

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.53 OF 2022
WITH CIVIL APPLICATION NO. 2799 OF 2022 IN CRA/53/2022

1. Smt. Aruna Gautam Kamble,
 Age 34 years, Occu. Household,
 R/o. Dr. Ambedkar Nagar, Nanded

2. Kum. Sneha Gautam Kamble,
 Age 17 years, Occu. Nil,
 Minor, under guardian of applicant No.1
 (mother)

.. Applicants
 (Original Petitioners)

Versus

1. Head Master,
 Rampratap Malpani Mukbadhir Vidyalaya,
 Maganpura, Nanded
2. Life Insurance Corporation of India
 Through its Devisional Manager,
 Yogksham Building, Gandhi Nagar, Nanded
3. PACL India Ltd.,
 22, 3rd Floor, Ambar Tower,
 C/o. Gurukripa Market, 1st Floor,
 Mahaveer Chowk, Nanded
4. Seema Gautam Kamble,
 Age 37 years Occu. Household,
 R/o. Dr. Ambedkar Nagar, Nanded

5. Ku. Megha Gautam Kamble,

6. Subodh Gautam Kamble,

7. Jay Gautam Kamble,

Respondent Nos.5 to 7 Minor,
 Occu. Education

8. Ajay Gautam Kamble,
 Age Minor, Occu. Education

Respondents Nos.5 to 8 under guardian
 of their real mother respondent No.4

.. Respondents
 (Original Respondents)

Mr. Ravindra B. Ade, Advocate for applicants;
Mr. A. N. Subnis, Advocate for Respondent No.1;
Mr. Girish S. Rane, Advocate for Respondent No.2;
Mr. Shailendra Gangakhedkar, Advocate for Respondent No.4

As per Orders dated 19.06.2023 and 08.07.2023, respondent No.3 is deleted.

CORAM: S. G. MEHARE, J.

Reserved on : 12-09-2023
Pronounced on : 03-10-2023

JUDGMENT:-

1. Heard finally by consent of the learned counsels for the parties.
2. The applicants have impugned a common judgment and order dated 09.06.2020 of the learned Principal District Judge, Nanded, passed in Regular Civil Appeal No.33 of 2014 filed by the applicants and Regular Civil Appeal No.18 of 2014 filed by the respondents.
3. The applicants and respondents are claiming the heirship/ successor of Gautam Kambale.
4. The brief facts of the case as averred in the application were that applicants Aruna and Sneha had applied Section 372 of the Indian Succession Act (for short, "said Act"), which was registered as Miscellaneous Application (Misc.R.J.E.) No.21 of 2007 before the learned Civil Judge Senior Division, Nanded, claiming that deceased Gautam Kamble solemnized marriage with Aruna on 14.09.1996. Out of their wedlock, they were blessed with daughter

Sneha on 21.06.2003. Deceased Gautam was a teacher. He died on 20.12.2006 in a motor vehicle accident. Respondent No.9 was the mother of the deceased. However, she died during the application. Instead of bringing her legal heirs as provided under Section 15 of the Hindu Succession Act, her name was deleted. Respondent No.4 claimed to be the legally wedded wife, and respondents nos. 5 to 8 claimed to be the legitimate sons and daughters of Gautam Kamble.

5. Respondent Seema claimed that she married deceased Gautam on 15.07.1994. Her maiden name was Sakhu, and the deceased named her Seema. Out of their wedlock, she delivered a daughter and three sons. At the time of filing the application, they were minors.

6. Both parties have produced evidence in support of their contention. Appreciating the evidence, the learned Civil Judge Senior Division believed that the marriage of petitioner Aruna was after the marriage of respondent No.4 Seema with Gautam. However, the learned Civil Judge held that daughter Sneha begotten to Aruna was a daughter of deceased Gutam, and she was the legitimate child and had the right to the property of her father and granted a succession certificate in favour of petitioner No.2 Sneha and respondents No.4 to 8.

7. In appeals preferred by both parties, the learned Principal District Judge, Nanded, held that Smt. Aruna failed to prove that

she was the legally wedded wife of Gautam Kamble and also held that Sneha was a daughter of the late Gautam but an illegitimate child and set aside the succession certificate directed to be issued in her favour and respondents No.4 to 8 were held eligible to inherit the debts. Against the said order, Aruna and Sneha are before the Court.

8. It was a defence of respondent Seema that Aruna married one Govind Kamble, and her marriage was subsisting. She had a specific case that on the alleged date of marriage of applicant Smt Aruna, deceased Gautam was on duty. Hence, their marriage was not performed. Therefore, Sneha was not even an illegitimate child.

