

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 463 OF 2014
ALONGWITH
CIVIL APPLICATION NO. 1067 OF 2014
(FOR STAY)

Smt. Kamal Mahaling Patil,
Age : 55 years, Occ. Household
R/o. Jirgyal, Tq. Jat,
Dist. Sangli

....Appellant
(Original Applicant)

VERSUS

1. Smt. Indubai Mahaling Patil
Age: 60 yrs, Occ. Household
R/o. Ambyal, Tq. Athani
Dist. Belgaum.
2. Shri. Vijay Mahaling Patil
(Deceased) through legal heirs-
- 2.1 Smt. Savitri Vijay Patil
Age : 40 yrs, Occ-Household
- 2.2 Kum. Arati Vijay Patil
Age : 15, Occ : Education
Both R/o. Mole, Tq. Athani
Dist. Belgaum.
3. Sou. Shevanta Ramchandra Sagar
Age : 44 yrs, Occ-Household
R/o. Ambyal, Tq. Athani
Dist. Belgaum.
4. Sou. Jyoti Bhimu Sejul
Age : 33 yrs, Occ-Household
R/o. Aymbal, Tq. Athani
Dist. Belgaum (Karnataka)
5. Shri. Sanjay Mahaling Patil
Age : 33 yrs, Occ- Service

R/o. Jirgyal, Tq. Jat
Dist. Sangli.

6. Shri. Rajendra Mahaling Patil
Age : 31 yrs, Occ - Education
R/o. Jirgual, Tq. Jat
Dist. Sangli.

7. Sou. Suman Harischandra Narute
Age : 29 yrs, Occu- Household
R/o. Jaysingpur, Tq. Shirol,
Dist. Kolhapur
Railway Station Road,
B.H. Kulkarni Mala

....Respondents
(Orig. Opponents)

* * * * *

Mr. Tejpal Ingale, Advocate for the appellants.

CORAM : SANDEEP K. SHINDE, J.

Judg. Reserved On : 1.2.2019.

Judg. Pronounced On : 28.2.2019.

JUDGMENT :

1. Heard learned Counsel for the parties.

1. *Whether a Hindu woman who marries
a Hindu man during the subsistence of his first
marriage would be entitled to family pension
under the Maharashtra Civil Services
(Pension) Rules, 1982.*

2. *“Whether the family pension can be*

*bequeathed by a Will and does it form part of
the estate of the deceased ?*

are the substantial questions of law, arising for determination
in this Second Appeal.

2. The facts giving rise to this appeal are as under :

. Mahaling Ramchandra Patil died on 5th May, 2001 at Sangli and was a Primary Teacher in his lifetime. He opted for voluntary retirement. On 12th March, 2001 he executed a Will, registered it with the Sub-Registrar and bequeathed family pension to his wife, Kamla Mahalinga Patil, who is the appellant before this Court. The office of the Zilla Parishad, Sangli called upon the appellant to produce a Succession Certificate or a probate issued by the Court of competent jurisdiction.

3. An application under Section 276 of the Indian Succession Act was filed by the appellant being Probate Application No. 104 of 2001. The Probate Court framed the following five issues and answered it accordingly :

- “1. Does applicant proved that the Will executed by the testator is legal and valid ?*
- 2. Does applicant proved that she is legally wedded wife of deceased testator Mahaling Ramchandra Patil ?*
- 3. Is applicant entitled to grant of probate/letters of administration ?*
- 4. Whether the respondent proved that, being the legally wedded wife, is she entitled to get succession certifiante as prayed ?*
- 5. What relief and order ?*

4. The application was dismissed holding that the appellant was not entitled to receive the family pension being the second wife of the deceased, Mahalinga Ramchandra Patil. The appellant carried the order passed in the Probate Application in Regular Civil Appeal No. 76 of 2009, however, it met with the same fate. The learned Appellate Court dismissed the Appeal and confirmed the order passed by the Probate Court in the Probate Application on 16th April, 2014.

5. It is against the order passed in Regular Civil Appeal No. 76 of 2009, this Second Appeal is preferred.

6. Question no.1 fell for the consideration before the Division Bench of this Court in the case of **Smt. Chanda Hinglas Bharati V/s. The State of Maharashtra reported in (2016) 2 B.C.R. page 623.** The Division Bench, upon appreciating the provisions of Sections 5, 11 and 17 of the Hindu Marriage Act has held that, marriage by a party with a spouse living at the time of marriage is void.

