



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 326 OF 2023

Jayashree Gangadhar Hiremath

.. Applicant

**Versus**

Nirmala Gangadhar Hiremath

.. Respondent

.....

- Mr. Pradeep Salgar a/w Mr. Aditya A. Joshi for Applicant
- Ms. Shilpa Pawar for Respondent

.....

**CORAM : MILIND N. JADHAV, J.**

**DATE : OCTOBER 03, 2024**

**JUDGMENT:**

1. This Revision Application is filed by the Applicant who is the second wife of the deceased Mr. Gangadhar Hiremath (for short "**Gangadhar**"). Respondent is the first wife.

2. Respondent filed Civil Miscellaneous Application No. 426 of 2014 before the Trial Court of Civil Judge Senior Division, Solapur for grant of Succession Certificate under provisions of Section 372 of Indian Succession Act, 1925 (for short "**the said Act**") in respect of movable properties of the deceased Gangadhar. The Trial Court allowed the Application and held that Respondent is the sole legal heir and therefore entitled to Succession Certificate.

3. Being aggrieved, Applicant filed Regular Civil Appeal No. 40 of 2022, before the District Court at Solapur to challenge the order of the Trial Court. By the Impugned order dated 07.01.2023 the Appeal is

dismissed by the District Court and Judgment dated 15.03.2022 passed by the Trial Court is confirmed.

4. Thus there are two concurrent orders of the Courts below which are impugned by the Applicant in the present Revision proceedings.

5. Briefly stated certain relevant facts are required for adjudication of the present dispute between the parties. Deceased Gangadhar was working as a government servant with the State of Maharashtra. In 1983, Gangadhar married the Respondent. Gangadhar and Respondent cohabited for six years and had one son named Subodh, who is partially disabled and presently living with Respondent.

**5.1.** On 02.02.1989, despite subsistence of the first marriage Gangadhar married the Revision Applicant (2<sup>nd</sup> wife) and thereafter both of them resided together for 25 years until his demise in 2014. Gangadhar and Revision Applicant (2<sup>nd</sup> wife) had four children. The daughter is married and sons are presently residing with Revision Applicant . All five children of Gangadhar are major as on today.

**5.2.** Respondent (1<sup>st</sup> wife) sought maintenance and alimony from Gangadhar for self and her son in the Court at Solapur. The Court passed order granting maintenance of amount of Rs. 4000/- per month to Respondent (1<sup>st</sup> wife) which was duly paid by Gangadhar to her every month until his demise on 02.04.2014.

**5.3.** However, Gangadhar nominated Revision Applicant (2<sup>nd</sup> wife) and her children as his nominees to claim his terminal benefits and family pension due to which pursuant to his demise, the said benefits were extended to Applicant and her children. I am informed by both Advocates at the bar that there is no dispute of terminal benefits as on date and the only dispute is in respect to receipt of pension by the Revision Applicant (2<sup>nd</sup> wife) which is subject matter of *lis* between the two widows of deceased Gangadhar. Respondent claimed family pension and for that she filed CMA.

**5.4.** On 05.11.2014, Respondent (1<sup>st</sup> wife) filed Civil Miscellaneous Application No. 426 of 2014 under Section 372 of the said Act seeking Succession Certificate to movable properties of Gangadhar, including declaration that she is entitled to receive Family pension. The Civil Miscellaneous Application was duly contested by Revision Applicant (2<sup>nd</sup> wife), unsuccessfully after its trial both parties let oral evidence.

**5.5.** By the impugned judgment and order dated 15.03.2022 Civil Miscellaneous Application No. 426 of 2014 is allowed declaring Respondent (1<sup>st</sup> wife) to be sole legal heir of deceased Gangadhar and declaring her to be entitled to receive Family pension.

**5.6.** Being aggrieved, Revision Applicant (2<sup>nd</sup> wife) filed Regular Civil Appeal No. 40 of 2022 before the District Court, Solapur to

challenge the judgment and order dated 15.03.2022. By the impugned judgment of the District Court dated 07.01.2023 the decision of Trial Court is upheld and the Regular Civil Appeal is dismissed. Hence, the present Civil Revision Application.

