

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(253)

RSA-4644-2019 (O&M)

Date of Decision : February 09, 2023

Paramjit Kaur and others

.. Appellants

Versus

General Public and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Kumar, Advocate, for the appellants.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-6312-C-2011

As the main case is listed for today, the present application seeking early hearing of the case has become infructuous.

RSA-4644-2019(O&M)

In the present Regular Second Appeal, the challenge is to the judgment and decree of the trial Court dated 04.12.2014 by which the suit filed by the appellants-plaintiffs seeking the retiral benefits in respect of the service rendered by Harbhajan Singh was dismissed as well as to the order dated 09.05.2019 passed by the lower Appellate Court to the extent that though appellants No. 2 and 3 were held entitled for the retiral benefits in respect of the service rendered by Harbhajan Singh in paragraph 14 of the said judgment of lower appellate court but as per paragraph 15 of the

judgment, the appeal was dismissed, which has led to the filing of the present Regular Second Appeal.

It may be noticed that when the present regular second appeal came up for hearing before the Coordinate Bench on 30.10.2019, the same had already been dismissed qua appellant-plaintiff No.1 namely Paramjit Kaur and the present appeal only subsists qua the other two appellants namely Harpreet Kaur as well as Rajpreet Kaur, daughters of the deceased-Harbhajan Singh.

Certain facts may be noticed herein so as to appreciate the controversy in the correct perspective.

Appellant No. 1-Paramjit Kaur along with appellant Nos. 2 and 3 i.e. Harpreet Kaur and Rajpreet Kaur filed a suit for declaration/mandatory injunction that as Paramjit Kaur is the widow of Harbhajan Singh and Harpreet Kaur and Rajpreet Kaur are the daughters born out of the said wedlock, they are entitled for the retiral benefits in respect of the service rendered by Harbhajan Singh after Harbhajan Singh died while in service on 20.09.2007.

In the suit, one Surjit Kaur was also arrayed as defendant No.5, who also claimed herself to be the legally wedded wife of late Harbhajan Singh. The trial Court, keeping in view the evidence which had come on record that late Harbhajan Singh had filed a divorce petition against Surjit Kaur-defendant No.5 wherein, it was admitted that Harbhajan Singh had married Surjit Kaur on 20.12.1983 but the said divorce petition was dismissed holding that Surjit Kaur was the legally wedded wife of Harbhajan Singh and while the subsistence of the first marriage, Harbhajan Singh could not have contracted the second marriage with Appellant No. 1-

Paramjit Kaur, the suit was dismissed by the trial court vide order dated 04.12.2014.

Feeling aggrieved against the said order of dismissal of the suit, Paramjit Kaur, Harpreet Kaur and Rajpreet Kaur-minor daughters of the deceased filed an appeal, which came to be decided on 09.05.2019. While deciding the appeal, the lower Appellate Court again came to conclusion that Harbhajan Singh was married to defendant no. 5-Surjit Kaur and while the subsistence of marriage of Harbhajan Singh with Surjit Kaur, Appellant No. 1-Paramjit Kaur cannot claim to be legally wedded wife of Harbhajan Singh so as to claim the retiral benefit in respect of the service rendered by late Harbhajan Singh after his death.

With regard to the two minor children i.e. Appellants No. 2 and 3, it was held that keeping in view the fact that the minor daughters have been able to prove that they were born out of the relationship between Paramjit Kaur and Harbhajan Singh, they will be entitled for retiral benefits being daughters of Harbhajan Singh along with his wife, Surjit Kaur. Though, the said finding has been recorded in paragraph 14 of the judgment dated 09.05.2019, but in paragraph 15, the appeal filed by the appellants-plaintiffs was dismissed and the judgment and decree of the trial court was not modified.

It may be noticed that even defendant no. 5-Surjit Kaur unfortunately died during the pendency of the suit on 27.11.2014.

Present appeal has been filed challenging the judgments and decrees of the courts below on the ground that once lower appellate court recorded a finding in favour of appellants no. 2 and 3 that they are entitled for the service benefits of Harbhajan Singh after his death along with Surjit

Kaur, it was incumbent upon the court below to modify the judgment and decree of the lower appellate court.

Learned counsel for the respondents-State submits that they have not preferred any appeal against the findings recorded by the lower Appellate Court in paragraph 14 but as the appeal was dismissed, there was no occasion to file the appeal even otherwise.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the facts which have been narrated hereinbefore as well as keeping in view the evidence which is already on record, it is clear that Harbhajan Singh (since deceased) was married to defendant No.5-Surjit Kaur in the year 1983 which marriage subsisted as, the divorce petition filed by Harbhajan Singh seeking divorce from Surjit Kaur was dismissed. In the absence of a valid divorce, Surjit Kaur remains the legally wedded wife of Harbhajan Singh till he died.