7. The Division Bench has considered the provisions of the Maharashtra Civil Services Rules and definition of “Family” defined under Rule 9(16) of the Maharashtra Civil Services (General Conditions of Services) Rules 1981, which reads as under :

“9(16) “Family” means a Government Servant's wife or husband, as the case may be, residing with the Government servant and legitimate children and step-children residing with and wholly dependent upon the Government servant. It includes, in addition, parents, sisters

and minor brothers if residing with and wholly dependent upon the Government servant.

Note 1.- Not more than one wife is included in the term "family" for the purpose of these rules."

8. The Division Bench, has also considered the provisions of Rule 26(1) and (2) of the Maharashtra Civil Services (Conduct) Rules, 1979 and held that Rule 26 prohibits the Government Servant from contracting the marriage with a person having spouse living unless such marriage is permissible under personal law applicable to such Government Servant and other party to a marriage. That contracting second marriage during the lifetime of the spouse is a misconduct and subject to disciplinary action under the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

9. Rule 116(6) of the Maharashtra Civil Services (Pension) Rules, 1982 frames and regulates the Family Pension Scheme. The relevant Rule on which the appellant has relied on for seeking the family pension, reads as under :

“116. *Family pension, 1964*

(6) (a)(i) Where the Family Pension is payable to more widows than one, the Family Pension shall be paid to the widows in equal shares;

(ii) On the death of a widow, her share of the Family Pension shall become payable to her eligible child :

[Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full to her.]

(b) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of Family Pension, which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

[Provided that on the share or shares or of family pension payable to such a child or children or to a widow or widows ceasing to be payable,

such share or shares shall not lapse but shall be payable to the other widow or widows and/or to other child or children, otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.]

(c) Where the deceased Government servant or pension is survived by a widow but has left behind eligible child or children from a divorced wife or wives, the eligible child or children shall be entitled to the share of Family Pension which the mother would have received at the time of the death of the Government servant or pensioner had she not been so divorced.]

[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or/to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.]

[(d) Where the family pension is payable to twin children it shall be paid to such children in equal shares “

Provided that, when one such child ceases to be eligible his/her share shall revert to the other child and when both of them cease to be eligible, the family pension shall be payable to the next eligible single child or twin children, as the case may be.]

10. The aforesaid Rule was considered by the Division Bench and held that the Family pension cannot be made payable to more than one Hindu widow in equal share if the marriage between Male Hindu Government Servant and a Woman (Widow) was performed after coming into force of the Hindu Marriage Act, and thus held :

“12.....We find that the object of Sub Rule 6 (a) (i) is to provide family pension to more widows than one only in certain contingencies and a woman contracting a marriage with a man during the life time of his wife would not be entitled to family pension, unless such marriage is permissible under the personal law applicable to such person and also the other party to the marriage. Admittedly, in the instant case, petitioner Chanda and Hinglas Bharati are Hindus and the marriage was solemnized

between Hinglas and petitioner Chanda in the year 1993 during the subsistence of the marriage of Hinglas Bharati with Smt. Pushpa and during the life time of Pushpa. In view of the provisions of various Laws, pension is payable to the issues or children born from the illegal or void marriages but pension is not payable, at least under the Maharashtra Civil Services (Pension) Rules to a woman whose marriage with the Government servant is void ab initio. Some weightage would also be required to be given to the word "widows" as expressed in Rule 116 (6) (a) (i) of the Maharashtra Civil Services (Pension) Rules, 1982. Rule 116 (6) (a) (i) of the Rules makes the pension payable only to widows and a woman claiming to have married a Hindu man during the life time of his wife cannot be said to be either his wife or his widow. On a reading of the provisions of the Maharashtra Civil Services (Pension) Rules, the Maharashtra Civil Services (Conduct) Rules, the Maharashtra Civil Services (General Conditions of Services) Rules as also the provisions of the Hindu Marriage Act and Hindu Succession Act, it appears that Rule 116 (6) (a) (i) of the Maharashtra Civil

Services (Pension) Rules, 1982 does not provide pension to a woman who marries a Hindu male Government servant during the subsistence of his marriage with his wife and during her life time. Even according to the Hindu Succession Act, a woman like the petitioner does not fall within the ambit of the term 'heir' and is not entitled to inherit the property of a Hindu male dying intestate, though the issues born to the said woman from a void wedlock would be entitled to inherit the personal property of the Hindu male dying intestate. We have already mentioned herein above, few of the circumstances in which the provisions of Rule 116 (6) (a) (i) of the Rules could provide pension to more widows than one. The circumstances mentioned by us may not be exhaustive and there may be other circumstances under which more widows than one could be entitled to family pension. However, suffice it to state that family pension would not be payable to a woman who marries a Hindu Government servant during the subsistence of his marriage and during the life time of his wife, after 18.5.1955.