6. On and from 02.04.2014, Revision Applicant (2<sup>nd</sup> wife) is receiving Family pension. I am informed that pursuant to the judgment of the District Court, Respondent (1<sup>st</sup> wife) approached the Competent Authority / Department and intimated them about the twin decisions of Trial Court and District Court. Both Advocates inform the Court that pursuant thereto, the Competent Authority has issued letter dated 15.03.2024 addressed to the Treasury Officer, Solapur requesting returning of PPO No. 111201198843 with the last payment certificate for cancellation of the same to enable the Competent Authority / Department to authorize issuance and payment of Family pension to Respondent (1<sup>st</sup> wife). Copy of the said letter is produced before the Court and taken on record. However since March 2024, the Competent Authority / Department has kept the family pension on hold due to the present CRA.

7. Advocate Ms. Shilpa Pawar has been appointed by the High Court Legal Services Committee, Mumbai as a legal aid Counsel to espouse the cause of Respondent (1<sup>st</sup> wife) on 09.07.2024. Revision

Applicant is duly represented by Advocates Mr. Pradeep Salgar and Mr. Aditya A. Joshi.

8. In view of the above facts, the matter was mentioned before me on 21.06.2024. A request was made for hearing the present Civil Revision Application finally by learned Advocate for Applicant. Thereafter considering their request and the fact that family pension was withheld due to pendency of present Civil Revision Application, by consent of parties, I heard the Civil Revision Application finally for disposal.

9. Mr. Salgar alongwith Mr. Joshi, learned Advocates for Revision Applicant (2<sup>nd</sup> wife) would submit that both the impugned Judgments and Orders suffer from non-application of mind and are patently erroneous. They would submit that deceased Gangadhar had appointed Revision Applicant as nominee to his pensionary benefits and therefore Applicant is entitled to the benefit. They would submit that deceased Gangadhar resided with the nominee for 25 years, that she took good care and provided support to him and hence Applicant (2<sup>nd</sup> wife) is entitled to pensionary benefit.

They would submit that, both Courts below have failed to consider the documents produced by Revision Applicant (2<sup>nd</sup> wife) in support of her case. They would submit that Trial Court failed to

consider the fact that no evidence of solemnisation of marriage between Respondent (1<sup>st</sup> wife) and deceased Gangadhar was placed on record.

**9.1.** They would next submit that Trial Court failed to consider and misinterpreted the evidence of Applicant's witness No. 3 i.e. the real brother of Gangadhar about his presence at the time of marriage of Applicant (2<sup>nd</sup> wife) and Gangadhar and also his denial of existence of marriage of Respondent (1<sup>st</sup> wife) and Gangadhar. They would submit that evidence of Applicant's witnesses has not been correctly appreciated by the Courts below.

**9.2.** They would submit that both Courts below failed to consider that marriage between Respondent (1<sup>st</sup> wife) and Gangadhar was dissolved by customary divorce and the same was affirmed and stated by Gangadhar in his examination-in-chief filed in Criminal Misc. Application No. 384 of 2012.

**9.3.** They would submit that both Courts below erred in considering the order dated 14.03.2013 passed in Criminal Misc. Application No. 384 of 2012, wherein the Court did not adjudicate the question of divorce and relationship between the parties. They would submit that both Courts below failed to consider that Gangadhar preferred a

challenge to the said order dated 14.03.2013 in Criminal Appeal No. 65 of 2013, which was pending.

**9.4.** Next, they would submit that both Courts below failed to consider that Respondent (1<sup>st</sup> wife) did not deny the averments made by Gangadhar in his examination-in-chief regarding dissolution of their marriage.

**9.5.** Finally, they would submit that the District Court erred in holding the nomination of Revision Applicant (2<sup>nd</sup> wife) by Gangadhar of no importance and consequence. They have urged to re-appreciate the facts and overturn both the impugned orders.

