

HONOURABLE SRI JUSTICE P.NAVEEN RAO

AND

HONOURABLE DR. JUSTICE G.RADHA RANI

APPEAL SUIT NO.674 of 2003

Date: .08.2022

Between:

Smt. Pramila Bai, W/o.Late E. Lakshman Rao,
(Ex.TTE/Railway-SC), aged about : 58 years,
Occ : House-wife, R/o.12-8-228/A, Mettuguda,
Secunderabad-17.

... Appellant / Petitioner

And

1. E. Rukmini Bai, W/o.Late E. Lakshman Rao,
Aged about : 60 years, Occ : House-hold,
R/o.9-3-723, Regimental Bazar,
Secunderabad.
2. The Divisional Railway Manager (Personal),
Hyderabad Division,
South Central Railway,
Secunderabad.

... Respondents / Defendants

This Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

AND

HONOURABLE DR. JUSTICE G.RADHA RANI

APPEAL SUIT NO.674 of 2003

JUDGMENT : *(per Hon'ble Dr. Justice G. Radha Rani)*

This appeal is preferred by the appellant aggrieved by the Judgment and Decree passed by the Judge, Family Court, Secunderabad in O.S.No.25 of 2001, dated 31.05.2002.

2. The appellant herein was plaintiff in O.S.No.25 of 2001.
3. The appellant filed the above suit to declare her as legally wedded wife of Late Lakshman Rao and to direct the 2nd respondent to pay the remaining monthly pension, after making payment to 1st respondent Rs.700/- per month, as per the compromise decree passed in O.S.No.509 of 1993.
4. The parties herein are referred to as per their array before the trial court.
5. As per the case of the plaintiff, Late E. Lakshman Rao worked as TTE in South Central Railways and retired from service on attaining the age of superannuation with effect from

13-06-1993. His first wife Rukmini Bai (1st respondent) deserted him and had not shown any interest towards him, and failed to take care of him, as such, the parents of Lakshman Rao performed his marriage with the plaintiff as per Hindu rites and customs at Yadagirigutta 35 years ago, and since then they lived as husband and wife till his death on 10-05-2000. Lakshman Rao, in his service record, had shown the name of the plaintiff as wife-nominee, and after retirement of Lakshman Rao, the 2nd defendant issued a medical card to Lakshman Rao showing the name of the plaintiff as his wife, wherein a joint photograph of the plaintiff and Lakshman Rao was also affixed. In the pension passbook also, their photos were affixed, and the plaintiff's name was mentioned in the relevant column of the service record.

6. She further submitted that during the life time of her husband, 1st defendant filed a suit against her husband claiming to be his wife *vide* O.S.No.509 of 1993 on the file of 1st Junior Civil Judge, Secunderabad, and the said suit ended in a compromise, and a decree was also passed in terms of the compromise on 14-09-1994. As per the compromise, 1st defendant was entitled to receive a sum of Rs.700/- per month towards her maintenance from

the monthly pension of E. Lakshman Rao till her life time and Lakshman Rao used to pay the remaining monthly pension to the plaintiff for maintaining the family. After the death of her husband, the plaintiff made a representation to 2nd defendant enclosing all relevant documents, but 2nd defendant refused to pay the pension.

7. The 1st defendant filed written statement submitting that she was the legally wedded wife of E. Lakshman Rao. During the subsistence of her marriage with Lakshman Rao, there could not have been any valid marriage between Lakshman Rao and the plaintiff. Till the death of Lakshman Rao, the marriage between her and Lakshman Rao was subsisting. The plaintiff herself accepted that she was the first wife, therefore there could not be any lawful marriage between Lakshman Rao and the plaintiff. The entries in the service register were not binding upon her. Issuance of medical identity card with the photograph of the plaintiff and the deceased would not give her the status of his wife. The plaintiff was not entitled for family pension nor for any declaration that she was the legally wedded wife of Lakshman Rao, and prayed to dismiss the suit.

8. The 2nd defendant remained *ex parte*.
9. The trial court framed the following issues:-
 1. *Whether the plaintiff is the legal heir of late E. Lakshman Rao?*
 2. *Whether the plaintiff is entitled for a direction to D2 to pay remaining monthly pension of late E. Lakshman Rao? and*
 3. *to what relief?*
10. The plaintiff examined herself as PW.1 and got examined two other witnesses as PWs.2 & 3. Exs.A1 to A7 were marked on her behalf. The 1st defendant examined herself as DW.1. No documents were marked by 1st defendant.
11. On considering the material on record, the trial court dismissed the suit.
12. Aggrieved by such dismissal, the plaintiff preferred this appeal contending that the trial court failed to look into the facts and evidence on record. The trial court failed to see that 1st defendant had deserted late Lakshman Rao long back and her in-laws performed her marriage with Lakshman Rao, and that it was not a void or voidable marriage. As per the custom, late Lakshman Rao married her. Her marriage with late Lakshman Rao was not

hit by Section 5 of the Hindu Marriage of Act 1955, and prayed to allow the appeal.