11. In the case of **Rameshwari Devi v. State of Bihar and Others**, reported in AIR 2000 Supreme Court page 735 while dealing with the right of the second wife to claim the pensionary benefit, Hon'ble Supreme Court has held :

“(i) that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage.

(ii) Under Section 16 of this Act, children of void marriage are legitimate.

(iii) Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956).

(iv) Yogmaya Devi (second wife) cannot be described a widow of Narain Lal, her marriage with Narain Lal being void.

(v) Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi

with Narain Lal.”

12. The learned Counsel appearing for the appellant, however, relied on the judgment of this Court in the case of **Kantabai, w/o. Dhulaji Sharma & Ors. V/s. Hausabai reported in 2015(3) Mh.L.J. 883**, wherein the learned Single Judge of this Court has held that, the ratio laid down by the Supreme Court in the case of *Rameshwari Devi* (supra) was in the context of the provisions of the Central Civil Services (Conduct Rules), as well as, Bihar Government Conduct Rules, 1976 which were not akin to Rule 116 of the Maharashtra Civil Services (Pension). It is on this count, learned Judge of this Court in *Kantabai* (supra), has held that the ratio in the case of *Rameshwari Devi* (supra) cannot be applied in view of the provisions of Rule 116 of the Maharashtra Civil Services Rules. However, Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1976 says, that no Government servant shall enter into or contract a marriage with a person having spouse living which is akin to Rule 21 of the Central Civil Services (Conduct) Rules and Rule 23 of the Bihar Government Servant's Conduct Rules, 1976. In fact, expression “Member of family” defined under

Bihar Government Servant's Conduct Rules, 1976 reads :

“(c) “Member of family” in relation to Government servant includes-

(1) The wife or husband as the case may be, of the Government servant or not but does not include a wife or husband, as the case may be, separated from the Government servant by a decree/order of a competent court.

(2) Son or daughter or step-son or step-daughter of Government servant and wholly dependent on him, but does not include a child or step child who is no longer dependent on the Government servant or of whose custody the Government servant has been deprived by or under any law.

(3) Any other person related, whether by blood or marriage, to the Government servant's wife or husband and wholly dependent on the Government servant.”

Likewise, Rule 7 of the Bihar Family Pension Rules, 1950 are analogues to Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982. I reproduce Rules as it is :

7. योजना का प्रशासन निम्नांकित रूप में होगा -

(i) सेवा के दौरान या सेवा-निवृत्ति के बाद 1ली अप्रैल, 1964 को या उसके बाद, मृत्यु होने पर पारिवारिक पेंशन अनुमान्य होगी यदि मृत्यु के समय सेवानिवृत्त पदाधिकारी क्षतिपूर्ति, अशक्तता, निवृत्ति या वार्धक्य-पेंशन प्राप्त करता था। यदि सेवा के दौरान मृत्यु हुई हो तो सरकारी सेवक न्यूनतम एक वर्ष सेवा पूरी कर चुका हो।

(ii) योजना के प्रयोजन के लिए पदाधिकारी के निम्नलिखित सम्बन्धी उसके परिवार के अंतर्गत होंगे -

(क) पत्नी, यदि पदाधिकारी पुरुष हो;

(ख) पति, यदि पदाधिकारी महिला हो;

(ग) अवयस्क पुत्र; और

(घ) अविवाहित अवयस्क पुत्री

टिप्पणी 1 : (ग) और (घ) के अंतर्गत सेवानिवृत्ति के पहले विधिवत रूप में गोद ली गई संतान भी होगी।

टिप्पणी 2 : इस योजना के प्रयोजन के लिए सेवानिवृत्ति के बाद किया गया विवाह को मान्यता नहीं दी जायेगी।