**10.** Ms. Pawar, learned Advocate appearing on behalf of Respondent (1<sup>st</sup> wife), would submit that Respondent got married to Gangadhar on 05.06.1983 whereas Applicant (2<sup>nd</sup> wife) got married to Gangadhar subsequently on 02.02.1989. She would submit that marriage of Applicant (2<sup>nd</sup> wife) with Gangadhar was admittedly during the subsistence of his first marriage. She would submit that Respondent and Gangadhar had one son namely 'Subodh' which was an admitted fact by Gangadhar and they both cohabited together for six years.

**10.1.** She would submit that both Courts below have taken cognizance of the Judgment and Order dated 14.03.2013 passed by the Court in Criminal Misc. Application No. 384 of 2012 wherein

Gangadhar was directed to pay maintenance amount and alimony of Rs. 4000/- per month to the Respondent (1<sup>st</sup> wife) for herself and her son's maintenance. She would therefore submit that during subsistence of the first marriage with Respondent (1<sup>st</sup> wife), marriage of Gangadhar with the Applicant (2<sup>nd</sup> wife) was void and illegal.

**10.2.** She would submit that Gangadhar had never divorced the Respondent (1<sup>st</sup> wife) during his lifetime despite which he performed second marriage with Applicant (2<sup>nd</sup> wife), which is illegal and void. Hence, she would submit that Respondent is the only legally wedded wife of Gangadhar and thus entitled to get family pension.

**10.3.** On the issue of nomination of Applicant (2<sup>nd</sup> wife) by Gangadhar to receive pension, she would submit that being a nominee cannot confer any legal right and legal status on Applicant (2<sup>nd</sup> wife) to claim pension in her favour. She would vehemently submit that Applicant (2<sup>nd</sup> wife) would not be entitled to claim family pension at all, rather she has received the Family pension for the last 10 years without being entitled to the same to the exclusion of the Respondent (1<sup>st</sup> wife).

**10.4.** She would submit that both the twin orders under challenge are well reasoned and cogent orders, which do not call for any interference as they are passed correctly in accordance with the



provisions of the said Act read with the Pension Rules. Hence, she would submit that the present Civil Revision Application be therefore dismissed.

11. I have heard both the learned Advocates for the respective parties and perused the pleadings. Submissions made by Advocates has received due consideration of the Court.

12. The facts in the present case as delineated herein above are not at all in dispute. This is a case where Applicant (2<sup>nd</sup> wife) has been receiving pension pursuant to his demise by virtue of her nomination by the husband. It is seen that Applicant (2<sup>nd</sup> wife) has received pension from the year 2014 until March, 2024 when the Competent Authority issued a letter dated 15.03.2024. However, from March, 2024 until today issuance of pension has been withheld due to pendency of the present Civil Revision Application filed by Applicant (2<sup>nd</sup> wife).

13. This is a case where deceased Gangadhar has admitted that he was married to Respondent (1<sup>st</sup> wife). This is so because Gangadhar was directed to pay maintenance to Respondent (1<sup>st</sup> wife) for herself and their son 'Subodh', which he was duly paying at the rate of Rs. 4000/- per month until his demise. Thus, there is no dispute about this

fact that deceased Gangadhar, was paying maintenance to the Respondent (1<sup>st</sup> wife) during his lifetime.

14. It is seen that, Gangadhar was working as Talathi at Akkalkot until his demise in 2014, thus he was a government servant. It is seen that Gangadhar nominated Applicant (2<sup>nd</sup> wife) as his nominee in the nomination form to receive family pension. In these facts, it is obvious that Gangadhar suppressed the fact of subsistence of his first marriage with Respondent (1<sup>st</sup> wife) because he was in Government service and if he would have disclosed the fact about his first marriage, then he would have been charged for misconduct under Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1979 and that might have affected his service adversely.