9. The learned Principal District Judge disbelieved the oral as well as documentary evidence of the Applicant Smt Aruna and also disbelieved that she and deceased Gautam were living under one roof as husband and wife and held that considering the inconsistent evidence of the petitioner Aruna and her father with full of material contradictions failed to prove that Smt Aruna is the legally wedded wife of late Gauratm. She failed to establish her marital relations with deceased Gautam Kambale. However, he recorded the findings that her daughter Sneha cannot be said to be presumed to be the daughter of deceased Govind Kambale, her first husband. It has been further held that if the oral as well as documentary evidence, as pointed out above, are considered, then there is a reason to believe that there was some sort of

relationship between Smt Aruna and deceased Gautam Kambale. Also, there was no reason for the hospital authority to incorporate the name of the petitioner as the wife of Gautam Kambale. All documents are prepared or came into existence during the lifetime of the deceased Gautam Kambale. Therefore, there is reason to believe that ku. Sneha was born out of the relationship between Smt Aruna and Gautam Kambale. It has been further held that when petitioner Smt Aruna failed to prove her status as the legally wedded wife of the late Gautam Kambale, the status of Kum Sneha was the illegitimate daughter of Gautam Kambale.

10. The learned counsel for the applicant has vehemently argued that in view of the latest judgment of the Hon'ble Supreme Court, in the case ***Revanasiddappa and another Versus Mallikarjun and others***, Civil Appeal No.2844 of 2011, along with other civil appeals, dated 1 September 2023, it has been held that in terms of sub-section (1) of Section 16 of the Hindu Marriage Act (in short, "H.M.Act"), a child of a marriage which is *null and void* under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child was born before or after commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be *void* otherwise than a petition under the enactment.

11. He argued that the learned Principal District Judge had

misconceived the facts and evidence and recorded the contradictory findings. On the one hand, he believed the birth of Sneha out of the relationship between Smt Aruna and the deceased Gautam Kamabale and held her illegitimate child. On the other, she is held not entitled to pensionary benefits as a pension is not an estate or property, as held by the High Court in the case of Drupada Pawar. He has emphasized mainly the marriage of Smt. Aruna with deceased Gautam. Even if the marriage of Smt Aruna and deceased Gaurtam Kambale was held void, the right to inherit the debts of deceased Gautam accrued to her daughter Sneha cannot be denied. To bolster his arguments, he relied on the case of ***Rameshwar Devi v State of Bihar and others (2000) 2 SCC 431.***

12. On the contrary, the learned counsel for the respondents would submit that the learned Principal District Judge correctly recorded the findings that the marriage of Smt Aruna and deceased Gautam Kambale was not proved. Since there was no marriage, void or null, between Smt Aruna and Gaurtam Kambale, the child born out of such marriage has no right to inheritance. The proceeding under Section 372 of the said Act does not cease the rights of the parties to prove their civil rights. The Succession Certificate has been correctly issued in the names of the respondents. No harm has been caused to the applicant by merely issuing the certificate in their favour. He has vehemently argued that the paternity of the child was heavily questioned; therefore,

the child cannot be held legitimate under Section 16 of the Hindu Marriage Act. Unless the competent Court decides her paternity, she would not be entitled to any such certificate. He further argued that the access between deceased Gautam Kamble and Smt Aruna has also not been proved; hence, the presumption of a child born out of wedlock under Section 112 of the Indian Evidence Act has been rebutted. The succession certificate under Section 372 of the Indian Succession Act does not establish the title of the grantee as the heir of the deceased but only furnishes him with the authority to collect his debts and allow the debtors to make payment without incurring any risk. In other words, he meant to say that the civil rights of the parties under Section 372 of the Indian Succession Act would not be taken away. The party concerned can move the competent Court of the Law to establish his/her civil rights. He relied on the case of ***Banarasidass v Teeku Dutta (Mrs) and another (2005) 4 SCC 449***.

13. The root question that falls for consideration is whether the birth of a child out of the relationship between male and female having a spouse alive and without *prima facie* proving they performed the marriage, is an illegitimate child and entitled to get the Succession Certificate under Section 372 of the Indian Succession Act.

14. The material on record *prima facie* indicates that at the time of the alleged marriage of Smt Aruna and deceased Gautam Kambale on 14.02.1996, both had a spouse living at the time of

the said marriage. The so-called marriage ceremony of their marriage has been disbelieved. The learned Principal District Judge held that their marriage had not been proved as the evidence produced could not be believed. He also held that the daughter of Smt Aruna is an illegitimate child. She cannot be a member of the Family under Rule 9(16) of the Maharashtra Civil Services (General Condition of Service) Rules ("M.C.S.Rules", for short). Therefore, the daughter Kum. Sneha being an illegitimate child, is certainly not entitled to pensionary benefits, as pension is not an estate or property as held by the Bombay High Court in ***Drupada @ Drupatabai Jaydeo Pawar and Ors V Indubai d/o Kashinath Shivram Chavan, 2017 (1) All M.R. 197.***

15. Before adverting to the entitlement of pension under the M.C.S. Rules to Kum Sneha, the Court feels it appropriate to discuss her recognition under law out of the relationship between her biological parents, who had a spouse living at the time of their alleged marriage.

