

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.322 OF 2014**

Smt. Sunita Bhagvandas Bairagi &
Others ...Appellants
V/s.
Bharati Bhagvandas Bairagi & Others ...Respondents

Mr. Harshad E. Palwe a/w. Ms.Farzana Khan and Mr.Sudip Mallik
for the Appellants.

Mr. R. M. Haridas for Respondent Nos. 1 to 5.

CORAM : RAJESH S. PATIL, J.

DATED : 22 DECEMBER 2023

PC.:

1. This Second Appeal is filed by Sunita who claims to be 'First Wife' of now deceased 'Bhagwandas', challenging the impugned judgment and order passed District Court, Nashik, only to extend that she is not considered as legally wedded wife of Deceased Bhagwandas.

2. Sunita had filed SCS No.277/2005 before the Civil Judge Senior Division, Nashik, claiming therein for a declaration

that she is the legally wedded wife of Bhagwandas and only heir of deceased Bhagwandas and hence she has heirship right pursuant therein. Further, she sought declaration that Defendant Nos. 1 to 5 i.e. Bharati and children of Bharati have no relationship with deceased Bhagwandas.

3. So also Civil Misc. Application No.141 of 2005 was filed by the Bharati claiming succession certificate under the provision of 372 of the Indian Succession Act for only herself and her children due to death of Bhagwandas. In the suit along with Civil Misc. Application evidence was lead by Plaintiff No.1 (Sunita) and one witness namely Sayaji Asaram Sonawane, a clerk in Nashik Municipal Corporation. On behalf of the Bharati evidence was lead by her. The suit filed by Sunita and Civil Misc. Application filed by Bharati were heard together, and by judgment and order dated 16 August 2007, the suit was dismissed and the Civil Misc. Application was allowed.

4. Being dissatisfied with the judgment and order dated 16 August 2007, Sunita filed RCS No.275 of 2007 before the

District Court, Nashik.

5. The District Court heard both parties in Appeal and by its judgment and order dated 14 August 2013 partly allowed, the appeal by granting a declaration that the right of the children of second wife (Sunita) were granted and it was held even they are entitled to equal share in the property of deceased Bhagwandas Bairagi along with first wife (Bharati) and her children. No right was given to the second wife (Sunita).

6. The present Second Appeal is filed by second wife (Sunita) only to the limited extend of she being not granted any share in the property of deceased Bhagwandas.

7. On 12 July 2017 the present Second Appeal was heard and Minutes of Order were entered into between the parties. For ease of reference, the said Minutes of Order dated 12 July 2017, are reproduced hereinbelow :

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 322 OF 2014

DISTRICT - NASHIK

Smt. Sumita Bhagvandas Bairagi & Ors. Appellants

Vs.

Bharati Bhagvandas Bairagi & Ors. Respondents

MINUTES OF ORDER

Coram : Shri. S. J. Kathawalla J.

Date : 12-7-17

- 1) The dispute in respect of entitlement of Appellant No. 2 to 4 and Respondent Nos. 2 to 5 is resolved in following manner.
- 2) The Nashik Municipal Corporation is directed to release the amounts of gratuity and other service benefit funds or amounts (except pension amount) lying with it, in the name of or on the account of deceased "Bhagvandas Madandas Bairagi" who was working as driver with its health department, in following manner :
 - a. 1/3rd of the total amount be released by cheque drawn in the name of Appellant No. 2 : Nisha Bhagvandas Bairagi.
 - b. 1/5th of the total amount be released by cheque drawn in the name of Appellant No. 3 : Bhagyashri Bhagvandas Bairagi.
 - c. 1/8th of the total amount be released by cheque drawn in the name of Appellant No. 1 : Sumita Bhagvandas Bairagi as Natural Guardian mother of Appellant No. 6 : Prathmesh Bhagvandas Bairagi. This will not be treated as acceptance of any entitlement of Appellant No. 1 in her personal capacity.
 - d. 1/8th of the total amount be released by cheque drawn in the name of Resp. No. 2 : Dhayana Bharati Bairagi.
 - e. 1/8th of the total amount be released by cheque drawn in the name of Resp. No. 7 : Anil Bhagvandas Bairagi.
 - f. 1/8th of the total amount be released by cheque drawn in the name of Resp. No. 4 : Pooja Bhagwan Bairagi @ Mrs. Pooja Sachin Bairagi (name after marriage).
 - g. 1/8th of the total amount be released by cheque drawn in the name of Resp. No. 5 : Mayur Bhagvandas Bairagi.

