

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.144 OF 2007

APPELLANT: Smt. Jaiwantabai w/o Shenuji Wankhade
aged about 59 years, Occupation: Labour,
resident of Panchashil Nagar, Akola,
District : Akola [Original Plaintiff as on R.A.]

... VERSUS ...

RESPONDENT: 1. Sunanda w/o Ganesh Dode,
Aged about 34 years, Occu : household work,
resident of c/o Ganesh Shaligram Dode
Zopadpatti area behind new S.T. Stand Akola
Tahsil and District : Akola.

2. Divisional Railway Manager [p], Central
Railway Bhusawal, Tahsil Bhusawal,
District : Jalgaon.

[Respondent no.1 and 2 are original
Defendants no.1 and 2 as on R.A.]

Shri Ved Deshpande h/f Shri A.S. Mardikar, Senior Advocate for the Appellant
Shri J.B. Gandhi, Advocate for Respondent No.1.
Shri N.P. Lambat, Advocate for Respondent No.2.

CORAM : S.M. MODAK, J.

RESERVED ON : 4th AUGUST, 2021

PRONOUNCED ON : 23rd AUGUST, 2021

JUDGMENT:-

Heard learned Advocate Shri Ved Deshpande for the
Appellant, learned Advocate Shri J.B. Gandhi for respondent No.1 and

learned Advocate Shri N.P. Lambat for respondent No.2.

02] This Court while admitting the appeal has framed following substantial question of law—

a) “*whether a widow can claim the estate of the husband after re-marriage*”?

At that time, this Court has referred to the judgment in the case of *Smt. Kasturi Devi Vs. Deputy Director of Consolidation & Others*¹. I have perused that judgment. It is no doubt true that “*the effect of re-marriage on her right to claim share in the property*” was considered in that judgment. However, the status of that woman was that of a mother and not of a widow. So to say there was a claim for inheritance not as a widow but as mother. It has been held that there will not be any effect on her share of inheritance from a son even after she re-married. Whereas in the case before us the issue is what is the effect on widow’s right of inheritance (not in the property of a son) on the property of the deceased husband.

03] The present appellant is the mother of the deceased-Anil Shenuji Wankhade. He was working as a pointsman with Indian Railways. He was married to present respondent No.1. Parties will be referred to by their original status before the trial Court.

¹ AIR 1976 SC 2595

04] Anil Wankhade expired in an accident on 19th April, 1991. He was entitled for dues from the Indian Railways. Deceased-Anil nominated his wife/defendant-Sunanda. It has come on record that there was a dispute in between deceased-Anil and wife-Sunanda. She was staying away from the husband-Anil.

05] After the death of husband-Anil, defendant-Sunanda re-married in the month of May, 1991 with one Ganesh Saligram Dode. Plaintiff-Jaiwantabai claimed dues from the Indian Railways in the year 1993. She also informed to the employer about re-marriage of defendant-Sunanda. Indian Railways/employer demanded a certificate of marriage. However, it could not be submitted. Employer disbursed dues of Rs.65,000/- in favour of defendant-Sunanda.

06] As plaintiff-Jaiwantabai could not find favour from the employer, she filed a suit before the Civil Judge (Junior Division), Akola. She sought declaration about status of defendant-Sunanda and also injunction restraining the employer from paying the dues to defendant-Sunanda.

07] The plaintiff gave evidence and examined herself and two witnesses namely Shrirang Ingde-PW-2 (who was aware about strained relationship in between the spouses and cohabitation with second husband) and Laxman Hiwrale-PW-3 (who attended the marriage of

defendant-Sunanda). Both the defendants have not given the oral evidence. The trial Court found favour with the plaintiff and decreed the suit in toto.