16. Admittedly, the biological parents of Kum. Sneha were governed under the H. M. Act. A valid and invalid marriage between two opposite sexes of Hindus has been recognized as per the provisions of the H.M.Act. The conditions for valid marriage have been provided under Section 5 of the H.M.Act. Any marriage in contravention of the conditions of the said Section is not legally recognized. Herein the case, we are concerned with clause (i) of the said Section. For the legal validity of the marriage, it is

required to be solemnized in accordance with the customary rites and ceremonies of either party thereto as per Section 7 of the H.M.Act. However, the rights of a child born of void marriage have been protected under Section 16 of the H.M.Act.

17. Marriage ceremonies are normally done in the presence of the people of the caste, relatives, friends and neighbours at the heavy expense of the parents of both sides or by themselves. Such ceremonies give social recognition to the marriage. Besides these, certain religious rituals as per the custom or socially recognized practice are performed in the presence of the invitees to the marriage ceremony. In short, it may be stated that there should be some sort of evidence that they both have accepted them as husband and wife in the presence of someone after the ceremony. Except for the ceremony of the marriage, the marriages are performed under the Marriage Registration Act. Again, such registration creates evidence that the parties to the marriage accepted the marital tie. After the marriage, which is performed mainly for the reproduction of a human, their social recognition is to be accepted by society. For the social recognition of a child, we have many after-birth ceremonies. Again, it is evidence of accepting the child as legitimate. Every marriage regulates the rights of inheritance of the wife and the children. Marriage is acceptance of the liability of the spouse till the last breath with assurance of maintenance during and after the life of the husband subject to certain conditions. The marriage shall be solemnized

with ceremonies as provided under H. M. Act for such benefits. M. Act. The child born out of such a legally valid marriage gets the recognition of legitimacy. Any marriage violating the conditions of the H.M.Act is voidable and can be declared null and void.

18. The question here was a little bit different. The petitioner, Smt. Aruna failed to prove the ceremonies of the marriage. Hence, her marriage with the deceased Gautam Kambale has been held not proven. However, it has been proved that Kum Sneha was born out of their relationship. There was no contrary evidence that during the lifetime of the deceased Gautam Kambale, he had disputed the paternity of Kum Sneha. The delivery papers establish that his name was shown as the biological father of Kum Sneha. The birth certificate issued by the Government Hospital is admissible under Section 35 of the Indian Evidence Act. So, prima facie, it is evident that the deceased Gautam Kambale was her biological father.

19. The question remains whether, in the absence of the proof of marriage ceremony, the relationship between petitioner Smt Aruna and deceased Gautam Kambale was marital or otherwise. Marriage is a precondition for a child to claim inheritance. The legitimacy of a child is to be believed on the proof of legal and valid marriage and the rights of a child born of void marriage, which is in violation of the conditions of Section 5 of the H. M. Act. The common thread for the legitimacy and illegitimacy of a child is 'marriage'. The legitimacy of a child born of void marriage is governed under

section 16 of the H.M.Act.

20. Recently, the rights of a child born of void marriage, which was referred to the larger bench in the case of ***Ravanasiddapa and Anr V Mallikarjun and Ors***, has been answered by the larger bench of the Hon'ble Supreme Court in Civil Appeal No. 2844 of 2011 dated September, 01. 2023. The conclusion relevant to the reference in paragraph K of the pronouncement, which may be related to this case, is reproduced as follows;

“(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (a) such a child is born before or after the commencement of Amending Act 1976;
(ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;
(iii) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born of a voidable marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 that such child will have rights to or in the property of the parents and not in the property of any other person”

21. It has been held in clause (ix) of the above pronouncement that for the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the coparcenary property between the

deceased in property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of H.M.A. 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place.

22. In clause (vi) of the above paragraph K, it has also been clarified that in terms of sub-section (3) of Section 6 of the Hindu Succession Act w.e.f. 9 September 2005 as amended, on a Hindu dying after the commencement of the Amending Act of 2005 his interest in the property of a Joint Hindu family governed by Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by Mitakshara law has been made the norm.

23. In clause (x) of paragraph K, it has been held that the provisions of the Hindu Succession Act 1956 have to be harmonized with the mandate in Section 16 (3) of H.M.A., which indicates that a child who has been conferred with legitimacy under sub-section (1) and (2) will not be entitled to rights in or the property of any person other than the parents. The property of the

parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above.

