

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

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Date of decision: 29.01.2020

+ **MAT.APP.(F.C.) 331/2019, CM APPL. 54654/2019 & CM APPL. 54655/2019**

SMT. MEENA

.....Appellant

Through: Mr. S.K.Anand, Advocate

versus

SMT. ISHWARTI AND ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This is an appeal against the judgment and decree dated 19.08.2019, passed by the learned Family Court (Central), Tis Hazari Courts, Delhi decreeing the suit filed by the respondent No.1/plaintiff against the appellant/defendant No.1 and the respondents/defendants No.2 & 3 and declaring her to be the legally wedded wife of late Charan Singh and entitled to the terminal benefits of the deceased alongwith permanent and mandatory injunction against the Northern Railway from releasing these dues to anyone other than the respondent No.1/plaintiff.

2. The brief facts as are relevant for the disposal of the present appeal are that faced with a challenge from the appellant/defendant No.1 claiming to be the wife/nominee of late Charan Singh, the respondent No.1/plaintiff

instituted a suit seeking a declaration that she is the legally wedded wife of late Charan Singh and was entitled to the family pension, provident fund, gratuity, ancillary and other consequential benefits upon the death of her husband, who was working as an Electric Welder with the respondent No.2/defendant No.2/The General Manager, Northern Railway and the respondent No.3/defendant No.3/The Div. Railway Manager, Northern Railway. A permanent injunction was also prayed for restraining the defendants from transferring, alienating, parting with, dealing with, creating any third party interest in the family pension, provident fund, gratuity, ancillary and other consequential benefits against the appellant/defendant No.1 alongwith a mandatory injunction against the respondent No.2/defendant No.2/The General Manager, Northern Railway and the respondent No.3/defendant No.3/The Div. Railway Manager, Northern Railway, not to release any payment to the appellant/defendant No.1. The appellant/defendant No.1 also claimed to be the widow of late Charan Singh and claimed that she alone was entitled to the terminal benefits including compassionate appointment on the demise of Sh. Charan Singh.

3. The Family Court settled the following issues on the basis of the pleadings of the parties:-

“i) Whether the plaintiff is the legally wedded wife of deceased Sh. Charan Singh and is entitled to all benefits accruing out of the services/benefits of deceased Sh. Charan Singh? OPP

ii) Whether the defendant No. 2 and 3 can be restrained from releasing the amount of defendant No. 1? OPD

iii) Whether the defendant No.1 is entitled to any benefit accruing out of service of deceased Sh. Charan Singh? OPD

iv) Whether the suit is not maintainable in view of the order of CAT? OPD
v) Relief”

4. The respondent No.1/plaintiff examined herself as PW1 and brought on record several documents. She also examined the uncle of late Charan Singh as PW2 and her brother-in-law Dhiraj Kumar, (brother of late Charan Singh) as PW3. PW4, Rajmal was dropped by the respondent No.1/plaintiff. Woman constable Vaishali was examined as PW5. The appellant/defendant No.1 examined only herself as DW1. The respondent No.2/defendant No.2/The General Manager, Northern Railway and the respondent No.3/defendant No.3/The Div. Railway Manager, Northern Railway examined Sh. Rajneesh Kumar, Sr. Clerk Settlement Section DRM Office as D2W1, Sh. Tejasva Jain, Clerk, Personal Department, Northern Railway, DRM Office, New Delhi as D2W2 and Sh. Pradeep Kumar, Trackman as D2W3. After considering the submissions made before it and the evidence that had come on record, the Family Court concluded that there was sufficient evidence brought on record to support the claim of the respondent No.1/plaintiff that she was the legally wedded wife of late Charan Singh and therefore, she was found entitled to the benefits accruing from the service of late Charan Singh with the Northern Railway. The injunctions as prayed for were accordingly issued on the ground that the respondent No. 1/plaintiff alone was entitled to all the pensionary and retiral benefits of late Charan Singh and it was held that the respondent No.2/defendant No.2/The General Manager, Northern Railway and the respondent No.3/defendant No.3/The Div. Railway Manager, Northern Railway could not release the amounts payable to the family on the demise of the employee, to anyone except for

the respondent No.1/plaintiff.

5. Learned counsel for the appellant/defendant No.1 vociferously contended that the Family Court has proceeded on the wrong premise for decreeing the suit in favour of the respondent No.1/plaintiff inasmuch as she had not produced the original documents and had relied on photocopies including all the Bahis, ration card etc. It was also argued by learned counsel that even if the Bahi was accepted, that document did not prove that a valid marriage existed between the respondent No.1/plaintiff and late Charan Singh. Reliance was placed on the decision of the Supreme Court in case titled Eswarti V. Parvathi, **AIR 2014 SC 2912**, to contend that a document that did not mention anything about the marriage ceremony or conduct and solemnization of the marriage, would not be a reliable piece of evidence to conclude that there was a valid marriage between the respondent No.1/plaintiff and late Charan Singh.

6. It was submitted that the respondent No.1/plaintiff had never come forward to assert any right as a wife during the lifetime of late Charan Singh and on the other hand, the appellant/defendant No.1 had been living with him since their marriage was conducted on 10.10.1990 and she had borne four children to him. Learned counsel also claimed that the ration card and the school records fully established that the appellant/defendant No.1 was the wife of late Charan Singh and therefore, the Family Court has erred in rejecting her evidence while accepting the weak evidence produced by the respondent No.1/plaintiff to decree the suit in her favour. Hence it was prayed that the impugned judgment be set aside and the suit be dismissed.