15. The question therefore is that, in such a case where admittedly there are two marriages performed, how much weightage is required to be given to the fact of the first marriage being hidden from the Competent Authority by Gangadhar. In the present case, it is seen that Gangadhar got married to Applicant (2<sup>nd</sup> wife) in 1989, thus his marriage with the Respondent (1<sup>st</sup> wife) lasted for six (6) years. Thereafter, Gangadhar stayed with the Applicant (2<sup>nd</sup> wife) until his demise on 02.04.2014 i.e. for 25 years.

16. It is seen that Gangadhar and Respondent i.e. his 1<sup>st</sup> wife had one son whereas Gangadhar and Applicant i.e. his 2<sup>nd</sup> wife had four (4) children. All five children are major today. Hence, the issue of eligibility of family pension is a dispute between the Applicant (2<sup>nd</sup> wife) and Respondent (1<sup>st</sup> wife). Both the parties led evidence before the Trial Court. From the evidence it is clear and proven that Gangadhar had not divorced or was legally separated from Respondent (1<sup>st</sup> wife).

17. In that view of the matter, both the Courts below have held that Gangadhar's marriage with Applicant (2<sup>nd</sup> wife) was performed during the subsistence of his first marriage with Respondent (1<sup>st</sup> wife). Therefore the second marriage was illegal and void. Based on this, both Courts below have after considering various citations of the Supreme Court and High Courts concluded that Respondent (1<sup>st</sup> wife) is the legally wedded wife of Gangadhar and entitled to get family pension of her deceased husband. The citations which have been cited by the Applicant (2<sup>nd</sup> wife) before the Trial court and District Court, have been adequately dealt with by both the Courts below and clearly distinguished on facts.

18. It is seen that, Respondent (1<sup>st</sup> wife) examined herself below Exh. '29' along with one witness below Exh. '42' and led her oral evidence. That apart, she relied upon various documents namely

marriage invitation card below Exh. '38' and Exh. '39', a certified copy of Judgment in Criminal Misc. Application No. 384 of 2012 filed below Exh. '80' and death certificate of Gangadhar filed below Exh. '77' in support of her case. As opposed to this, Applicant (2<sup>nd</sup> wife) examined herself below Exh. '54' and two other witnesses below Exh. '74' and Exh. '75'. Applicant (2<sup>nd</sup> wife) relied upon documentary evidence consisting of her Ration card below Exh. '65', copies of Aadhar card of Gangadhar and his four (4) children below Exh. '69' to Exh. '72', verified copy of pension payment order received by her below Exh. '73' and certified copy of sanction of pension below Exh. '74'. Both the Courts below have taken cognizance of the aforementioned oral and documentary evidence including cross-examination of the witnesses before passing their Judgments.

**19.** From the above pleadings and record, it is also seen that by Judgment and Order passed in Criminal Misc. Application No. 384 of 2012 maintenance and alimony of Rs. 4000/- per month was awarded to Respondent (1<sup>st</sup> wife) and her son Subodh and Gangadhar paid the same to them during his lifetime. This is an important circumstance which has been taken into cognizance by both the Courts below.

**20.** Though Mr. Salgar has referred to two decisions of the Supreme Court in support of Applicant's case, he would fairly argue that, the present *lis* is pertaining to eligibility of Family pension between the

Applicant (2<sup>nd</sup> wife) and Respondent (1<sup>st</sup> wife) only. He would submit that all five (5) children are major and therefore they would not be entitled to family pension. He has invoked Rule 116 of the Maharashtra Civil Services (Pension) Rules, to contend that under Sub-Rule 6, thereof it is stated that where family pension is paid to more than one widow, the family pension must be paid to them in equal shares.

**21.** After taking instructions from Applicant (2<sup>nd</sup> wife), he would argue and submit that in view of the above Rule, Applicant is consenting to apportionment of the family pension equally between herself and respondent (1<sup>st</sup> wife). Thus, he would submit that Applicant (2<sup>nd</sup> wife) is ready and willing to concede 50 % of the family pension in favour of Respondent (1<sup>st</sup> wife). The said submission of Mr. Salgar, cannot be countenanced in the facts of the present case, primarily because in the present case, marriage of Gangadhar with Applicant (2<sup>nd</sup> wife) is during the subsistence of the first marriage with the Respondent (1<sup>st</sup> wife).

