

20 February 2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 816 OF 2022

Smt. Asha Maruti Shejal

...APPELLANT

v/S.

Smt. Rukmini @ Ranibai Maruti

Shejal and Ors.

....RESPONDENTS

Mr. Vikas Saindane *a/w. Mr. Nitin Dhandore, for the Appellant.*

Mr. S.M. Gorwadkar, *Senior Advocate with Mr. Prasad Kulkarni a/
w. Mr. V.H. Narvekar for Respondent No.1.*

Ms. Leena Patil, *for Respondent Nos.3 to 5.*

CORAM : SANDEEP V. MARNE, J.

DATED : 20 February 2024.

JUDGMENT :

1. By this Appeal, the Appellant challenges the Judgment and Decree dated 2 January 2019 passed by the Principal District Judge, Solapur in Regular Civil Appeal No. 211 of 2015. The first Appellate Court has allowed the Appeal preferred by Respondent Nos.1 and 2 herein and has dismissed the Appeal preferred by the Appellant. The Judgment and Decree dated 2 September 2015 passed by the Civil Judge Senior Division, Solapur in Regular Civil Suit No. 826 of 2011 is set aside and the suit is decreed by

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declaring that Plaintiffs alone are the legal heirs of deceased-Maruti and by directing Defendant Nos.3 to 5 to release the entire amount of family pension in respect of deceased-Maruti in favour of the Plaintiffs. The issue involved is about entitlement of second wife to a share in retirement benefits of deceased railway servant.

2. Maruti Bapu Shejal was employed in the office of Divisional Railway Manager, Central Railway, Solapur on the post of Watchman. He married Plaintiff No.1-Rukminibai and out of the wedlock, three children, including Plaintiff No.2 were born. Maruti entered into second wedlock with Asha (Defendant No.4) on 4 May 1998. Maruti took voluntary retirement on 19 October 2009. He declared Defendant No.4-Asha as his nominee in the railway records. Maruti died on 22 October 2011. The first wife-Rukminibai and her son, Kiran instituted Regular Civil Suit No. 826 of 2011 in the Court of Civil Judge Senior Division, Solapur seeking declaration that Rukminibai is the only legally wedded wife of the deceased and praying for direction against the railway authorities for payment of all pensionary benefits of deceased-Maruti to the Plaintiffs. Asha was impleaded as Defendant No.4 to the suit. The Trial Court partly allowed decreed the suit holding that recording of name of Defendant No. 4 as legally wedded wife of the deceased was illegal and the entry was directed to be cancelled. The Railway Authorities were directed to make an entry of Plaintiff-Rukminibai as well as Defendant No.4-Asha as wives of deceased-Maruti. It was directed that 70% of the family pension be paid to Plaintiff No.1-Rukminibai and 30% to Defendant No.4-Asha.

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3. Both Rukminibai and Asha got aggrieved by Trial Court's Decree dated 2 September 2015. Rukminibai filed Regular Civil Appeal No. 211 of 2015 whereas Asha filed Regular Civil Appeal No. 297 of 2016 before the Principal District Judge, Solapur. Both Appeals were heard together and by common Judgment and Order dated 2 January 2019, the Principal District Judge has allowed Rukminibai's Regular Civil Appeal No. 211 of 2015 and has dismissed Asha's Regular Civil Appeal No. 297 of 2016. It has set aside the Decree dated 2 September 2015 passed by the Trial Court and has decreed Regular Civil Suit No. 826 of 2011 declaring that Plaintiffs alone are the legal heirs of deceased-Maruti and has directed the Railway Authorities to pay the entire amount of family pension in respect of deceased-Maruti to Plaintiff No.1 alone. Asha being aggrieved by the decision of the first Appellate Court has filed the present Second Appeal.

4. I have heard Mr. Saindane, the learned counsel appearing for the Appellant, Mr. Gorwadkar, learned Senior Advocate appearing for Respondent No.1 and Ms. Patil, learned counsel appearing for Respondent Nos.3 to 5.

5. The decree of the first Appellate Court is sought to be assailed by relying upon Rule 75 of the Railway Services (Pension) Rules, 1993 providing that in the event of family pension being payable to more widows than one, the same shall be paid to such widows in equal shares. Mr. Saindane has also relied upon judgment of Division Bench of this Court, Bench at Nagpur in

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Union of India & Anr. V/s. Smt. Jaywantabai Ramrao Kewoo 2015 (6) Bom.C.R. 714 interpreting Rule 75 and holding that the said Rule does not violate Section 11 of the Hindu Marriage Act. It is further sought to be contended that both widows, Rukminibai and Asha are entitled to family pension in equal shares and that the first Appellate Court has erred in dismissing Appellant's Appeal by placing reliance on Section 11 of the Hindu Marriage Act.

6. Mr. Gorwadkar, on the other hand has placed reliance on judgment of Full Bench of this Court in **Kamalbai w/o. Venkatrao Nipanikar Vs. State of Maharashtra & Ors.** 2019 (3) Mh.L.J. 921 in which similar Rule in Maharashtra Civil Services (Pension) Rules, 1982 is interpreted by the Full Bench and it has held that second wife is not legally wedded wife and therefore is not entitled to family pension. It has further held that only in cases where the second marriage is legally valid that the relevant rule can be applied for distributing family pension. This Court took note of the judgment of Division Bench in **Jaywantabai Ramrao Kewoo** while delivering the Full Bench decision in **Kamalbai w/o Venkatrao Nipanikar**. Therefore, the view taken in **Jaywantabai Ramrao Kewoo** (supra) is no longer good law in view of Full Bench decision in **Kamalbai w/o Venkatrao Nipanikar** (supra).

7. In **Union of India & Anr. V/s. Smt. Ganeshibai alias Sunderibai** 2020 (3) Bom.C.R. 175, the Division Bench of this Court has interpreted Rule 75 of the Railway Services (Pension) Rules and has held that only in cases where the second marriage is permissible, family pension can be equally divided. In that case,

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the Court held that the parties belonged to Gond community in which second marriage is permissible. No evidence is produced in the present case to prove that the second marriage is permissible in the present case.

8. Mr. Saindane has also relied upon judgment of the Apex Court in **Shiramabai w/o. Pundalik Bhawe & Ors. V/s. Captain, Record Officer, for O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State & Anr. 2023 SCC Online 1026** wherein the Apex Court allowed the claim for a family pension by second wife. However, the marked difference in the case before the Apex Court was that the first wife had not staked any claim for pension after demise of the employee. This factor weighed with the Apex Court for upholding the claim of second wife for family pension. In the present case, the first wife, Rukminibai has instituted the suit claiming to be the only legally wedded wife and therefore the judgment of the Apex Court in ***Shirambai w/o Pundalik Bhawe*** (supra) cannot be made applicable to the present case.

9. It is thus a settled legal position that where second marriage is impermissible or becomes void under Section 11 of the Hindu Marriage Act, Rule 75 of the Railway (Pension) Rules, cannot be invoked for granting any family pension to the second wife. Since the law is already settled, I do not find any reason to interfere in the decree of the first Appellate Court. No substantial question of law is involved in the Appeal. The Second Appeal is accordingly **rejected**.