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- h. 1/3rd of the total amount be deposited in this Court by cheque in the name of "The Registrar, Appellate Side, High Court, Mumbai" which be invested in any nationalized bank.
- i. The total amount of pension lying in the pension account of deceased "Bhagvandas Madandas Bairagi", as of today, be deposited in this Court by cheque in the name of "The Registrar, Appellate Side, High Court, Mumbai" which be invested in any nationalized bank.
- j. The aforesaid release and deposit of amounts be effected by Nashik Municipal Corporation within 15 days of receipt of authenticated copy of this Order and minutes.
- 3) The dispute about whether Appellant No. 1 (Sunita Bhagvandas Bairagi) or Respondent No. 1 (Bharati @ Aruna Bhagvandas Bairagi) was legally wedded wife of deceased Bhagvandas Bairagi is kept open to be decided by this Court.

Mumbai,

Dated : 12th July, 2017

for relathad
Advocate for the Appellants

for
Advocate for the Respondents
भारती कुंठे अरुणभाई बापूभाई बोरगे
(Bharati @ Aruna B. Bairagi)

Appellant No. 1 (Sunita Bairagi) Respondent No. 1

Sunita Bairagi
Bairagi

Appellant No. 2 (Nisha Bairagi) Respondent No. 3

Nisha Bairagi

Appellant No. 3 (Bhagyashri Bairagi)

Bhagyashri Bairagi

Appellant No. 4 (Smt. Sunita Bairagi)

Sunita Bairagi (Smt. Sunita Bairagi)

8. So also Second Appeal was admitted on 12 July 2017 on following questions of law. “Whether the First Appellate Court has erred in holding that Respondent No.1 is the legally wedded wife of deceased Bhagwandas Bairagi ?”

SUBMISSION

9. On behalf of the Appellant Mr. Harshad Palwe made submissions.

(i) Mr. Palwe submits that the deceased had inserted the name of his client, the Sunita in the nomination form. Mr. Palwe submits that it will be necessary to look into the Rules of Maharashtra Civil Pension Rules, as the deceased was working as an employee of Nashik Municipal Corporation. He submitted that Rule 115 of the said Pension Rules has to be considered and thereafter Rule 111, sub rule 5 (i). He submitted that there is no ambiguity and the words mentioned are firstly by amendment in the year 2016 by the Notification “legally wedded wife” or wives. Mr. Palwe further submitted that since the word wives has not been

amended, which means not only legally wedded wife but also one which can be called as wife without the word legally.

(i) Mr. Palwe to buttress his submission referred to the following judgment :

Vidhyadhari and Others v/s. Sukhrana Bai and Others reported in ***(2008) 2 Supreme Court Cases 238.***

(iii) Mr. Palwe further submitted that the question of law as framed by this Court should be answered in favour of the Appellant.

10. On the other hand, Mr. Haridas made submission on behalf of the Respondent-first wife. Mr. Haridas submitted that the difference in the facts of the judgment cited on behalf of the appellant and the present proceedings is that the parties knowing the position of law had entered into the minutes of the order, wherein the voluntary agreed that no share should be given to the

second wife, except the 'pension'. He submitted that in the present proceeding it is only the question of pension.

11. Mr. Haridas submitted that one has to look into the Maharashtra Civil Service Pension Rules. He submitted that Rule 111 (5) (i) the word use are legally wedded wife. Therefore, it is necessary that women claiming her share from the deceased person has to be legally wedded wife.

12. Mr. Haridas further submitted that the nomination of pension of deceased was only in the name of first wife and an attempt were made that the name of second wife be inserted therein. However, Appellant second wife not able to prove that such an exercise of inserting the name of second wife was done completely as per the provision of law. He further submitted that this fact has been specifically considered by the Appellate Court.

