

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 3921 OF 2016

- 1] Smt. Uma Vijendra Wagh
Age 65 years, Occu. Retd. Govt. Servant
R/o. N-5, CIDCO,
Aurangabad.
- 2] Madhuri d/o. Vijendra Wagh,
Age : Major, Occ. Household,
R/o. As above.

.. APPELLANTS
[Orig. Defendants]

VERSUS

- 1] Rukhminibai Vijendra Wagh,
Age : 64 years, Occ. Household,
R/o. B-21, Indrani Apartment,
Vedant Nagar, Aurangabad.
- 2] Shri Mahendra s/o. Vijendra Wagh
Age : Major, Occ. Service,
R/o. As above.
- 3] The State of Maharashtra
Irrigation and Power Department
Jayakwadi Project Construct Ltd.
Division No.5, Irrigation Branch,
Near Aakashwani, Jalna Road,
Aurangabad.

.. RESPONDENTS

...

Mr.P.R.Katneshwarkar, Advocate holding for Mr.Swapnil A. Deshmukh, Advocate for the appellants
Mr. Sanket S. Kulkarni, Advocate for respondent nos.1 and 2.
Mr.S.S.Dande, AGP for respondent no.3 – State.

...

CORAM : S.G.DIGE, J.

Reserved on : 29.08.2022

Pronounced on : 29.09.2022

JUDGMENT :

1] This appeal is preferred against the judgment and order passed by the Civil Judge Senior Division, Aurangabad [for short 'the trial Court'] for granting succession certificate in favour of respondent nos.1 and 2.

Brief facts of the case are as under:

2] On 28th January, 2005, present respondent nos.1 and 2 filed petition for grant of succession certificate in respect of death of Vijendra Wagh and for getting benefits of employment of deceased Vijendra Wagh. The present appellants filed objection and objected for issuance of succession certificate in favour of respondent nos. 1 and 2. Respondent no.1 is wife of deceased Vijendra Wagh and there was divorce deed between them in the year 1973. The marriage of appellant no.1 and Vijendra Wagh was

solemnized and since the day of marriage, appellant no.1 resided with deceased Vijendra Wagh, out of the said wedlock, daughter i.e. appellant no.2 - Madhuri was born. After divorce, respondent no.1 filed maintenance petition against deceased Vijendra Wagh, she was receiving maintenance.

3] After hearing all the parties and considering the evidence on record, the trial Court has passed the order allowing the application filed by respondent nos.1 and 2 and granted succession certificate in favour of respondent nos. 1 and 2 and appellant no.2.

4] It is the contention of the learned counsel for the appellants that there was divorce deed between deceased Vijendra Wagh and respondent no.1 but the said divorce deed was not considered by the learned trial Court. The marriage between deceased Vijendra Wagh and appellant no.1 performed in the year 1974 since then they are residing together. The names of the appellants are recorded in the service book of the deceased Vijendra Wagh

as nominee but this fact is not considered by the trial Court and arrived at a wrong conclusion on assumptions and presumptions, which caused injustice to the appellants. The Trial Court has not considered the *Government Gazette* dated 21.11.1974. The trial Court has not considered the evidence on record filed by the Government witnesses and the Government record, and arrived at a wrong conclusion. In the service Rules, the nominee appointed have meaning in law, in the service record the name of nominee cannot be changed on the basis of succession certificate, hence, requested to allow the appeal.

5] It is the contention of the learned counsel for respondent nos.1 and 2 that respondent no.1 is legally wedded wife of deceased Vijendra Wagh. Out of their wedlock, respondent no.2 was born. In the year, 1996, there was some matrimonial disputes between respondent no.1 and deceased Vijendra, therefore, respondent no.1 filed maintenance petition under Section 125 of Criminal Procedure Code [for short 'Cr.P.C.'] wherein she was

granted maintenance of Rs.400/- per month. The said petition was compromised on 13th October, 1996. The said order of maintenance is still in tact. This Court has dismissed the divorce petition of deceased Vijendra against respondent no.1. Thus, the marriage between respondent no.1 and deceased Vijendra was subsisting till his death. Respondent no.1 is legally wedded wife of deceased Vijendra. Hence, she is entitled for family pension of deceased Vijendra. Appellant no.1, being second wife, cannot claim family pension, hence, requested to dismiss the appeal. The learned counsel relied on the Full Bench judgment of this Court in the case of **Kamalbai & others Vs. The State of Maharashtra & others** in Writ Petition Nos.9933, 11256 and 12308 of 2016, decided on 31st January, 2019.

6] I have heard both learned counsel. Perused the judgment and order passed by the trial Court. The issue involved in this appeal is whether second wife can claim family pension and terminal benefits of the deceased. It is

the contention of the learned counsel for the appellants that there was divorce deed of the year 1973 between respondent no.1 and deceased Vijendra, which is 30 years old document. Due to the said divorce deed, the marital relations between deceased Vijendra and respondent no.1 come to an end, thereafter there was marriage between appellant no.1 and deceased Vijendra. So appellant no.1 is entitled for succession certificate of deceased Vijendra. In my view, it has come on record that maintenance petition was filed by respondent no.1 against deceased Vijendra in the year 1996, which was compromised and Rs.400/- per month maintenance was granted to respondent no.1. The deceased Vijendra and respondent no.1 were fighting their divorce petition in this Court up to 2003. This Court has dismissed the said petition of divorce. Thus, the marriage between respondent no.1 and deceased Vijendra was subsisting till his death. Appellant no.1 is second wife of deceased Vijendra. The Full Bench Judgment of this Court in the case of **Kamalbai [supra]** has held that second wife is not entitled for family pension. Family pension can be

claimed by widow, who was legally wedded wife of deceased employee. Second wife, if not legally wedded wife, would not be entitled for family pension. In the present case, the marital relations of respondent no.1 with deceased Vijendra were subsisting till his death. The trial Court has rightly considered appellant no.2 [daughter of appellant no.1] as heir to the extent of 1/3rd share of deceased Vijendra being his daughter. Hence, I do not find infirmity in the order passed by the trial Court and I pass the following order:-

ORDER

- i] Appeal is dismissed.
- ii] No order as to costs.

[S.G.DIGE]
JUDGE

DDC