08] The Indian Railways were directed to pay all the dues to plaintiff-Jaiwantabai as they have already released the dues to defendant-Sunanda. They have preferred the first appeal before the District Court, Akola. The first Appellate Court after hearing all the sides, was pleased to modify the judgment. The first Appellate Court recognized the share of defendant-Sunanda. The direction was given to the Indian Railways to disburse the amount to plaintiff-Jaiwantabai and defendant-Sunanda. It is this judgment, which is challenged before this Court by the original plaintiff. The trial Court has accepted the claim of the plaintiff in toto, whereas the first Appellate Court has also recognized the share of defendant-Sunanda. That is why, the plaintiff is aggrieved by the first Appellate Court's judgment.

SUBMISSION

09] According to the learned Advocate for the appellant after the re-marriage, defendant-Sunanda loses all her rights in the property of deceased-Anil. He also criticized the conduct of the employer in releasing the funds by not insisting upon succession certificate (but only on the basis of nomination). He has prayed for issuing direction to the Indian Railways to recover the amount from defendant-Sunanda

and to pay it to her in entirety. Whereas according to learned Advocate for defendant-Sunanda, the Hindu Widow's Re-marriage Act, 1856 (hereinafter referred to as the "Act of 1856") is repealed in the year 1983 and even Section 24 is omitted from the Hindu Succession Act, 1956 (hereinafter referred to as the "Act of 1956") w.e.f. 9th September, 2005. He relied upon a judgment in the case of *Sanjay Purushottam Patankar Vs. Prajakta Pramnod Patil*². Whereas learned Advocate for respondent No.2/employer submitted that the amount has already been disbursed to the defendant-Sunanda on the basis of valid nomination and it is for the plaintiff to recover from the defendant-Sunanda, if she succeeds.

10] On hearing the submissions and perusing the records, following facts were proved—

- a) marriage in between defendant-Sunanda and deceased-Anil,
- b) deceased-Anil working with Indian Railways as a pointsman,
- c) death of Anil on 19th April, 1991,
- d) relationship of plaintiff-Jaiwantabai as a mother with deceased Anil,
- e) disbursement of the amount by Indian Railways to defendant-Sunanda,
- f) re-marriage of Sunanda in the month of May, 1991.

11] Trial Court believed the theory of second marriage. Even though trial Court had given negative declaration against defendant-Sunanda, she has neither preferred first appeal nor filed the cross-objection. Even though the first Appellate Court while recognizing the claim of defendant-Sunanda has not upset the finding about second marriage of Sunanda. On the point of disbursement by the employer, the findings of the first Appellate Court are as follows:-

“13. In the circumstances if appellant has disbursed amount without obtaining succession certificate from respondent No.2 and without being her name recorded as of nominee in service record of deceased Anil then in that circumstances the appellant is liable to pay appropriate share of respondent No.1 from those dues to her”.

However, subsequently the first Appellate Court observed thus:-

“13. However, if by observing due procedure the appellant has effected payment to respondent No.2 that too as a nominee of deceased Anil then in that circumstance respondent No.1 has to file proper proceeding for recovery of her appropriate share from that amount”.

First Appellate Court has directed that plaintiff and defendant-Sunanda are entitled to get appropriate share.

PROVISIONS OF LAW

12] It is true that the dues from employer is nothing but the self-acquired property of the deceased-Anil. It is also true that as per Section 2 of the Act of 1856 on re-marriage, the rights and interests for deceased husband's property ceases and then there will be determination as if she have then died. It is also true that the Act of 1856 was repealed in the year 1983. It is pertinent to note that when the Hindu Succession Act was drafted in the year 1956, Section 24 was incorporated. The widow losses right if she remarries on the date when succession opens. It is also true that Section 24 is omitted from the Act of 1956 w.e.f. 9th September, 2005. Deceased-Anil expired on 19th April, 1991, so on that date succession to his property opened. So, we have to see what was the position in force at that time. The Act of 1856 was already repealed. Section 24 was very much there on the statute book. So, on the basis of that provision, whether it can be said that defendant-Sunanda can be excluded from succeeding the property of deceased-Anil?

