Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL STAMP NO. 30546 OF 2016

Smt.Leelawati Ratanrao Mohite .. Appellant
Vs.
Smt.Alka Ratanrao Mohite .. Respondent

Mr.Shashikant B.Deshpande, for the Appellant.
Mr.S.M.Railkar, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 02nd AUGUST, 2019

P.C. :

. Heard learned Counsel for the appellant and learned Counsel for the respondent.

2. Appeal is admitted on the following substantial question of law.

> " Whether the jurisdiction of the civil Court to issue succession certificate is taken away if the appellant fails to produce the certificate issued by the Collector under Section 6 of the Pensions Act, 1871 ?"

The facts of the case in brief are :

3. That the appellant is the original applicant. The appellant filed an application under Section 372 of the Indian Succession Act, 1925 for grant of succession certificate. The appellant and respondent are real sisters. The appellant is the elder sister respondent. It is the contention of the appellant that her marriage with Ratanrao was solemnized in 1963. It is further her case that though respondent claims to be wife of Ratanrao, however, the marriage during the subsistence of appellant's marriage with Ratanrao cannot be said to be a valid marriage. The respondent came out with the case that she is legally wedded wife of deceased Ratanrao. The marriage was solemnized on 07/06/1971. Ratanrao had nominated her name in his service record & accordingly she is receiving pension.

4. Ratanrao died on 22/06/2008 in Sangli and was serving in Rayat Shikshan Sanstha, Satara. According to respondent, she is entitled to receive terminal and pensionary benefits. On the basis of the evidence on record, the trial Court

found that the appellant is the legally wedded wife of Ratanrao. The trial Court therefore allowed the application and issued succession certificate in the name of the appellant, her son - Sanjay and daughter - Sunita. Succession Certificate also came to be issued in the name of Son and daughters of respondent - Alka i.e. Avinash, Shobha and Pushparani. The trial Court did not issue succession certificate in favour of respondent.

5. The respondent challenged the decree of the trial before the First Appellate Court. The First Appellate Court held that respondent is a legitimate wife of Ratanrao. The findings of the trial Court thus came to be reversed. The Appellate Court was further of the opinion that as the claim made by the appellant was only for the payment of pension, unless certificate is issued by the Collector under the Pensions Act, 1871 for permission for institution of Suit, the Suit would not be tenable. In this view of the matter, the Appeal was allowed and Misc. application filed by applicant came to be rejected.

6. Learned Counsel for the appellant submitted that the Appellate Court failed to consider the evidence on record in as much as the witnesses have deposed that the marriage of the appellant with Ratanrao was solemnized much prior to the one claimed by the respondent. He would further submit that out of the said marriage one son – Sanjay and daughter – Sunita are born. According to him, Ratanrao developed a relationship with appellant's younger sister viz. respondent herein and out of the said relationship children are born to Ratanrao and respondent. It is his case that the respondent gave birth to children during the subsistence of the appellant's marriage with the Ratanrao. He would submit that the Appellate Court was not justified in reversing the judgment and order of the trial Court. According to him, the application for issuance of succession certificate was maintainable and in the teeth of the decision of the Apex Court in the case of **Vidyadhari & Ors. Vs. Sukhrana Bai & Ors. (2008) 2 Supreme Court Cases 238**, the view of the Appellate Court is not sustainable.

7. Learned Counsel for the respondent on the other hand would submit that the provision of Section 6 of the Pensions Act, 1871 is very clear. According to him, it is only upon production of the certificate issued by Collector under Section 6 of the said Act will the question of maintaining an application for grant of succession certificate would arise. He would submit that the Appellate Court found that there are no pleadings regarding cohabitation between Lilawati and Ratanrao. In such a case, the application itself was not maintainable. He would invite my attention to the findings of the Appellate Court where the Appellate Court observed that there is no decree of any civil Court or matrimonial Court declaring marriage of Alka with Ratanrao as null and void. He would further submit that for want of mandatory compliance of the provisions of the Pensions Act, 1871, the Appellate Court rightly concluded that the application is not tenable.

8. Heard learned Counsel. Undisputed facts on record are that the applicant as well as respondent are real sisters.

Both sisters claimed that their marriage with Ratanrao is valid one. It is further not disputed that the appellant as well as respondent begot children from Ratanrao. The applicant has made an application for grant of succession certificate in respect of family pension. Once there is no dispute that the appellant begot children from her relationship with Ratanrao then question is whether children of appellant would be entitled to claim a share in the pension. No doubt, the Appellate Court has discussed the evidence on record and arrived at the finding that marriage of Ratanrao with Alka cannot be branded as illegal. However, the Appellate Court seems to have been swayed by the fact that in the nomination form, Ratanrao nominated the respondent as his nominee. The Appellate Court also was of the opinion that when the permission of the Collector to institute the Suit is not obtained, this results in non-compliance of mandatory provisions of the Pensions Act, 1871 and therefore the jurisdiction of the Civil Court is taken away.

9. I have carefully gone through the decision of the

Apex Court in the case of **Vidyadhari** *(surpa)*. In my opinion, the rights of the children born out of such relationship and question whether the nominee would have absolute right to get the pensionary benefits has been considered by Their Lordships in the case of Vidyadhari. The decision of the Apex Court would have bearing on the present controversy. However, this decision was not brought to the notice of the First Appellate Court.

10. It would be material to quote paragraphs 12 to 15 which read thus :

> 12. 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.

13. This Court in Rameshwari Devis case 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.

14. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. 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, choose 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 hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the Trial Court to the satisfaction of the Trial Court.
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> 15. It should not be understood by the above that we are, in any way, deciding the status of Vidhadhari finally. She may still prosecute her own remedies for establishing her own status independently of these proceedings."

11. In these circumstances, it would be appropriate that the Appellate Court reconsiders the entire matter in the light of the decision of the Apex Court in **Vidyadhari** *(supra)* and in accordance with law. In this view of the matter, following order is passed.

O R D E R

(i) The Appeal is allowed with no order as to costs.

(ii) The impugned judgment and decree is set aside.

(iii) The Appellate Court to reconsider the matter afresh.

(iv) All contentions are kept open. I may not be understood to have expressed any opinion on the merits.

(v) Having regard to the age of the parties, it is requested that the Appellate Court hears the Appeal expeditiously and in any event within a period of 4 months from today.

(M.S.KARNIK, J.)