



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 153 OF 2022
WITH CIVIL APPLICATION NO. 4020 OF 2022
WITH CIVIL APPLICATION NO. 8762 OF 2025**

**Laxmibai Laxman Kandhare
VERSUS
Shantabai Laxman Kandhare And Ors**

Mr. G. G. Suryawanshi, Advocate for Appellant
Mr. G. D. Kale, Advocate for Respondent Nos. 1 and 2

CORAM : R. M. JOSHI, J.

DATE : 14th AUGUST, 2025

PER COURT :-

1. This appeal takes exception to the judgment and decree passed by the First Appellate Court in Regular Civil Suit No. 121/2018 whereby the plaintiff No. 1 is declared as legally wedded wife of deceased Laxman Kandhare. Further, it is held that as a legally wedded wife and her son being only heirs of Laxman, are entitled for family pension of deceased. The First Appellate Court has set aside the order dated 11.02.2010 passed by Trial Court granting family pension to defendant No. 3 for defendant Nos. 1 and 2.

2. Record indicates that there is dispute between plaintiff and defendant No. 3/appellant herein as to who is legally wedded wife of deceased Laxman. Regular Civil Suit No. 143/2015 came to be filed by respondent Nos. 1 and 2 (original plaintiffs) for declaration that they are legally wedded wives

of Laxman. Injunction was sought against defendant Nos. 1 and 2 from disposing the family pension of defendant No. 3.

3. After completion of pleadings and on framing of issues, parties led evidence. Plaintiff No. 1 examined herself and led evidence of witnesses. Whereas defendants did not enter the witness box. However, documentary evidence was relied upon. Learned trial Court dismissed the suit with observations that the plaintiff No. 1 has failed to prove her marriage with Laxman. The Trial Court has also taken into consideration the nomination of the family in the record of the employee indicating defendant No. 3 to be wife of Laxman. Plaintiff being aggrieved by the said judgment preferred RCA No. 121/2018. The First Appellate Court accepted the case of plaintiff No. 1 and declared her to be legally wedded wife of Laxman and she is held to be entitled for the family pension. Defendant No. 3 being aggrieved by the said judgment and decree has preferred this appeal.

4. This being appeal under Section 100 of the Code of Civil Procedure, unless substantial question of law is involved herein, this Court would not get any jurisdiction to entertain the appeal and pass any order therein. Keeping in mind the said position of law, the contentions sought to be raised by the rival parties are considered.

5. Learned counsel for appellant/defendant No. 3 submits that the

First Appellate Court has committed error in reversing the findings recorded by the Trial Court with regard to the fact that plaintiff No. 1 has failed to prove the marriage with Laxman. It is his submission that on the basis of documentary evidence on record, it ought to have been held that defendant No. 3 is the wife of Laxman. He makes further grievance that the rights of the children from the said wedlock between Laxman and defendant No. 3 is likely to be affected if the judgment and decree is not set aside. In addition to these submissions, he contends that defendant be given an opportunity of leading evidence before the Trial Court and Civil Application is filed to that effect. To support his submission, he placed reliance on the judgment of Supreme Court in case of ***Rameshwari Devi vs. State of Bihar and others (2000) 2 SCC 431***. As far as said judgment is concerned, once even defendant No. 3 fails to enter the witness box, her contention of marriage cannot be accepted.

6. Learned counsel for respondents supported the impugned order.
7. Admittedly, plaintiff No. 1 led evidence with regard to the marriage and examined two witnesses. There is further evidence on record to indicate that proceedings under Section 125 of the Criminal Procedure Code was filed by plaintiff No. 1 against Laxman. Laxman admitted the relationship between the parties and that plaintiff No. 1 is his wife. Apart from this plaintiffs led evidence before the Trial Court to substantiate validity of

marriage. In such case, it cannot be said that the First Appellate Court has committed any error in holding that plaintiff No. 1 is legally wedded wife of Laxman.

8. As against this, defendant No. 3 has not even entered the witness box in order to claim that she is legally wedded wife of Laxman and her children are begotten from the relationship with Laxman. In absence of defendants substantiating such claim before Trial Court, the same cannot be accepted merely on the basis of arguments of counsel for the appellant/original defendant No. 3 in this appeal.

9. Defendant No. 3 had resisted the suit and participated in the trial so also contested RCA No. 121/2018. She in spite of opportunities failed to lead evidence before the Trial Court and nor any prayer was made before the Appellate Court for leading evidence citing reasons for not leading evidence before Trial Court. Order XLI Rule 27 mandates the due diligence to be shown by the party and the reason for which the party was prevented from leading such evidence at appropriate stage. In absence of any due diligence being even attempted to be shown by defendant No. 3, before Trial Court and First Appellate Court, this Court finds no such reason in order to allow the Civil Application. As a result of this, Civil Applications stand dismissed. In the facts of the case and from evidence on record findings recorded by the First

Appellate Court cannot be termed as perverse in order to cause interference therein. Thus, this appeal does not involve any substantial question of law.

10. Hence, appeal stands dismissed.

(R. M. JOSHI, J.)

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