13. Mr. Haridas further submitted that in the present proceedings it has been proved the deceased husband was always

staying with first wife and it is nobodies case that he ever had stopped leaving with his first wife. Mr. Haridas further submitted that it might be that apart from first wife the deceased was visiting the house of second wife. Mr. Haridas also submitted that the deceased was working with Nashik Municipal Corporation as a driver and had died on 30 May 2005 while in service.

14. Mr. Haridas also referred to the judgment of Supreme Court in (i) *Raj Kumari and Another V/s. Krishna and Others* reported in *(2015) 14 Supreme Court Cases 511* and judgment of Division Bench of this Court in *Chanda Hinglas Bharati (Smt) v/s. State of Maharashtra and Ors* reported in *2016 (2) Bom. C. R. 623*. He referred to the judgment of *Shamal Mahdeo Tate v/s. District Collector, Solapur and other* reported in *2022 (3) Mh. L.J.* and the judgment of *Kamal Mahaling Patil V/s. Indubai Mahaling Patil & Ors.* Reported in *2019 (4) Mh.L.J.*, and also the judgment of *Draupada @ Draupadi Jaydeo Pawar & Ors. V/s. Indubai d/o. Kashinath Shivram Chavan & Anr.* Reported in *2017 (1) ALL MR 197 and Kamalbai vs. State of Maharashtra*, reported in *2019 (3) Mh.L.J. 921*.

15. Mr. Haridas submitted that taking into consideration the law laid down by Supreme Court and by this Court. There is no merit in the Second Appeal and the question of law should be answered in favour of Respondent as rightly held by both the courts, by not granting any right to the Appellant (second wife).

ANALYSIS AND CONCLUSION :

16. I have heard both the learned counsel and I have gone through the documents and judgments referred by the parties.

17. This Second Appeal is filed by Sunita who also claims to be the wife of now deceased Bhagwandas. Sunita had filed a suit before the Civil Judge, Senior Division, Nashik for a declaration that she is legally wedded wife of the deceased Bhagwandas. Deceased Bhagwandas had married to a lady named Bharati. With his wedlock with Bharati, he has four children. So also after marrying Sunita, he has three children. The second wife Sunita filed a suit in the year 2005 for a declaration that she is legally wedded wife of the deceased Bhagwandas and hence she is the only heir of the deceased Bhagwandas and further she sought a

declaration that defendant nos. 1 to 5 who are the first wife and children of first wife, have no relationship with the deceased Bhagwandas. The first wife Bharati infact filed a civil miscellaneous application claiming succession certificate under the provisions of Section 372 of the Indian Succession Act, for herself and her children with Bhagwandas. The suit and the application for succession certificate were heard together. The suit filed by the second wife was dismissed, but the application filed for succession certificate by the first wife was allowed. In the First Appeal, only modification which was done is that the children of the second wife were considered as the legal heirs. However, no benefit was given to the second wife.

18. The present Second Appeal was filed in this Court by the second wife and it was admitted on only one substantial question of law which reads as under :-

“ Whether the First Appellate Court has erred in holding that the respondent no.1 is legally wedded wife of the deceased Bhagwandas ? ”

19. On the day of the admission of the Second Appeal, the

parties infact had entered into an amicable settlement and hence the minutes of the order were prepared and executed between the parties. The said minutes of the order dated 12 July, 2017 however in paragraph (3), it was recorded that the question whether the second wife was the legally wedded wife of the deceased Bhagwandas, was kept open by this Court.

20. Therefore, the only question to be answered in the Second Appeal is whether the appellant original plaintiff is the legally wedded wife of the deceased.

21. The second wife even though entered into the witness box along with one Sayaji, being a clerk with the Nashik Municipal Corporation, where the deceased was working, she could not prove that she was the legally wedded wife, as the deceased Bhagwandas had first wife was already proved. Therefore the Appellate Court was right in holding that the respondent no.1 is the legally wedded wife of the deceased Bhagwandas.

