, and Sri N.Aswartha Narayana, learned counsel for respondent Nos.1 to 3 herein, apart from perusing the material on record.

4. While admitting the Second Appeal on 01.08.2014, this Court framed the following substantial questions of law for consideration:

- (1) Whether the lower appellate Court erred in law in not considering the question whether the deceased M.Ramesh Babu could have executed a Will in respect of the service benefits payable to him on his retirement or death?

(2) Whether the lower appellate Court can set aside the decree and judgment in O.P. No.115 of 2005 dt.28-02-2011 passed by the Principal Senior Civil Judge, Anantapur, when the appellant/1st respondent was nominated as a nominee by Ramesh Babu in the service records?

(3) Whether the lower appellate Court can set aside the decree and judgment in O.P. No.115 of 2005 dt.28-02-2011 passed by the Principal Senior Civil Judge, Anantapur, having observed that there are no suspicious circumstances in executing the Will?

(4) Whether the lower appellate Court can set aside the decree and judgment in O.P. No.115 of 2005 dt.28-02-2011 passed by the Principal Senior Civil Judge, Anantapur, having observed that the arrears of pension is the property of Ramesh Babu and the said Ramesh Babu can execute a Will?

5. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The respondents 1 to 3 herein filed O.P. No.115 of 2005 under Section 372 of the Indian Succession Act, 1925, for grant of succession certificate in their favour. The 1st respondent is the legally wedded wife of M.Ramesh Babu, who was working as Head Clerk under Senior Section Engineer. The marriage was solemnized on 15.11.1985, they led happy married life and blessed with two children, i.e., respondents 2 and 3 herein. M.Ramesh Babu fell ill and attacked with paralysis. The 4th respondent herein, by memorandum dated 21.10.2003, was pleased to terminate the services of M.Ramesh Babu on being rendered medically unfit. On such invalidation, all steps were taken by M.Ramesh Babu for settlement of all accounts that are payable on such termination. Even before the amounts are settled and paid, M.Ramesh Babu died on 14.06.2004 in Praja Vydyasala at Anantapur. The respondents 1 to 3 herein claimed that they, being the first class heirs, are

entitled to the family pension and all other benefits that are payable to the deceased-M.Ramesh Babu. The respondents 1 to 3 herein got issued a legal notice to the respondents 4 and 5 herein requesting them to make payments. The respondents 4 and 5 instead of making payments, directed the 1st respondent, *vide* letter dated 16.07.2004, to establish status of wife as there is a rival claim from the appellant. The respondents 1 to 3 advised the appellant that she has no absolute status as a wife, and, with a view to settle the matter, filed P.L.C.355 of 2004 on the file of the District Legal Services Authority, Anantapur. But the appellant has not co-operated for settlement and as such the respondents 1 to 3 are constrained to file the petition for succession certificate. The respondents 1 to 3 further stated that the appellant seems to have submitted a claim for payment of amounts payable to M.Ramesh Babu on the ground that she is nominated by Late M.Ramesh Babu for various amounts. The claim of the appellant is untenable and unsustainable. The deceased-M.Ramesh Babu never married the appellant at any point of time. When some disputes developed between the 1st respondent herein and late M.Ramesh Babu, he filed O.P. No.12 of 1997 on the file of the Principal Senior Civil Judge for dissolution of marriage and the same was dismissed on 17.03.1999 and thereafter, they both lived together. During the interregnum, the appellant exerted coercion and being swayed away by that he nominated her for some accounts. After his death, the appellant performed obsequies of her husband and the respondents 1 to 3 herein are only legal heirs.

(b) The appellant filed counter denying all the averments made in the petition and contended that she was shown as nominee in the service records of the deceased-M.Ramesh Babu and also submitted her joint photo with the deceased-M.Ramesh Babu as his wife. The deceased-M.Ramesh Babu filed O.P. for divorce against the 1st respondent herein alleging cruelty and subsequently, he got divorce on 24.07.1997 and later he married the appellant

on 30.09.1997 and thereafter he died on 14.06.2005. During his lifetime, he executed a registered Will dated 16.07.2002 bequeathing his benefits, bank balance, etc., in favour of the appellant. O.P. No.12 of 1997 was not dismissed on 17.03.1999 as contended by the respondents 1 to 3 herein, but it was allowed on 24.09.1997. The 1st respondent never resided with M.Ramesh Babu after the disputes have cropped up between them. There is no cause of action for the petition and the respondents 1 to 3 are not entitled to claim any succession certificate.

(c) The trial Court after considering the entire evidence on record, i.e., the evidence of P.W.1 and the documents Exs.A.1 to A.17 marked on behalf of the respondents 1 to 3 herein and the evidence of R.Ws.1 and 2 and the documents Exs.B.1 to B.4 marked on behalf of the appellant, dismissed the original petition filed by the respondents 1 to 3 herein, *vide* order dated 28.02.2011. Aggrieved by the said dismissal order, the respondents 1 to 3 herein preferred A.S. No.36 of 2011 and the first appellate court was pleased to set aside the order passed by the trial Court and granted succession certificate in favour of the respondents 1 to 3 herein to receive all the amounts payable to the deceased-M.Ramesh Babu and further granted permission to the appellant, having served the deceased-M.Ramesh Babu on humanitarian condition, to withdraw a lump sum amount of Rs.4,00,000/- from and out of the arrears of pension amount as per calculation memo filed by the 4th respondent herein. Challenging the said judgment, the appellant preferred the Second Appeal raising the substantial questions of law referred to supra.