(iii) पेंशन अनुमान्य होगी -

(क) विधवा/विधुर के मामले में मृत्यु या पुनर्विवाह की तारीख तक, जो पहले हो।

(ख) अवयस्क पुत्र के मामले में उस समय तक जब उसकी आयु 18 वर्ष की हो जाती है।

(ग) अविवाहित पुत्री के मामले में उस समय तक जब उसकी आयु 21 वर्ष की हो जाती है या उसका विवाह हो जाता है, जो पहले हो।

[टिप्पणी (i)] : यदि पदाधिकारी की एक से अधिक विधवायें जीवित हों तो उनको बराबर-बराबर पेंशन दी जायेगी। विधवा की मृत्यु पर उसकी पेंशन का अंश उसकी उपयुक्त अवयस्क संतान को देय होगा। यदि मृत्यु के समय विधवा की कोई उपयुक्त अवयस्क संतान जीवित न हो तो उसका पेंशन का अंश समाप्त हो जायेगा।

1. अधिसूचना सं० 9425 दि०, दिनांक 27-7-1967 द्वारा प्रतिस्थापित।

Thus, provision of Bihar Pension Rules, are akin to Maharashtra Rules.

13. Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982 governs the family pension. Sub-Rule

(2) of Section 116 reads as under :-

“116(2). Without prejudice to the provisions contained in sub-rule (4) where a Government Servant dies-

(a)

(b)

(c) After retirement from service and was, in receipt of pension on the date of death.

The family of the deceased shall be entitled to Family Pension.” (emphasis supplied)

. The expression “Family” for the purposes of this Rule is defined under Section 16(b) which reads as under :

16(b) “Family” in relation to a Government servant means-

(i) Wife in the case of a male Government servant, or husband in the case of a female Government servant;

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;
(emphasis supplied)

(iii) son who has not attained the age of twenty-one years and unmarried daughter who has not attained the

age of twenty-four years, including such son and daughter adopted legally before retirement.

Thus, the definition of “Family” includes wife (Clause (i) hereinabove) and judicially separated wife (Clause (ii)) or husband; such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery. Sub-Rule (6) provides that, where family pension is payable to more widows than one (emphasis supplied), the family pension shall be paid to the widows in equal share. In my view, “being payable to more widows than one” means payable to “a wife” and “a judicially separated wife” and not a wife who performs second marriage with a Government servant when his first marriage was subsisting. Thus, the expression “payable to more widows” is to be understood and interpreted in view of the term “family” as defined under sub-rule (16) Clause (b) of Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982. Even otherwise, Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1979 prohibits the Government servant

from contracting the second marriage having a spouse living at the given point of time.

14. The close scrutiny of the Rule 116 reveals that, under sub-rule 11, where a female Government servant or male Government servant dies leaving behind a judicially separated husband or wife and no child or children, the Family Pension in respect of deceased shall be payable to the person surviving, but shall not be paid to the persons surviving, if such person was held guilty of committing adultery. Therefore, the scheme under Rule 116 contemplates, when a judicially separated wife is not entitled to claim family pension, if separation is granted on the ground of adultery, then can it be argued that the second wife, whose marriage is void, under the Hindu Marriage Act is entitled to claim Family Pension ? The answer obviously is, No.

15. Thus under, the scheme of family pension, under Rule 116 of the Maharashtra Pension Rules, 1982, family

pension is payable to a wife and a judicially separated wife and in this context the expression “Family pension is payable to more widows than one” (emphasis supplied) is to be understood. Thus, on the conjoint reading of provisions of Rule 116 (2) read with 116(16)(h) read with 6(9)(i) of the Maharashtra Civil Services (Pension) Rules with Section 26 of the Maharashtra Civil Services (Conduct) Rules, 1979, the second wife with whom the marriage was performed by a Hindu male Government servant during the subsistence of his first marriage, is excluded from the definition of “Family” under Rule 116 Sub-Rule (16)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 and as such not entitled to claim the Family pension.

