

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11233 OF 2022

1. Anusayabai W/o Tukaram Ghuge
Age : 59 years, Occ: Household,
R/o: Nagzari, Tq : Kinwat,
District Nanded.
2. Meena W/o Balaji Kendre,
Age : 36 years, Occ: Household,
R/o: Nichpur, Tq : Kinwat,
District Nanded.
3. Usha W/o Sanjay Nagare,
Age : 34 years, Occ: Household,
R/o: Kinwat, Tq : Kinwat,
District Nanded.
4. Sunita W/o Krishnamurty Darade
Age : 32 years, Occ: Household,
R/o: Bodhadi, Tq : Kinwat,
District Nanded.
5. Jyoti W/o Madhav Kagne
Age : 28 years, Occ: Household,
R/o: Nichpur, Tq : Kinwat,
District Nanded.

...Petitioners/
Obj. Petitioners

Versus

1. Shakuntalabai W/o Tukaram Ghuge
Age: 55 years, Occ: Household,
R/o: Nagzari, Tq. Kinwat.
2. Archanabai W/o Balaji Gutte
Age: 38 years, Occ: Household,
R/o: Nagzari, Tq. Kinwat,
District: Nanded.

...Respondents/
Org. Petitioners

Mr. Swapnil B. Joshi and Mr S.S.Patunkar,
Advocates i/by J.P. Legal Associates
Mr R.R. Shaikh, Advocate for Respondent No. 2 - Caveator

CORAM : SANDEEP V. MARNE, J.

DATE : 23rd NOVEMBER, 2022

FINAL ORDER :

1. This is a dispute between two women claiming to be the wife of late Tukaram Patloba Ghuge, who was working in the Forest Department of Government of Maharashtra and expired on 23rd December, 2011.

2. Shakuntalabai claims to be the only legally wedded wife of Tukaram and disputes the marriage of Anusayabai. Alternatively, Shakuntalabai contends that she is the first legally wedded wife of Tukaram. Anusayabai on the other hand, disputes the marriage between Shakuntalabai and Tukaram and claims to be the only legally wedded wife. The competing claims of Shakuntalabai and Anusayabai arose on account of Misc. Civil Application No. 249/2012 being filed by Shakuntalabai in the Court of Civil Judge, Junior Division, Kinwat for issuance of legal heirship certificate under section 3 of the Bombay Regulation VIII of 1827 (hereinafter referred to as 'the Bombay Regulation' for the sake of brevity). Shakuntalabai and her daughter Archanabai were the applicants in the said application. Anusayabai and her four daughters filed Objection Petition in Misc. Civil Application No. 249/2012. After considering the competing claims of Shakuntalabai and Anusayabai, the trial court was pleased to deliver the Judgment and order dated 16.01.2020 *inter alia* holding that Shakuntalabai is the first legally wedded wife of Tukaram and Anusayabai is his second wife. The application of Shakuntalabai as well as the objection of Anusayabai was partly allowed

and the direction was issued to issue heirship certificate in the names of applicants as well as objection petitioners in addition to Tukaram's mother Dhondabai.

3. Anusayabai challenged the decision of the trial court by filing Regular Civil Appeal No. 26/2020 before the District Court, Nanded by Judgment and order dated 06.08.2022. The District Court, Nanded was pleased to dismiss Anusayabai's appeal directing issuance of legal heirship certificate in the names of Shakuntalabai, her daughter Archanabai, four daughters of Anusabai (Meena, Usha, Sunita and Jyoti) and Tukaram's mother Dhondabai. In short, the District Court excluded the name of Anusayabai from the legal heirship certificate. Petitioner Anusayabai and her four daughters are aggrieved by the decision of the District Court which is impugned in present petition.

4. Appearing for petitioners Mr Swapnil Joshi, learned counsel would submit that the trial court had not framed any specific issue as to which of the two is the first legally wedded wife of Tukaram. He would submit that in absence of such an issue being framed, the trial court erred in holding that Shakuntalabai was the first legally wedded wife of Tukaram. Mr Joshi would further submit that even otherwise, absolutely no material was placed before the trial court for recording a finding that Shakuntalabai was the first legally wedded wife. He would submit that mere birth of daughter of Shakuntalabai before the birth of the first daughter of Anusayabai could not have been reason for the trial court to arrive at a finding that Shakuntalabai was the first legally wedded wife of Tukaram.

5. Mr Joshi would further place reliance on the second sub-section of Section 4 of the Bombay Regulation and would contend that since a complicated question arose before the trial court, it ought to have suspended the proceedings and enabled either parties to file a regular suit. He would further submit that the proceedings for issuance of legal heirship certificate under the Bombay Regulation are to be decided in a summary manner and the court is not required to go into the validity of competing claims of two parties in such summary proceedings. He would therefore, seek setting aside of the order passed by the trial court on the ground that it exceeded its jurisdiction under Bombay Regulation by proceeding to decide the complicated questions of law and facts.