22. The Full Bench of this Court in the judgment of ***Kamalbai*** (supra) in paragraph nos. 17 to 26 have held that the

family pension payable to a widow of the deceased Government servant, the widow has to be the legally married woman, in the cases to which the Maharashtra Civil Services (Pension) Rules, 1982 apply.

23. So also as per Rule 26 of Maharashtra Civil Services (Conduct) Rules, 1979 clarifies that no Government servant having living spouse shall enter into or contract a marriage with any person. Rule 26 reads as under :-

26. Contracting of marriages :-

1. No Government servant shall enter into, or contract, a marriage with a person having a spouse living ; and

2. No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person. Provided that the Government may permit a Government servant to enter into, or contract, any such marriage as it referred to in clause (1) or clause (2), if it is satisfied that---

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the Government.

24. The Full Bench in the judgment of *Kamalbai* (supra) affirms the view taken by *Chanda Bharati* (supra), *Ramabai* (supra) and *Indubai* (supra).

25. Supreme Court in the judgment of *Raj Kumari & Anr.* (supra), delivered by 3 Judges, held that the pension is given to the legally wedded wife of the deceased Government employee in accordance with the Rules and Regulations governing the service condition. Paragraph 13 of the said judgment reads as under :-

13. Normally, pension is given to the legally wedded wife of a deceased employee. By no stretch of imagination one can say that the plaintiff, Smt. Krishna was the legally wedded wife of late Shri Atam Parkash, especially when he had a wife, who was alive when he married to another woman in Arya Samaj temple, as submitted by the learned counsel appearing for the appellants. We are, therefore, of the view that the High Court should not have modified the findings arrived at and the decree passed by the trial court in relation to the pensionary benefits. The pensionary benefits shall be given by the employer of late Shri Atam Parkash to the present appellants in accordance with the rules and regulations governing service conditions of late Shri Atam Parkash.

26. This judgment of the Supreme Court has been considered by the Full Bench judgment of the Bombay High Court

in *Kamalbai* (supra).

27. The judgment referred by the Appellant of the Supreme Court in *Vidhyadhari & Ors.* (supra) where the facts were that there were two wives, first wife did not have any children, however second wife had two sons and two daughters, who were minor at the time when the application was made for receiving service benefits. The deceased had nominated the second wife in for the service benefits. Therefore, in the said case while deciding the issue, the Supreme Court granted in the interest of justice 1/5th to the first wife and balance 4/5th to the four children of the second wife and further clarified that they have not decided the status of the second wife. Paragraph 15 of the said judgment reads as under :-

15. It should not be understood by the above that we are, in any way, deciding the status of Vidhyadhari finally. She may still prosecute her own remedies for establishing her own status independently of these proceedings.

28. In my view, taking into consideration the law laid down by the Supreme Court and the Full Bench of this Court, I am satisfied that substantial question of law is to be answered in

favour of Respondent No.1.

29. There is no merit in the Second Appeal. The Second Appeal is dismissed. There shall be no order as to costs.

30. The amounts are deposited by Nashik Municipal Corporation, pursuant to the minutes of order dated 12 July 2017, filed in the Second Appeal No.322 of 2014, as per clause (h) and (i), which read as under :-

“(h) 1/8th of the total amount be deposited in this Court by cheque in the name of “The Registrar, Appellate Side, High Court, Mumbai” which be invested in any nationalized bank.

(i). The total amount of pension lying in the pension account of deceased “Bhagvandas Madandas Bairagi,” as of today, be deposited in this Court by cheque in the name of “The Registrar, Appellate Side, High Court, Mumbai” which be invested in any nationalized bank.”

31. The said amount as mentioned in clauses (h) and (i) above, is allowed to be withdrawn by Respondent No.1 (Bharati Bhagwandas Bairagi), along with accrued interest. For the sake of clarification, the Nashik Municipal Corporation henceforth should deposit all pension benefit to the bank account of Respondent

No.1 (Bharati Bhagwandas Bairagi).

32. All parties to act on the authenticated copy of this order.

(RAJESH S. PATIL, J.)