

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1549 OF 2019
WITH
CIVIL APPLICATION NO.3491 OF 2019
IN
FIRST APPEAL NO. 1549 OF 2019

1. **Ketan Netaji Sutar,**
Aged about 23 years,
Occupation : Education.
2. **Smt.Vimal Netaji Sutar,**
Aged about 44 years,
Occupation : Household,
At present R/o. Nigadi Tarf,
Satara, Tal. & District :Satara. ... Appellants

Versus

1. **Smt. Surekha Netaji Sutar,**
Aged about 50 years,
Occupation : Household.
2. **Kiran Netaji Sutar,**
Aged about 32 years,
Occupation : Education.
3. **Kundan Netaji Sutar,**
Aged about 28 years,
Occupation : Education,
All R/o. Chinchner Vandan,
Tal & District : Satara. ... Respondents

.....

Mr. Dilip Bodake a/w Mr.Sharad Bhosale, for the Appellants.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 29th AUGUST, 2023.

JUDGMENT :

. Heard learned Counsel Mr. Bodake on the point of admission of Appeal.

2 Perused the impugned judgment as well as oral and documentary evidence adduced before the lower Court.

3 Admittedly, respondent No.1 is a legally wedded wife of Netaji Sutar (for short 'deceased') while the appellant No.2 claims to be the second wife of deceased, who died on 9th June, 2010.

4 Appellant No.2 had moved an application under Section 372 of the Indian Succession Act, 1925, for grant of a Succession Certificate in her favour for seeking a job on compassionate ground in place of the deceased. Deceased was an Assistant Teacher in New English School, Chinchner Vandan, Tal. and Dist. Satara. It is an admitted fact that the respondent No.1 is the first and legally wedded wife of the deceased while respondent Nos. 2 and 3 are her

children. The alleged marriage of appellant No.2 with deceased was admittedly a void marriage in view of Section 11 of the Hindu Marriage Act, 1955. The learned trial Court has, therefore, rightly observed that in view of Section 11 of the Hindu Marriage Act, the marriage of the deceased with appellant No.2 was a void marriage.

5 Section 5 (i) of Hindu Marriage Act contemplates;

“ Section 5- Conditions for a Hindu marriage -

A marriage may be solemnized between any two Hindus,

(i) neither party has a spouse living at the time of the marriage.”

6 Admittedly, the appellant No.2 was a spouse living at the time of alleged second marriage of the appellant No.2 with the deceased. The marriage of deceased and respondent No.1-Surekha was never dissolved. The appellant No.2 has failed to establish her marriage with deceased. She had even not averred in her application as to how she came in contact with the deceased and as to how their marriage has been solemnized. This amounts to suppression of material fact and would attract sub Section 2 of Section 372 of the Indian Succession Act.

7 The appellant No.2 appears to have tendered a document **Exh. 32** before the Civil Judge in order to prove her marriage which the Court below has rightly discarded on the ground that it is only a plain piece of paper on which parents of the appellant No.2 and some other villagers had put their signatures indicating that the marriage has been solemnized between appellant No.2 and the deceased. It cannot be accepted as an admissible evidence. Merely because the appellant No.2 and the deceased along with the respondents were staying under one roof, it cannot be said that appellant No.2 acquired a status of a legally wedded wife of the deceased.

8 The application under Section 372 of the Indian Succession Act, 1925 may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof. The appellant No.2 claimed a job on compassionate ground due to the death of the deceased claiming to be his legally wedded wife, which she cannot, in view of Section 11 of the Hindu Marriage Act as stated herein-above. The question of solemnization of so called marriage of the appellant No.2 with the deceased is inconsequential.

9 The learned Trial Court has, therefore, rightly discussed the evidence including the case laws reported in **Union of India and Anr. Vs. V. R. Tripathi**,¹ as well as **Vijaya Ukarda Athor (Athawale) Vs. State of Maharashtra and Ors.**².

10 In case of Union of India (Supra), the issue was in respect of the settled legal position in view of Section 16 of Hindu Marriage Act, 1955 wherein legitimacy of children of void and voidable marriages is recognized, which is not the issue before the trial Court while entertaining an application under Section 372 of the Indian Succession Act, 1925. There is no issue of legitimacy of the appellant No.1 and, therefore, the ratio laid down in this case would not be helpful to the Counsel for the appellants.

11 As regards ratio laid down in Vijaya Ukarda Athor (Athawale) (Supra), it is held by this Court that the purpose for providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

1 2018 DGLS(SC) 1378.

2 Writ Petition No.1341 of 2013, decided on 20/07/2016.

12 The Court below has, therefore, rightly observed that issuance of Succession Certificate in favour of appellants cannot be considered for getting a job on compassionate ground, which is a exclusive domain of the concerned authority.

13 Having said so, I do not find any substance in the Appeal and hence, it needs to be dismissed at this stage itself and as such, it stands dismissed.

14 There shall be no order as to costs.

15 Pending applications, if any, also shall stand disposed of.

[PRITHVIRAJ K. CHAVAN, J.]