6. Mr Joshi would further invite my attention to the objections raised by Anusayabai before the trial court to the effect that the real name of Shakuntalabai is "Shakuntala Laxman Munde" and that she cannot be legally wedded wife of Tukaram. He would submit that in support of this contention, voters list was placed before the trial court. He would further submit that this aspect is not at all decided by the trial court. Mr Joshi would further submit that failure to decide this issue by the trial court was specifically highlighted in para No. 8 of the appeal memo filed before the District Court, but the District Court also has failed to record any findings on this vital aspect. Mr Joshi would therefore pray for setting aside the orders of the trial as well as the first appellate court.

7. Mr Shaikh, learned counsel appearing for respondent No. 2 would oppose the petition and support the orders passed by the courts

below. He would submit that in the cross examination of Anusayabai, she had admitted that Shakuntalabai's maiden name was "Shakuntala Laxman Munde". He would therefore submit that petitioners attempted to mislead both the trial court and the lower appellate court by placing reliance on voters list showing Shakuntalabai's maiden name in order to create artificial dispute about her marriage with Tukaram. Mr Shaikh has taken through various findings recorded by the trial court and lower appellate court and has prayed for dismissal of the petition.

8. After having heard both the counsel for parties, it is apparent that even though both Shakuntalabai and Anusayabai sought to dispute the marriage of the rival parties with Tukaram, both trial court as well as lower appellate court have conclusively proved that both solemnized marriages with Tukaram.

9. Shakuntalabai has not challenged the decisions of the trial or the lower appellate court to this extent and thus, has acquiesced in the position that marriage solemnized between Anusayabai and Tukaram has been solemnized. It is only Anusayabai, who has sought to question solemnization of marriage between Tukaram and Shakuntalabai. Let me first decide this challenge set up by petitioners.

10. The marriage between Tukaram and Shakuntalabai was sought to be disputed before the trial and the appellate court essentially on the basis of the voters list reflecting name of Shakuntalabai as "Shakuntala Laxman Munde". On that basis, it was vaguely sought to be suggested before me that Shakuntalabai had solemnized marriage with some other

person and not with Tukaram. However, as rightly pointed out by Mr Shaikh, Anusayabai admitted in her cross-examination that Shakuntalabai's maiden name was "Shakuntala Laxman Munde". Thus, an attempt on the part of Anusayabai to question marriage between Tukaram and Shakuntalabai is totally misplaced. Even though, no specific findings are recorded by the trial and the first appellate court in this regard, I am of the view that since the contention itself is baseless, the same deserves outright rejection.

11. Now that the marriage of Tukaram with both Shakuntalabai and Anusayabai is established, it becomes necessary to find out as to which marriage took place first. The trial and the lower appellate court have heavily relied upon two factors for arriving at conclusion that Shakuntalabai's marriage with Tukaram was solemnized first. Firstly, Tukaram's mother and brother stepped into the witness box and testified that Shakuntalabai is the first legally wedded wife of Tukaram. As observed by the trial court, the evidence of Tukaram's mother and brother remained unshattered in the cross-examination.

12. The second aspect which has weighed heavily with both the courts below is the school leaving certificate of Shakuntalabai's daughter, Archanabai. In the school records, her name is recorded as "Archanabai Tukaram Ghuge" and she is born on 6th May, 1984. As against this, the daughters of Anusayabai are born on 01.06.1986, 18.02.1988, 02.02.1990 and 30.01.1992. Since Archanabai is the first daughter of Tukaram, and since she is born out of wedlock of Shakuntalabai, the trial

court has relied upon this aspect for holding that Shakuntalabai's marriage was solemnized before that of Anusayabai. Though birth of Archana at prior point of time could not lone be a reason enough for drawing a concrete conclusion of prior solemnization of marriage of Shakuntalabai, this factor coupled with the evidence of Tukaram's mother and brother leaves no room for doubt that Shakuntalabai is the first wife of Tukaram.

13. I am therefore of the view that neither trial nor the first appellate court have committed any error in arriving at finding that the marriage between Shakuntalabai and Tukartam was solemnized prior to that of Anusayabai.

14. Having held that Shakuntalabai is the first legally wedded wife of Tukaram, the marriage between Tukaram and Anusayabai would be rendered void under the provisions of Section 11 of the Hindu Marriage Act, 1955. However, the rights of daughters of Anusayabai would be protected by the provisions of section 16 of the Hindu Marriage Act, 1955 which reads thus -

16. Legitimacy of children of void and voidable marriages. (1) *Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.*

(2) *Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have*

been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

15. Thus, even though the marriage between Tukaram and Anusayabai is void, petitioner Nos. 2 to 5, who are daughters born out of the wedlock would continue to be legitimate and would be entitled to succeed the estate of Tukaram.

16. The trial court initially committed an error in issuing succession certificate in the name of Anusayabai as well, that direction is erroneous as Anusayabai's marriage with Tukaram is void. This error is corrected by the first appellate court by excluding Anusayabai's name from the legal heirship certificate. The ultimate order passed by the first appellate court, therefore, deserves to be upheld.

17. In the result, I do not find any merit in the petition. The same is dismissed with no order as to costs.

[SANDEEP V. MARNE, J.]

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