6. Learned counsel for the appellant herein would contend that the first appellate court ought to have seen that during lifetime, the deceased-M.Ramesh Babu executed a Will dated 16.07.2002 marked as Ex.B.1 in a sound and disposing state of mind bequeathing his benefits and bank balance in favour of the appellant and the said Will was clearly proved by the evidence of R.W.2;

the first appellate court ought to have seen that as per Section 372 of the Indian Succession Act, 1925, the application for succession certificate shall be made to the District Judge by the respondents 1 to 3 herein, therefore, the petition is not maintainable before the trial Court; and ultimately, prayed to allow the second appeal by setting aside the judgment passed by the first appellate court. In support of his contentions, he relied on the following decisions:

(1) **Smt. Lila Gupta v. Laxmi Narian and others**¹.

(2) **T.K.Subhash v. Smt. Kamala Bail and others**²

7. Learned counsel for the respondents 1 to 3 herein would contend that the trial Court failed to consider the evidence and the documents placed on behalf of the respondents 1 to 3 herein and erroneously dismissed the original petition filed for grant of succession certificate in favour of the respondents 1 to 3 herein; the first appellate Court after appreciating the entire evidence on record, rightly granted succession certificate in favour of the respondents 1 to 3 herein by setting aside the dismissal order passed by the trial Court; there are no grounds to set aside the judgment passed by the first appellate court; there is no substantial question of law arise in this second appeal for consideration; and ultimately, prayed to dismiss the second appeal.

8. The appellant vehemently contended that she got married with the deceased-M.Ramesh Babu on 13.09.1997 after M.Ramesh Babu obtaining decree of divorce on 24.09.1997 with the 1st respondent herein. To substantiate the same, the appellant deposed as R.W.1. She did not choose to examine any other person to prove the said marriage. Further, the photographs said to have taken at the time of their marriage are not filed. There is no credible evidence to act upon that there was marriage between the appellant and late M.Ramesh

¹ AIR 1978 SC 1351

² 2008(3) ALT 490 (D.B.)

Babu. A certificate showing the date of registration of marriage as 16.07.2002 was filed and marked as Ex.B.4. Even the said certificate did not show the date of marriage. Having considered the oral and documentary evidence, the first appellate court held that there was no marriage between late M.Ramesh Babu and the appellant. The issue related to marriage is a factual aspect, which has been well considered by the first appellate court. The finding of the first appellate court that there was no second marriage between late M.Ramesh Babu and the appellant is sustainable. The appellant also contended that she is entitled to all death benefits including the pension under a registered Will dated 16.07.2002 marked as Ex.B.1. The first appellate court also had elaborately dealt with the right and entitlement of the parties under the Hindu Law and held that the dispute is with regard to the arrears of pension and it cannot be bequeathed by way of a Will. Though Ex.B.1 is a registered Will, the testator had no right to do so. It is also held by the first appellate court that late M.Ramesh Babu suffered from paralysis, he was incapable of attending his daily needs. The pension benefits cannot be considered as the property of the deceased and he cannot bequeath the same as mentioned in Ex.B.1-Will deed. There were some pension amounts due by the date of death of M.Ramesh Babu, which took place on 14.06.2005 from the date of termination made in the year 2003. There is a specific finding of the first appellate court that the pension payable subsequent to the death of late M.Ramesh Babu cannot be bequeathed. So, Ex.B.1-Will deed do not create any right/entitlement to receive pension on the demise of M.Ramesh Babu by the appellant. The marital relationship of late M.Ramesh Babu with the appellant and the entitlement of the appellant with regard to the pension benefits were well considered by the first appellate court.

9. Learned counsel for the appellant has placed reliance on a decision of the Hon'ble Supreme Court in **Smt. Lila Gupta's** case (1 supra), wherein the deceased obtained divorce and thereafter he married to another woman and

there was a dispute between the widow and the brother's children of the deceased. In the instant case, there was no divorce between late M.Ramesh Babu and his first wife, i.e., respondent No.1 herein. Further, there is no proof of marriage between late M.Ramesh Babu and the appellant as contended. Therefore, the above decision has no application to the instant case on hand.

10. Learned counsel for the appellant has also placed reliance on another decision of a Division Bench of this Court in **T.K.Subhash's** case (2 supra), wherein it is held as follows:

"A Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a Will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act, which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act."

In the instant case on hand, the appellant is not the successor in interest of the deceased-M.Ramesh Babu. Moreover, late M.Ramesh Babu has no authority to direct the payment of pension after his death. The pension payable is governed by the service rules. Therefore, this decision has no application to the instant case.

11. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Courts below is confined to substantial question of law. The findings with regard to the factual aspects by the first appellate court are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of Second Appeal. More so,

when there is no substantial question of law. The appellant must show the substantial question of law is involved to succeed in the Second Appeal. The first appellate had elaborately dealt with the factual aspect with regard to the marital relationship of late M.Ramesh Babu with the appellant and the entitlement of the appellant with regard to the pension benefits. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. In view of the facts and circumstances of the case, the findings of the Courts below are not perverse. So, no re-appreciation of entire evidence is warranted in this Second Appeal. Viewing from any angle, this Court finds that the substantial questions of law raised in the Second Appeal are devoid of merit. No other substantial questions of law arise for determination. Therefore, this Second Appeal is devoid of merit and is liable to be dismissed.

12. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 15.06.2012 in A.S. No.36 of 2011 on the file of the I Additional District Judge, Anantapur. The Miscellaneous Petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

Date: 28.08.2018
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Dr. SHAMEEM AKTHER, J