The question which arises is as to who will be entitled for the service benefits in respect of the service rendered by late Harbhajan Singh and the children of a void marriage are to be treated as a legitimate so as to be entitled to the estate of their father or not.

The said question came up for consideration before the Hon'ble Supreme Court of India in ***Civil Appeal No.605 of 2000 titled as Rameshwari Devi vs. State of Bihar, decided on 27.01.2000*** wherein, the Hon'ble Supreme Court of India, keeping in view the Rule 23 of the Hindu Succession Act 1956 held that children born out of the void marriage are to be treated as a legitimate children so as to succeed estate of their father.

Relevant paragraph 13 and 14 of the said judgment are as under:-

“ 13. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of [Section 5](#) of the Hindu Marriage Act and was a void marriage. Under [Section 16](#) of this Act, children of void marriage are legitimate. Under the [Hindu Succession Act, 1956](#), property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see [Sections 8, 10](#) and the Schedule to the [Hindu Succession Act, 1956](#)). Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.

14. Rameshwari Devi has raised two principal objections : (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi with her marriage with Narain Lal would be legitimate under [Section 16](#) of the Hindu Marriage Act. First objection we have discussed above and

there is nothing said by Rameshwari Devi to rebut the presumption in favour of marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. Inquiry was quite detailed one and there are in fact two witnesses examined during the course of inquiry being (1) Sant Prasad Sharma, teacher, DAV High School, Danapur and (2) Sri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, Rtd. District Judge, Bhagalpur, Smt. (Dr.) Arun Prasad, Sheohar, Smt. S.N. Sinha, w/o Sri S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in records as sons of Narain Lal.”

The said question came up for consideration before the Hon'ble Supreme Court of India again in **Civil Appeal No.575 of 2008 titled as Vidyadhari and others vs. Sukhrana Bai and others, decided on 22.01.2008** wherein again, by relying upon the judgment in **Rameshwari Devi's case (supra)**, the children of the void marriage were held to be

legitimate children so as to be entitled to estate of their father. The relevant paragraph 10 of **Vidhyadhari's case (supra)** is as under:-

“ 10. However, unfortunately, the High Court stopped there only and did not consider the question as to whether inspite of this factual scenario Vidhyadhari could be rendered the Succession Certificate. The High Court almost presumed that Succession Certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this Succession Certificate was for the purposes of collecting the Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues in the nature of death benefits of Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the Succession Certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed. This Court in a reported decision in Rameshwari Devis case (supra) has held that even if a Government Servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an application for Succession Certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application under [Section 372](#) of the Indian Succession Act as there is nothing in that Section to prevent such a nominee from claiming the certificate on the basis of

nomination. The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his life-time. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the Succession Certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of Succession Certificate the court has to use its discretion where the rival claims, as in this case, are made for the Succession Certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a Succession Certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had born his four children and had claimed a Succession Certificate on behalf children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.”

Keeping in view the settled principle of law noticed

hereinbefore as well as the evidence, which has come on record, finding has

also been recorded by the lower appellate court that both the appellants No. 2 and 3 are born out of the void marriage of Harbhajan Singh but are to be treated as legitimate for the purpose of succession to estate of their father. Once the said finding has been recorded by the lower Appellate Court in paragraph 14 of order dated 09.05.2019, nothing has come on record as to why the appeal filed by the appellants-plaintiffs was dismissed despite the said finding being recorded.

Learned counsel for the respondents concedes the fact that the said facts are on record by way of evidence as well as finding of the lower Appellate Court in paragraph 14 of the impugned judgment.

Keeping in view the said position, the present appeal filed by the appellants No. 2 and 3 is allowed to the extent that they are held entitled for estate of their father, Late Harbhajan Singh and will be entitled for the retiral benefits in respect of the service rendered by their father-Harbhajan Singh after his death.

As this Court has been informed that defendant no. 5-Surjit Kaur has already died, while the suit was pending before the trial court and the service benefits in respect of the service rendered by late Harbhajan Singh are yet to be released, the same are directed to be released in favour of appellants No. 2 and 3 along with the family pension from the date Harbhajan Singh died.

It may be noticed that Harbhajan Singh had died on 20.09.2007 on which date, the law settled by ***Rameshwari Devi's case (supra)*** was in existence to be followed but the same was not followed and rather the entitled persons were forced to litigate.

Appellants No. 2 and 3 will also be entitled for arrears of

pension from the date of death of their father along with arrears upto the date they are entitled for as per the rules governing the service.

Let the present order be complied with within a period of two months from the receipt of copy of this order.

The decree qua the entitlement as held in the order be drawn in favour of appellants No. 2 and 3.

The present Regular Second Appeal is allowed in above terms.

As the main appeal has been allowed, present application i.e. CM-13210-C-2019 stands disposed of.

February 09, 2023

(HARSIMRAN SINGH SETHI)

harsha

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No