13. Heard the learned counsel for the appellant. None appeared for the 1st respondent.

14. The learned counsel for the appellant submitted that late Lakshman Rao married the appellant 36 years ago as per Hindu rites and customs at Yadagirigutta, and since the day of marriage they lived together as husband and wife. In the service record of late Lakshman Rao, the name of the appellant was shown as his 'wife' and 'nominee' of late Lakshman Rao. After retirement of Lakshman Rao, the 2nd respondent issued a medical card in favor of Lakshman Rao showing the appellant as his wife. In the pension passbook, the photo of the appellant along with late Lakshman Rao was affixed and the name of the appellant was recorded as his wife in the relevant column. The suit filed by 1st respondent against late Lakshman Rao ended in compromise. In pursuance of the said compromise decree, the 1st respondent received a sum of Rs.700/- per month towards maintenance during the life time of late Lakshman Rao, as such, the appellant was entitled for the

remaining amount of family pension, and the trial court erred in dismissing the suit; and prayed to allow the appeal.

15. Perused the record.

16. The trial court, on considering the evidence of the parties on record, observed that there was a categorical admission by all the parties that during subsistence of the first marriage of Lakshman Rao with 1st defendant, plaintiff married Lakshman Rao, and hence the same was *void ab initio* as per section 5(i) of Hindu Marriage Act, 1955. She failed to show that the marriage between 1st defendant with Lakshman Rao was dissolved by any competent court. The marriage between 1st defendant and Lakshman Rao would not dissolve automatically even if both were not living together or leading lives of their own with some other man or woman, and the 1st defendant would still continue to be the wife of late Lakshman Rao. Nomination by late Lakshman Rao in favor of the plaintiff during the subsistence of his marriage with 1st defendant was not valid. Living with a person for more than 35 years would not validate the marriage which was *void ab initio*. No presumption could be drawn in favor of the plaintiff when the marriage was subsisting between late Lakshman Rao and 1st

defendant. There was no proof of marriage between plaintiff and late Lakshman Rao as per Hindu rites and customs.

17. In view of above, and in the facts and circumstances of the case, we do not find any illegality in the observations of the trial court. Moreover, the Trial Court made the above observations by duly considering the provisions of Section 5 and Section 11 of the Hindu Marriage Act, 1955¹, relevant portions of which are reproduced as under :

¹**5. Conditions for a Hindu marriage.**—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party— (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or (c) has been subject to recurrent attacks of insanity
- (iii) the bridegroom has completed the age of 21 years and the bride, the age of 18 years at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

... ..

11. Void marriages.—Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

18. Admittedly, the marriage was subsisting between late Lakshman Rao and 1st defendant till his death, and it was not dissolved by any competent court. The Trial Court relied on the judgment of the Hon'ble Apex Court in **Smt. Yamuna Bai Anantha Rao Yadav vs. Anantha Rao Shivram Yadav**² wherein on considering Section 5(i) of the Hindu Marriage Act and Section 12(2) of the Hindu Marriage Act, it was held that Section 12 is confined to other categories of marriages and is not applicable to one solemnized in violation of Section 5(i) of the Act. The cases covered by Section 12(2) are not *void ab initio*. Unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. But the marriages covered by Section 11 are void *ipso jure*, i.e., void from the very inception and have to be ignored as not existing in law at all.

19. In view of the law laid down under Section 5(i) and Section 11 of Hindu Marriage Act, 1955 and, as seen from the above judgment of the Hon'ble Apex Court in **Smt. Yamuna Bai**

² AIR 1998 SC 644

Anantha Rao Yadav (2 supra), the marriage between the plaintiff and late Lakshman Rao is *void ab initio* as the plaintiff failed to file any documentary evidence to show that the marriage between 1st defendant and late Lakshman Rao was dissolved by any competent court decree.

20. With regard to the contention of the learned counsel for the appellant about the name of the plaintiff being shown in the service records of late Lakshman Rao as her nominee, a decision of the Division Bench of the Andhra Pradesh High Court in **Gettam Israil Vs Gettam Siromani & Ors.**³, answers the said contention. It says that only after taking steps to get the first marriage dissolved, the employee can make such a nomination and he cannot nominate a woman who was not his wife or a family member to receive the death or retirement benefits.

21. As per the evidence of PW.1, three years after her marriage with Lakshman Rao, 1st defendant came to Lakshman Rao and herself and they all stayed together under the same roof. The 1st defendant filed a suit for declaration three months prior to the retirement of her husband, and the said suit ended in compromise.

³ AIR 2002 AP 279

The plaintiff was not a party to the said suit. Hence, the said compromise was also not binding upon the plaintiff.

22. Hence, the Trial Court dismissing the suit filed by the plaintiff is considered as proper and valid as it is in accordance with the settled proposition of law. Therefore, we do not find any illegality or infirmity in the order of the Trial Court which needs any interference by this court.

23. In the result, the appeal is dismissed confirming the judgment of the trial court. No costs.

24. As a sequel, miscellaneous applications pending if any in this Appeal, shall stand closed.

P.NAVEEN RAO, J

DR. G.RADHA RANI, J

Date : 26.08.2022
Ktl / Ndr

HONOURABLE SRI JUSTICE P.NAVEEN RAO

AND

HONOURABLE DR. JUSTICE G.RADHA RANI

APPEAL SUIT NO.674 of 2003

(Pre-delivery judgment prepared by Hon'ble Dr. Justice G. Radha Rani)

Date : .08.2022
Ndr