13] The Division Bench of this Court (Principal Seat) in the case of **Sanjay Purushottam Patankar** (supra), was pleased to refuse stay to the execution of the order passed in testamentary petition. Succession certificate was granted in favour of the wife (even though she re-married) in respect of estate of deceased husband. Then the mother

filed separate petition for grant of succession certificate. She asked for stay of the order passed in first testamentary petition. It was refused by learned Single Judge. It was confirmed by the Division Bench of this Court. The provisions of Section 14 of the Act of 1956 was considered.

14] It is very well true that if we have to deal with rights of a particular party, we have to consider the provisions of relevant law in its entirety. Section 14 of the Act of 1956 makes the female Hindu being absolute owner if she possessed the property. Whereas Section 24 of the said Act disinherits the widow if she re-marries. Here this Court wants to note the difference in between the wordings of Section 2 of the Act of 1856 on one hand and the wordings of Section 24 of the Act of 1956. There is emphasis 'on the date when succession opens' as per Section 24 of the Act of 1956. The status of the widow being re-married continuing to be widow must be on the date when succession opens. The wordings "if on the date the succession opens" does not find place in Section 2 of the Act of 1856. So, we have to respect the intention of the legislators while incorporating these provisions in Section 24 of the Act of 1956.

15] In other words, if the widow has not re-married when the succession opens, the disqualification under Section 24 of the Act of 1956 will not be applicable. Admittedly, defendant-Sunanda re-married

in May, 1991 (i.e. after opening of succession on 19th April, 1991). For the above discussion, contention of the appellant so as to disqualify the defendant-Sunanda cannot be accepted. The plaintiff-Jaiwantabai and defendant-Sunanda being class 1st heirs are entitled to get equal share in the property of deceased-Anil. As contemplated under Section 10 of the Act of 1956, the widow (Rule 1) and the mother (Rule 2) of the intestate takes one share each. So both are entitled to get 50% from the property of deceased-Anil. For the above discussion, I am inclined to answer the substantial question in the affirmative on the basis of the facts involved in this appeal.

ABOUT RECOVERY

16] There is a request to issue direction to the employer to recover the amount coming to the share of plaintiff from defendant-Sunanda and give it to the plaintiff. The employer has disbursed the amount to the nominee-Sunanda. She is defendant No.2. She has received the amount of Rs.65,000/- i.e. the entire amount. She is not entitled to get whole amount. She is bound to return 50% of the amount to plaintiff/appellant. The doctrine of unjust enrichment applies. It is true that before the trial Court, the plaintiff has not asked for refund of half of amount from defendant No.1. Does it mean to say that Court should shut its eyes and handicapped. The answer is certainly no. If the appellant is left within the option of filing execution

only with a paper decree of entitlement, she will be put up again into vagrancy. The provisions of Order 41 Rule 33 of CPC empowers the appellate Court to pass appropriate orders to do complete justice. This has to be with interest of 6%. Hence, the following order :

ORDER

- I. The appeal is partly allowed.
- II. The judgment passed by 5th Adhoc Additional District Judge, Akola in R.C.A. No.175/2002 on 27/01/2005 is modified as follows :

- (a) The respondent-defendant No.1 Sunanda w/o Ganesh Dode is directed to refund 50% of the amount received by her towards dues of deceased husband from respondent No.2 – Central Railway within a period of three months from today to the appellant.
- (b) Respondent No.1 to refund the amount with 6% interest from the date of receipt by her till payment.
- (c) Respondent No.1 (in her past name or new name) to file an affidavit before the trial Court within two months from today about exact amount received by her from respondent No.2.
- (d) The trial Court to accept that affidavit and keep it on record.

- (e) The appellant is at liberty to file execution proceeding.
- (f) The executing Court is at liberty to execute the decree by passing appropriate orders.
- (g) Respondent No.2 is also directed to file an affidavit before the trial Court describing the amount disbursed by them to respondent No.1 and under which head.

III. Parties to bear their own costs.

IV. The appeal is disposed of.

(S.M. MODAK, J.)

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