



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.37 OF 2016

Kantabai Mohanlal Chaudhari .Vs. Kesarbai Mohanlal Chaudhari and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.G. Karmarkar, Advocate for appellant.

Mr. Soumitra Paliwal, Advocate for respondent No.1/Intervenor.

Mr. M.P. Kariya, Advocate for respondent No.2.

CORAM : ROHIT W. JOSHI, J.

DATE : 25/09/2025

1. Heard finally by consent of learned counsel for the respective parties.

2. The present respondent No.1 is first wife of deceased Mohanlal Chaudhari. The appellant is the second wife of the said deceased. It is not in dispute that the marriage of the appellant was solemnized with Mohanlal Chaudhari during the lifetime of his first wife, Kesarbai and that too after the commencement of the Hindu Marriage Act, 1955.

3. The husband-Mohanlal was in the employment of the Government of Maharashtra. He expired in the year 2000. After his demise, a dispute arose between the appellant and the respondent in relation to the right to receive pension. The said dispute was the subject

matter of Regular Civil Suit No.166 of 2005. In the said civil suit, the parties have arrived at amicable settlement for sharing the pension. In the settlement terms, the respondent No.1 has admitted that the appellant was legally wedded wife of the deceased Mohanlal.

4. The respondent No.1 filed a suit for declaration, injunction and possession against the appellant in relation to the suit properties, which comprise of several agricultural lands. The said suit was dismissed by the learned trial Court, primarily relying on the amicable settlement of the pension dispute, wherein the respondent has admitted that the appellant is the legally wedded wife of Mohanlal. The learned trial Court has held that the appellant and the respondent both are entitled to inherit Mohanlal's properties and therefore, the respondent/plaintiff could not claim a decree for possession

5. Being aggrieved by the dismissal of the suit, the respondent No.1 preferred first appeal being Regular Civil Appeal No.32 of 2011. This appeal is allowed by the learned First Appellate Court and a decree for possession was passed in favour of respondent No.1/plaintiff. The appeal was allowed on the ground that the appellant is not legally wedded wife of the deceased Mohanlal, since the marriage was solemnized after the commencement of Hindu Marriage Act, 1955, while the first wife was still alive.

6. The original defendant has filed the present second appeal, being aggrieved by the judgment and decree passed by the learned First Appellate Court. Notice in the present appeal was issued vide order dated 06.06.2017, on the following substantial questions of law:-

“(1) Whether the respondent is precluded from disputing the correctness of the statement made in para 2 of the document of compromise at Exhibit-45 ?

(2) Whether the revenue records at Exhibits 34 to 37 indicating the names of the appellant and the respondent being wives of Mohanlal Choudhari support the case of the applicant that she too was the legally wedded wife of said Mohanlal Chaudhari ?”

7. It is true that in the suit relating to the right to receive pension, the respondent/plaintiff had admitted the appellant/ defendant to be legally wedded wife of the defendant. However, it is also true that there can be no estoppel against the law. It is undisputed that the appellant/defendant is the second wife of deceased Mohanlal and that the marriage was solemnized after the commencement of the Hindu Marriage Act, 1955, while the first wife namely Kesarbai was alive.

8. The statement in Exh.45 i.e. settlement terms in the suit relating to pension, will not operate as estoppel against the respondent/plaintiff from claiming that the appellant/defendant is not legally wedded wife of deceased

Mohanlal, in view of the settled legal principle that there cannot be any estoppel against law. It also appears that after the demise of Mohanlal, the names of both widows i.e. the appellant and the respondent were recorded in the revenue records. The relevant documents in this regard are Exhibits 34 to 37. Revenue records are not title documents. What applies to Exh.45 also applies to Exhibits 34 to 37 and as such contention of appellant that she is a legally wedded wife cannot be accepted on the basis of the said documents.

9. In view of the aforesaid, no fault can be found with the judgment and decree passed by the learned First Appellate Court holding that the defendant/appellant is not legally wedded wife of the deceased Mohanlal and therefore, not entitled to any share in the suit properties. The decree for possession was rightly passed in favour of respondent/plaintiff.

10. The substantial questions of law are answered accordingly and the second appeal is **dismissed** with no order as to costs.

(ROHIT W. JOSHI, J.)