**22.** Further, the Rule invoked by Applicant, cannot be made applicable in the present case as it would only apply to more than one widow being entitled to pension and would apply only if a Hindu employee has married a woman (widow) before the coming into force of the Hindu Marriage Act on 18.05.1955 and in the case of employee

where such marriage is permissible under the personal law applicable to the said employee or the Government servant and the other party to the marriage. Thus Rule 116 seeking equal apportionment of family pension to more than one widow does not apply in the facts of the present case. That apart, Applicant (1<sup>st</sup> wife) has received full pension for the past 10 years already when she is not entitled and eligible for the same in law.

23. In support of Applicant's submissions, Mr. Salgar has referred to and relied upon the two following decisions of the Apex Court and persuaded me to consider and apply them to the facts of the present case:-

(i) *Vidhyadhari and Others Vs. Sukhrana Bai and Others*<sup>1</sup> and

(ii) *Tulsa Devi Nirola and Others Vs. Radha Nirola and Others*<sup>2</sup>.

24. In the case of *Vidhyadhari and Others (first supra)*, some facts in that case were some what similar to the facts in the present case as argued by Mr. Salgar. In that case, Sukhrana Bai was the 1<sup>st</sup> wife but she had no children with the deceased husband. Vidhyadhari was the 2<sup>nd</sup> wife and she had 2 sons and 2 daughters with the husband. Two separate applications were filed under Section 372 of the said Act by both the widows for obtaining Succession Certificate. In the present

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1 (2008) 2 SCC 238

2 2020 SCC OnLine SC 283

case, Applicant has not filed any such Application. Their deceased husband was working as CCM Helper in Western Coalfields Ltd. and expired while in service. In that case, Vidhyadhari i.e. 2<sup>nd</sup> wife stated that she was nominated by her husband for receiving amounts under Provident Fund, Family Pension Scheme and Coal Mines Deposits Life Scheme and she received a sum of Rs. 45,036/- towards gratuity from the employer and therefore she claimed that Succession Certificate be granted to her on the basis of nomination made by her husband to the exclusion of the 1<sup>st</sup> wife.

**24.1.** Oral and documentary evidence was led by both widows. The Trial Court held that Vidhyadhari i.e. 2<sup>nd</sup> wife was the legal widow of the deceased husband / employee. It was held that her four (4) children were sired by the deceased husband / employee and were his legal heirs. The Trial Court held that Succession Certificate was to be issued in favour of Vidhyadhari i.e. 2<sup>nd</sup> wife and not in favour of Sukhrana Bai i.e. 1<sup>st</sup> wife. In that case, the Trial Court based its conclusion on the reasons that the deceased husband was married to the 1<sup>st</sup> wife and there were no issues from the wedlock and thereafter, he married Vidhyadhari and for about 20 - 25 years lived with her until his death and during this time the 1<sup>st</sup> wife never came to stay with him.

**24.2.** On the basis of these findings the Trial Court dismissed the case of the 1<sup>st</sup> wife. While arriving at this conclusion Trial Court referred to the decision of the Supreme Court in the case of *M. Govindaraju Vs. K. Munisami Gounder*<sup>3</sup> and held that the deceased husband belong to the "Shudra" community and in that community if a wife deserts her husband and no effort is made by the husband to take her back as his wife then under Hindu Law it is presumed that divorce has taken place between the two. On this basis of customary law, a finding was given that the husband had divorced the 1<sup>st</sup> wife and solemnized the 2<sup>nd</sup> marriage with Vidhyadhari and therefore marriage with the 2<sup>nd</sup> wife cannot be said to be illegal.

