

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO.1646 OF 2023

PANCHSHILA KADUBA SALVE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

Ms.Afsia Nuzhat Ansari, Advocate for the petitioner.
Mr.S.K.Tambe, AGP for the respondent/State.

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

DATE : FEBRUARY 16, 2023

PER COURT :

1. We have considered the submissions of the learned Advocate for the petitioner on 13.02.2023 and today. There is no dispute that the petitioner before us is the second wife of the deceased Kaduba Salve. The petitioner has one daughter and one son after her marriage with the deceased on 25.05.1986. Another daughter born out of the marriage, has passed away. The deceased passed away on 01.05.2018. The first wife has passed away on 04.06.2022.

2. The first wife approached the learned Civil Judge, Senior Division in MARJI No.991/2018, seeking an heirship certificate. Though in the

petition, the petitioner claims that the first wife was childless, we find from a *purshis* placed before the learned Judge (Mrs.M.S.Kakade) at Aurangabad, signed by the first wife Vimal and another person by name Sadashiv Kaduba Salve. Kaduba is the deceased husband of the first wife Vimal. The learned Advocate for the petitioner is unaware as to who is Sadashiv, though the name indicates that he could be the son of the deceased and the first wife Vimal.

3. The learned 3rd Joint Civil Judge, Senior Division, Aurangabad (Shri S.D.Kurhekar) has signed the Mediator's report at Exh.23 in MARJI No.991/2018 concluding that the settlement through mediation between the parties, was successful. The petitioner was defendant No.2 in the said proceedings. Based on such mediation report, the learned Judge (Mrs. M.S.Kakade) accepted the mediation report Exh.23 in the presence of the parties and concluded that the heirship certificate be issued in terms of the compromise to the first wife Vimal as well as to the present petitioner Lina.

4. It is well settled that in Hindu Law, there is no concept of second wife, ever since the Hindu Marriage Act, 1955 was amended. The Full

Bench of this Court has delivered a judgment in *Kamalbai Venkatrao Nipanikar Vs. State of Maharashtra and others [2019(3) Mh.L.J.921]* concluding that by no stretch, a lady who has come in the life of a married person, could become a legally wedded second wife during the subsistence of the marriage with the first wife or during the lifetime of the first wife. It was, therefore, held that the second woman will not be entitled for any family pension.

5. The learned advocate for the petitioner submits that the first wife has now passed away on 04.06.2022. Legally, the case of the petitioner is not advanced by the death of the first wife since it is a consistent stand of the petitioner that she performed the alleged marriage with the deceased Kaduba on 25.05.1986, when the first wife Vimal was alive and the first marriage was also subsisting.

6. In view of the above, this petition stands dismissed.

7. We find that two learned Judicial officers have erroneously accepted an unsustainable compromise between two wives for sharing the pension, in view of the law laid down in Kamalbai (supra). We,

therefore, direct the learned Registrar (Judicial) of this Court to place a copy of this order alongwith the judgment of the Full Bench, before the learned Principal District Judge, Satara and Kolhapur respectively, so as to call upon the concerned 2 Judicial Officers, namely Shri S.D.Kurhekar and Mrs.M.S.Kakade, for counselling on this aspect.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)