16. The Division Bench in the case of *Chanda Hingas* (supra), has held thus;

“Some weightage would also be required to be given to the word “widows” as expressed in Rule 116(6)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982. According to the Black Law’s Dictionary, “a widow would be a woman whose husband has died and who has not

remarried". As per the Oxford English Dictionary, the widow would be a woman who has lost her husband by death and who has not remarried again". It appears from the dictionary meaning of the word "widow" that a widow would be a woman who is married and lost her husband. As the marriage between a Hindu male Government servant during the lifetime of his wife is void, the marriage between the said Government servant and the second wife would not be a marriage in the eye of law. The woman performing the so called 'marriage' with a Hindu Government servant during the lifetime of his wife cannot be said to be his widow".

17. Mr. Ingale, the learned Counsel appearing for the petitioner has relied on the judgment of the Supreme Court in the case of **Vidhyadhari and Others vs. Sukhrana Bai and Others, reported in 2008(3) Mh.L.J. 1**. In the cited case, an employee working with the Western Coalfields had died while in service. Two applications were filed under Section 372 of the Indian Succession Act with respect to obtaining movable properties of the deceased. One was filed by Vidhyadhari (second wife) and another by Sukhrana Bai, (first wife). The trial Court granted the application of the

second wife. However, the High Court granted the application in favour of Sukhrana Bai, the first wife. Vidhyadhari therefore filed an appeal before the Hon'ble Supreme Court. It appears, the deceased had nominated his second wife for receiving the amounts under the Provident Fund Family Pension Scheme and therefore Vidhyadhari had claimed the Succession Certificate on the basis of nominations, besides her marriage with the deceased. The trial Court, after appreciating the evidence held Vidhyadhari to be the legal widow of the deceased employee, which finding the High Court reversed and held that the first wife was entitled to grant of Succession Certificate. In para-10 of the said judgment, the Apex Court has observed thus :

“10. However, unfortunately, the High Court stopped there only and did not consider the question as to whether inspite of this factual scenario Vidhyadhari could be rendered the Succession Certificate. The High Court almost presumed that Succession Certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this Succession Certificate was for the purposes of

collecting the Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues in the nature of death benefits of Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the Succession Certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed. This Court in a reported decision in Rameshwari Devis 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 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.”

18. In para-11 of its judgment, the Apex Court has confirmed the finding of the High Court that Sukhrana Bai (first wife) was the only legitimate wife. The Apex Court, however, chose to grant Succession Certificate to Vidhyadhari (second wife) who was the nominee of the deceased and mother of his four children and therefore held thus;

“However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the

equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities we would, therefore, chose to grant Succession Certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would handover the same to her. As a nominee, she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai”.

. Thus, in the said cases, the deceased had died leaving behind his first wife Sukhrana Bai and four children born from the wedlock with the second wife. The Apex Court, however, held that, Sukhrana Bai was the only legitimate wife and no share in the property of the deceased was allotted to the second wife, Vidhyadhari. Thus, in my view, the judgment in the case of *Vidhyadhari* (supra) is of no assistance to the appellant herein.

19. Mr. Ingale, the learned Counsel appearing for the petitioner, has relied on the judgment of the Division Bench of this Court in **Writ Petition No. 11839 of 2015 (Smt.**

Shakuntala w/o. Gulabrao Jagtap Versus. The State of Maharashtra and Ors.) dated 12th July, 2017. This petition was preferred by the second wife of the deceased who had worked as an Assistant Teacher (Music) and had retired from the respondent School. Deceased husband had initially got married with Chandrabhaga the first wife and from the said wedlock, they had conceived a female child. Shakuntala-the petitioner got married with Gulabrao on 16th June, 1974 with the consent of his first wife. The first wife died on 25th November, 1992. Gulabrao died on 2nd June, 1996. The Pension authority declined to grant pension to second wife on the ground that second marriage had taken place when the first wife was alive and as per the provisions of the Hindu Marriage Act, 1955 her marriage was void and therefore cannot claim the benefits of the family pension scheme. In the said case, reliance was placed on the judgment of this Court in the case of *Kantabai* (supra). However, in *Kantabai* (supra), the law laid down by the Supreme Court in the case of **Rameshwari Devi v. State of Bihar and Others reported in AIR 2000 Supreme Court 735** was not considered only because provisions of Bihar Pension Rules, were not akin to

Maharashtra Civil Services (Pension) Rules, 1982. However, Bihar Pension Rules are akin/analogues to Maharashtra Rules, as could be seen, which are reproduced hereinabove. Thus, in my view, the judgment in Writ Petition No. 11839 of 2015 is of no assistance to the petitioner. That from the aforesaid discussion, I hold and conclude :

(i) marriages covered by Section 11 of the Hindu Marriage Act are void i.e. void from inception and have to be ignored as not existing in law at all when such a question arises.