**24.3.** The High Court however, came to a different conclusion that the alleged customary divorce between the husband and 1<sup>st</sup> wife was not established and it allowed the Appeal of the 1<sup>st</sup> wife and directed that Succession Certificate be granted in favour of the 1<sup>st</sup> wife. The matter was carried to the Supreme Court.

**24.4.** After considering the pleadings and evidence on record, the Supreme Court accepted the finding of the High Court that the 1<sup>st</sup> wife was the legally wedded wife while Vidhyadhari (2<sup>nd</sup> wife) couldn't claim that status, since there was no evidence of any divorce between

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3 (1996) 5 SCC 467



the husband and the 1<sup>st</sup> wife or even assertion by the 2<sup>nd</sup> wife that the husband had divorced the 1<sup>st</sup> wife.

**24.5.** The Supreme Court held that on the issue of nomination, the law was well settled. It held that Vidhyadhari ( 2<sup>nd</sup> wife) can claim the death benefits being a nominee and can always file Application under Section 372 of the said Act, as there is nothing in that Section to prevent such a nominee from claiming certification on the basis of nomination. However, Supreme Court clarified that no doubt Vidhyadhari ( 2<sup>nd</sup> wife) can claim to be a legal heir but she could not claim that status to the exclusion of the legal heirs of deceased as her only status was that of a nominee.

**24.6.** Since the 1<sup>st</sup> wife i.e. Sukhrana Bai was the legally wedded wife of the deceased, the Supreme Court held that in grant of Succession Certificate, the Court has to use its discretion where the rival claims as in that case were made for Succession Certificate by both widows to the movable properties of the deceased. The Supreme Court further clarified that merely because Sukhrana Bai (1<sup>st</sup> wife) was the legally wedded wife, that by itself did not entitle her to a Succession Certificate in comparison to Vidhyadhari, who all through had lived with the deceased employee as his wife and had borne his four (4) children and had claimed Succession Certificate on behalf of her children. The Supreme Court held that the four children were

legitimate legal heirs and in the facts of that case, Supreme Court held that though it agreed with the High Court that Sukhrana Bai (1<sup>st</sup> wife) was the only legitimate wife, yet the Supreme Court chose to grant Succession Certificate in favour of Vidhyadhari (2<sup>nd</sup> wife) who was the nominee and mother of the employee's four (4) children.

**24.7.** The Supreme Court held that balance of equities was required to be maintained in that case and therefore the 1<sup>st</sup> wife and four (4) children of the 2<sup>nd</sup> wife were entitled to 1/5th share equally. Thus, the Supreme Court apportioned and assigned 1/5th share to the 1<sup>st</sup> wife in the facts of that case.

**25.** However such are not the facts herein. There are no rival claims by both the wives of deceased Gangadhar. Claim is made only by the Respondent (1<sup>st</sup> wife) for Succession Certificate. All four children of Applicant (2<sup>nd</sup> wife) are major. Rather, Respondent (1<sup>st</sup> wife)'s only son Subodh lives with her and is a person with disability. He is entirely dependent on Respondent (1<sup>st</sup> wife).

**26.** Mr. Salgar, has heavily relied upon the decision to contend that the said decision has also been followed by the Supreme Court in the case of *Tulsa Devi Nirola and Others (second supra)*, wherein similar facts and circumstances existed and the 2<sup>nd</sup> wife therein was nominated under the Pension Rules.

**27.** In so far as the decision in the case of *Tulsa Devi Nirola and Others (second supra)* is concerned, though it makes a reference to Vidhyadhari's case, the said decision is on entirely different facts which are clearly distinguishable. In that case the deceased employee during the subsistence of his first marriage solemnized second marriage and sired three (3) children with his second wife. However, in that case the employee / husband during his lifetime in order to avoid disputes between his two wives, executed *Banda Patra* (settlement deed) dated 30.06.2008 christened as a partition deed, by which he divided his movable and immovable properties between his two wives before his retirement on 30.06.2009. Under this settlement deed both his wives received the benefits. The husband subsequently expired on 13.04.2015.

