

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.9279 OF 2022

REKHABAI NIMBA MAHAJAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND
OTHERS

Mr.Jayashree T. Ghorpade, Advocate for the petitioners.
Mr.S.G.Sangle, AGP for the respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : DECEMBER 01, 2022

PER COURT :

1. Akin to the matter that we dealt with by order dated 04.03.2022 in WP No.14833/2019 filed by Kushabai w/o Sheshrao Kendre Vs. The State of Maharashtra and others, this is yet another case wherein 2 widows claiming to be the first and second wife of the deceased, are seeking partition in family pension.

2. The learned Advocate for the petitioners submits that petitioner No.2 is the first wife and petitioner No.1 is the second wife. Both of them are living together under one roof even during the lifetime of the husband and even after his passing away. Both approached the learned

Civil Judge, Junior Division at Chalisgaon in Reg.Civil case 193/2021 filed by Smt.Bhikubai Nimba (petitioner No.1 herein). The Lokadalat panel which dealt with this case in Lokadalat held on 11.12.2021, accepted the compromise purshis dated 11.12.2021 between the 2 wives on the ground that each one of them would get 50% of the family pension.

3. Our judicial conscience is shocked by such conduct of the Lokadalat panel. In Kushabai (supra), the learned 2nd Joint Civil Judge, Jr.Division, Ahmedpur had granted heirship certificate to two wives vide order dated 06.02.2018 passed in Misc.Civil Application No.250/2017. Considering the law laid down by the Full Bench of this Court in the matter of Kamalbai and others Vs. The State of Maharashtra and others [(2019(3) Mh.L.J. 921], we declared the said certificate to be unsustainable and we referred the case to the learned Guardian Judge of Judicial District, Nagpur under whose jurisdiction, the concerned learned Judge was posted at the relevant time. We also placed the matter before the Principal District Judge, Latur for exercising powers u/s 7 of the Bombay Regulation VIII of 1827 and Section 383 of the Indian Succession Act to deal with the said matter or allot the case to the learned District Judge assigned with the said

jurisdiction.

4. Considering the law laid down in Kamalbai (supra), it would be only petitioner No.2 who would be entitled to the pension. We are not concerned as to whether there is a private arrangement between both the petitioners. Nevertheless, the Law declares that the children of the second wife would not be termed as illegitimate children and subject to the law applicable, after the first wife, the children of the first wife as well as the children of the second wife would be entitled for the equal family pension.

5. In view of the above, this petition is disposed off.

6. We request the learned Registrar (Judicial) of this Court to place this order before the learned Principal District Judge, Jalgaon with a further request to counsel the panel which accepted the compromise in the presence of the Court for distributing family pension in equal shares between the legally wedded wife and the second wife, which was impermissible.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)