24. This Court is exercising the powers under the Indian Succession Act. The jurisdiction of the Court under Section 372 of the Indian Succession Act is limited. In the case of **Banarasidass** cited above, it has been held that it only furnishes the grantee with the authority to collect the debts of the deceased and allows the debtor to make the payments to him without any risk. Thus, the object of the said certificate is to facilitate the collection of debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased.

25. The proceeding under Section 372 of the Indian Succession Act is a summary proceeding. Section 386 of the above Act provides for the effect of the decision under the said Act and the liability of the holder of the certificate issued thereunder. The decision taken under the said Act does not bar the trial of the same question in any suit or in any other proceeding between the same parties and would not affect the liability of any person who may receive the whole or any part of the debt or security or any interest or dividend on any security to the account therefor to the person lawfully entitled thereto. The provision indicates that any issue as to the legitimacy decided under Section 372 or any other

Section under the said Act is subject to the dispute in a suit or any other proceeding between the same parties and would be decided by the competent Court of the law.

26. In the light of the above provisions, the petitioner has a right to prove her marriage by a separate suit. However, in a summary proceeding, it has been prima facie observed that there was no evidence to believe that the marriage of petitioner Smt Aruna and the deceased Gautam Kamabale was solemnized with ceremonies prevailing in their caste or religion. On the other hand, it is evident that Kum Sneha was the biological daughter of the deceased Gautam Kambale. Therefore, at this juncture, it would be inappropriate to determine the rights of Ku. Sneha in the service benefit of the deceased under Section 16 of the H.M.Act.

27. In the case of ***Draupada @ Draupadi Jaydeo Pawar V Indubai d/o Kashinath Shirvram Chavan*** (*supra*), the Bombay High Court has held that though the marriage is not defined under H. M.Act, void or voidable marriage is defined under Sections 5, 11 and 12 of the H.M.Act. Thus, broadly, either customary solemnization of marriage is required or performed of legal formality is a condition precedent to label that relationship as a marriage. However, there was no discussion of the M.C.S. Rules as regards the pension.

28. As discussed above, the marriage between petitioner Smt Aruna and deceased Gautam Kambale was not believed for want

of ceremonies. Unless their marriage, though is declared void by the competent Court of the law, it would be difficult to grant the succession certificate to her daughter Kum. Sneha.

29. In the facts and the law involved in this case, it was difficult for the Judge to decide the right to the certificate, which seems to be intricate and difficult in a summary proceeding under Section 372 (3) of the Indian Succession Act. However, it further empowers the Judge that he may nevertheless grant the succession certificate to the applicant if he appears to be the person having *prima facie* best title thereto.

30. It has been *prima facie* proven that the deceased Gautam Kambale was the biological father of the applicant, Kum. Sneha. Her right to have an inheritance cannot be determined in this summary proceeding as the marriage ceremony of her biological father and mother has not been proved. In the facts of the case, the Court is of the view that to balance the equities, the succession certificate be granted to respondents No.4 to 8, who appear to be the persons having *prima facie* best title, with a rider that they would protect one-sixth ($1/6^{\text{th}}$) share of Kum. Sneha till her status is decided by the competent civil Court. The mother of the deceased was a party to the proceeding. She had a right to the property of a predeceased son. After her demise, her share devolved upon the heirs mentioned in Section 15 of the Hindu Succession Act. In the case at hand, the Court has no information about such heirs. Hence, her one-sixth ($1/6^{\text{th}}$) share has been

protected in the interest of her heirs and respondents Nos.4 to 8 are authorized to collect the debts to the extent of their clear one-sixth ($1/6^{\text{th}}$) share. They may prove their share in the share of the mother of the deceased separately. The civil revision application deserves to be allowed partly. Hence, the order:-

ORDER

- (i) Civil revision application is partly allowed.
- (ii) The common judgment and order dated 09.06.2020, of the learned Principal District Judge, Nanded, in Regular Civil Appeal No.33 of 2014 dismissing the Civil M. A. (R.J.E.) No.21 of 2007, is set aside and the judgment and order in Regular Civil Appeal No.18 of 2014 is modified as follows:-
 - a) Succession certificate be issued in the name of respondents No.4 to 8 to the extent of one-sixth ($1/6^{\text{th}}$) share jointly with a rider to keep one-sixth ($1/6^{\text{th}}$) share protected to be received from the service benefits and any claim granted under the Motor Vehicles Act till her status as legitimate child under Section 16 of the Hindu Marriage Act is decided by the competent Court. If the suit for declaration of marriage filed by Smt. Aruna is not within six months from today, the one-sixth ($1/6^{\text{th}}$) share withheld by this Court be released to the respondents Nos.4 to 8, subject to the decision of the suit, if filed thereafter.
- (iii) No order as to costs.
- (iv) Pending civil application stands disposed of.

**(S. G. MEHARE)
JUDGE**