**27.1.** The 1<sup>st</sup> wife applied for Succession Certificate but it was denied in view of the settlement deed as she had received the benefit. The Appeal was also dismissed. Before the Supreme Court, the 1<sup>st</sup> wife staked her claim for family pension under the Pension Rules namely the Sikkim Services (Pension) Rules, 1990 and claimed equitable distribution of Family pension. The said case was decided by Supreme Court on the basis of applicability of the Hindu Marriage Act, 1955, to the state of Sikkim and it held that on the date of the second marriage

in that case, the Hindu Marriage Act, 1955 had not been in force in the state of Sikkim.

**27.2.** Therefore, the Supreme Court held that there was nothing placed on record to show that the second marriage was invalid. The Supreme Court referred to the settlement / partition deed executed by the husband during his lifetime and held that in that view of the matter, nomination of the 2<sup>nd</sup> wife to receive Family pension cannot be held to be bad and she is not required share it equally with the 1<sup>st</sup> wife. The Supreme Court in fact held that if the settlement deed would not have been executed and acted upon, then different considerations may have arisen.

**27.3.** In view of the above distinguishing facts, the decision in the case of *Tulsa Devi Nirola and Others (second supra)* cannot apply to the facts in the present case.

**28.** Coming back to the decision in *Vidhyadhari and Others (first supra)*, it is seen that the facts therein are not identical to the facts in the present case. In the present case all four (4) children of the 2<sup>nd</sup> wife are major unlike the consideration in Vidhyadhari's case considered by the Supreme Court which held that they would be entitled to a proportionate share each. Further, in the present case the Applicant (2<sup>nd</sup> wife) has already received family pension rather has

been receiving family pension from the year 2014 onwards i.e. for the last 10 years to the complete exclusion of Respondent (1<sup>st</sup> wife) due to her nomination. The most important distinguishing factor is that in the present case the Revision Applicant (2<sup>nd</sup> wife) has not filed any application for Succession Certificate. She has only contested the Application filed by the Respondent (1<sup>st</sup> wife).

29. Hence, due to the above observations and findings, the decisions relied upon by Mr. Salgar cannot be considered and applied *ipso facto* to the facts in the present case.

30. When the Court would be faced with rival claims for grant of Succession Certificate, in that case the Court can use its discretion. In the present case it is only the Respondent (1<sup>st</sup> wife) who has immediately after the demise of her husband filed Application below Section 372 of the said Act for grant of Succession Certificate in her favour. In the meanwhile, on the basis of nomination / nominee the Applicant has already received the terminal benefits and has been receiving the Family pension entirely to the exclusion of the Respondent (1<sup>st</sup> wife). The finding returned by the learned Trial Court and upheld by the District Court that Respondent (1<sup>st</sup> wife) is the legally wedded wife, while the Applicant (2<sup>nd</sup> wife) cannot claim that status, undoubtedly, in the facts of this case needs to be upheld and is therefore confirmed.

31. Here is a case where the Respondent (1<sup>st</sup> wife) along with her son have been abandoned after six (6) years of cohabitation by the husband. Thereafter, the husband married the Applicant (2<sup>nd</sup> wife) and lived with her for 25 years until his demise in the year 2014 and has sired four (4) children with the Applicant (2<sup>nd</sup> wife). The Applicant (2<sup>nd</sup> wife) was nominated by the husband to receive the benefits but as a nominee, she could not have received the benefits as his legal heir to the exclusion of the Respondent (1<sup>st</sup> wife) as the marriage with the first wife was subsisting and the husband was paying Rs.4000/- per month to Respondent (1<sup>st</sup> wife) and their son under the orders of the Court. Thus, the reliance of the Applicant (2<sup>nd</sup> wife) on the facts in the case of *Vidhyadhari and Others (first supra)* cannot be countenanced. In the present case all four (4) children of the Applicant (2<sup>nd</sup> wife) are major. Considering the fact that Applicant (2<sup>nd</sup> wife) has received Family pension entirely to the exclusion of the Respondent (1<sup>st</sup> wife) for the past 10 years despite the subsistence of the first marriage, the submission and proposal for apportionment advanced by Mr. Salgar, that henceforth the Family pension be apportioned between the two (2) parties namely Applicant (2<sup>nd</sup> wife) and Respondent (1<sup>st</sup> wife) equally cannot be countenanced.