(ii) a woman performing the marriage with a Hindu Government servant during the lifetime of his wife cannot be said to be his “widow”.

(iii) definition of “Family” under sub-rule 16 of Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982 includes only wife and a judicially separated wife with a rider that judicial separation is not granted on the ground of adultery.

(iv) expression “Family pension is payable to more widows than one” in terms of sub-rule (6) clause

(a) of Rule 116 of the Maharashtra Civil Services (Pension) Rules, 1982 cannot be read in isolation but has to be read and understood in context of definition of “Family” defined under Rule 116(16) (b) of the Maharashtra civil Services Pension Rules, 1982, in as much as, pension is payable to the “Family of deceased”. (emphasis supplied).

Thus, taking into consideration the provisions of the scheme of “Family pension” under Rule 116 and the definition of “Family”, I hold that a Hindu woman who marries a Hindu man during the subsistence of his first marriage is excluded from the scheme of Rule 116 of the Maharashtra Civil Services Pension Rules and thus not entitled to the family pension. I therefore answer Question no.1 in negative.

20. In the case in hand, deceased Mahaling had executed a Will on 12th March, 2001 and bequeathed his movable and immovable properties to the petitioner. The learned Counsel therefore submits that the disposition under

the registered Will shall supersede, the provisions of the Family pension scheme defined under Rule 116 of the said Rules. This contention of the petitioner was rejected by the learned trial Court on the ground that, right to pension is a statutory right and not a property as defined under the provisions of the Transfer of Property Act and therefore by executing a Will deceased was not entitled to transfer the right which was accrued to his legally wedded wife i.e. Indubai Patil after his death.

21. Thus, the substantial question of law is;

“Whether the family pension can be bequeathed by a Will and does it form part of the estate of the deceased ?

22. In the case of **Nitu Versus. Sheela Rani and Others, reported in (2016) 16 Supreme Court Cases page 229**, identical question fell for consideration before the Hon'ble Supreme Court wherein the widow and mother of the deceased claimed the family pension. While answering the

issue, the Hon'ble Supreme Court considered the definition of "Family" for the purposes of the scheme and found that so far as the mother is concerned, she has not been included in the definition of the term "Family" and therefore held, mother would not be entitled to be included in the family of late, Yashpal as he was married. In para-16 the Apex Court has held :

"16. So far as the provisions of the [Hindu Succession Act, 1956](#), are concerned, it is true that the properties of a Hindu, who dies intestate would first of all go to the persons enumerated in class I of the schedule as per the provisions of [Section 8](#) of the said Act and therefore, so far as the properties of late Shri Yash Pal are concerned, they would be divided among the respondent mother and the appellant wife, provided there is no other family member of late Shri Yash Pal alive, who would fall within class I heirs, but position in this case, with regard to pension, is different."

23. Yet, in another judgment, the Hon'ble Supreme Court in the case of **Smt. Violet Issaac and Others Versus. Union of India and Others**, reported in (1991) 1

Supreme Court Cases page 725, has held that, Family Pension Scheme under the Rule is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension scheme is in the nature of a welfare scheme and therefore it does not (emphasis supplied) form part of his estate enabling him to dispose of the same by testamentary disposition.

24. In the case in hand, though a Will was executed by the deceased, bequeathing his movable property to the appellant but in view of the law laid down by the Supreme Court in the aforesaid two cases, testamentary disposition is of no consequence as the family pension does not form part of the estate of the deceased. The question is therefore answered accordingly.

25. Thus, for the reasons stated hereinabove, the Appeal fails and dismissed accordingly.

26. With the dismissal of the Appeal, the Civil Application No. 1067 of 2014 taken out for stay does not survive. The same is accordingly disposed of.

27. The learned Counsel for the appellant, at this stage, seeks stay of the execution of the Succession Certificate granted in favour of the respondent for a period of six weeks. Accordingly, the execution of the Succession Certificate issued by the Civil Judge Senior Division and confirmed in Regular Civil Appeal no. 76 of 2009, is hereby stayed for a period of six weeks.

(SANDEEP K. SHINDE, J)