7. At the outset, we may note that under Section 14 of the Family Courts Act, 1984, a Family Court may receive as evidence, any report, statement,

documents, information or matter that may, in its opinion, assist it to deal effectively with a dispute before it, without being constrained by the strict rules of evidence as prescribed under the Indian Evidence Act, 1872. Section 14 of the Family Courts Act, 1984 is reproduced here under for ready reference:-

“14. Application of Indian Evidence Act, 1872:- A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.”

8. In the light of the above provision, mere production of photocopies of various documents need not have resulted in the rejection of the evidence produced by the respondent No.1/plaintiff. In fact, the record reveals that even the appellant/defendant No.1 has produced photocopies of various documents in support of her case. That apart, the Family Court has relied upon the testimony of two witnesses produced by the respondent No.1/plaintiff and examined as PW2 & PW3 to conclude that the respondent No.1/plaintiff was the legally wedded wife of late Charan Singh.

9. We may turn to the evidence that has been brought on record by both sides. The material produced by the appellant/defendant No.1 to establish her relationship with late Charan Singh are two marriage photographs, copy of election card, copy of old ration card and copies of school leaving certificates/school attendance certificates issued to her children. During her cross-examination, she admitted that the ration card, copy whereof had been placed on record as Mark-DW1/3, was issued on 23.09.2005, after Sh.

Charan Singh had expired on 09.04.2005. She admitted that Mark-DW1/3A, which was a new ration card, had also been prepared after the demise of Sh. Charan Singh, on her moving an application to the authorities. She further admitted in her cross-examination that she had filled in the details in the admission forms of her children Ajay, Kajal and Rahul and that the Nagar Nigam Prathmik Adarsh Vidyalaya and the Sarvodaya Bal Vidyalaya had issued the certificates (marked as Ex.DW1/4, Ex.DW1/5 and Ex.DW1/6) to her children Ajay, Kajal and Rahul on the basis of information furnished by her at the time of the admission of her children in the said schools.

10. In contrast to these documents, the respondent No.1/plaintiff had produced a copy of the Bahi, a 30 year old document, which was recorded on 09.05.1978. In support of this document, which was recorded at the time of the marriage of the three sons of Mehar Singh namely, Dhiraj Kumar, Pratap and Charan Singh with the three daughters of Lakhi Ram namely Mohna, Rajpati and Ishwari on 09.05.1978 reflecting that various persons had attended the occasion and gifted various amounts to the three couples, the respondent No.1/plaintiff had examined the uncle of late Charan Singh and his brother as PW2 & PW3. These two witnesses have categorically stated that the three brothers were married to the three sisters on the same date. PW2 denied the suggestion that the Bahi was a forged document. No suggestion was made to either PW2 or PW3 that the Bahi did not reflect the solemnization of valid marriages between the three brothers and three sisters.

11. In these circumstances, the judgment relied upon by learned counsel in Eswari V. Parvathi (supra), would not be applicable to the facts of the present case, as the witnesses to the marriage, including a person, who was

married on the same day, have been examined by the respondent No.1/plaintiff and nothing has been brought on record through their cross-examination to substantiate the claim of the appellant/defendant No.1 that the marriage was not solemnized with Saptapadi or other Hindu Rituals.

12. Further, the respondent No.1/plaintiff brought on record her ration card (Ex.PW1/7), which discloses that ration was issued on the said card in the year 1992 and thereafter, and records the family members as Charan Singh (self), Ishwari (wife) and 5 children, named separately. This ration card was clearly issued and used during the lifetime of late Charan Singh and has far greater weight vis-à-vis the ration card produced by the appellant/defendant No.1, which was admittedly issued after the death of Sh. Charan Singh and on the basis of information furnished by the appellant/defendant No.1.

13. The next significant evidence produced by the respondent No.1/plaintiff is that during his lifetime, late Charan Singh had obtained a loan/advance on his GPF for the marriage of his two daughters. In 1996, he could have obtained a loan only for adult daughters and not for the children of the appellant/defendant No.1. His name is also mentioned in the marriage invitation card, Ex.PW1/6 reflecting that the marriages of two of his daughters were solemnized on 09.02.1996. In fact, the name of the father of late Charan Singh is also mentioned in this card as 'Meher Singh' alongwith the names of Surat Singh Khatak (PW2) and Dhiraj Khatak (PW3), which lends greater credence to this piece of evidence. The copy of the application for the GPF overdraft, Mark-PW1/5A bears an official endorsement, which also makes it an authentic piece of evidence despite being a photocopy. The Family Court has rightly analysed all these important pieces of evidence to

arrive at the conclusion that the respondent No.1/plaintiff was the legally wedded wife of late Charan Singh.

14. Given the above facts and circumstances, it appears that during the subsistence of his marriage with the respondent No.1/plaintiff, late Charan Singh had married the appellant/defendant No.1, without divorcing the respondent No.1/plaintiff. He could not have done so and nor could the appellant/defendant No.1 be treated as his lawful wife for claiming his death benefits from the respondent No.2/defendant No.2/The General Manager, Northern Railway and the respondent No.3/defendant No.3/The Div. Railway Manager, Northern Railway. We can only sympathize with the predicament of the appellant/defendant No.1, but no relief can be granted to her in law. The appeal is accordingly dismissed as devoid of merits alongwith the pending applications.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

JANUARY 29, 2020
MK/pkb/s