32. In fact, on the pervious date of hearing, Respondent (1<sup>st</sup> wife) has travelled all the way from Solapur, to attend the Court Proceeding

before me and when the aforementioned proposal was made by Mr. Salgar, she submitted that grave injustice was meted out to her since, the entire Family pension was received by Applicant (2<sup>nd</sup> wife) for her own benefit for the last 10 years. She vehemently opposed the proposal for equal apportionment of family pension at this stage and submitted to the Court that in view of the conduct of the Applicant (2<sup>nd</sup> wife) of receiving the entire family pension for the last 10 years in the past without seeking the imprimatur of the Court under Section 372 of the said Act. This Court should uphold both orders passed by the Courts below and direct payment of entire Family pension in her favour atleast for the next 10 years so that equitable justice can be delivered by the Court.

**33.** I find complete merit in the submissions advanced by and in favour of Respondent (1<sup>st</sup> wife). The Applicant (2<sup>nd</sup> wife) before me has not even applied for Succession Certificate despite being well aware of the fact about the subsistence of the first marriage of her husband. The husband in the present case was paying Rs. 4000/- per month as permanent alimony to the Respondent (1<sup>st</sup> wife) and her son under orders of the Court until his demise.

**34.** In this view of the matter and the observations and findings herein above, I find no reason and cause to interfere with both the twin Judgments and Orders passed by the Trial Court and the District

Court. Both the Judgments dated 15.03.2022 and 07.01.2023 are reasoned and cogent decisions delivered by both the Courts below after hearing both the parties and after considering their respective cases and the relevant facts and citations cited.

35. The deceased Gangadhar, was a Government servant and therefore at the time of nomination of the Applicant (2<sup>nd</sup> wife), he could not have recorded and disclosed the admitted fact of the subsistence of his marriage with Respondent (1<sup>st</sup> wife). Hence, merely on the basis of nomination the Applicant (2<sup>nd</sup> wife), in the facts and circumstances of the present case where admittedly the second marriage has taken place during the subsistence of the first marriage has got an unfair advantage for 10 long years. The case of the Applicant (2<sup>nd</sup> wife) worsens because she has not even filed any Application seeking Succession Certificate under Section 372 of the said Act.

36. Hence, both the Judgments and Orders dated 15.03.2022 passed by Trial Court and 07.01.2023 by District Court deserve to be upheld and are so upheld and confirmed.

37. This Court appreciates the efforts of Ms. Shilpa Pawar, learned Advocate appointed through legal aid to espouse the cause of the



Respondent (1<sup>st</sup> wife). Her fees shall be released by the Legal Aid Department in accordance with law.

**38.** The Competent Authority / Department which has issued the letter dated 15.03.2024 through the Asstt. Accounts Officer PR-12 to the Treasury Office, Solapur is directed to take cognizance of a server copy of this order and shall ensure release of Family pension to Respondent (1<sup>st</sup> wife) with immediate effect including release of any arrears from March, 2024 or the period from which release of Family pension to Applicant (2<sup>nd</sup> wife) has been stopped by the said Competent Authority / Department.

**39.** The Competent Authority / Department shall not insist on a certified copy of this order and act immediately on a server copy of this order and ensure that the arrears of the Family pension are paid over to Respondent (1<sup>st</sup> wife), within a period of two (2) weeks from the date on which the server copy is placed before the Competent Authority / Department.

**40.** Accordingly, the Family pension shall be paid to the Respondent (1<sup>st</sup> wife). Respondent (1<sup>st</sup> wife) is directed to give all necessary bank details and compliances to the Competent Authority / Department within a period of one (1) week from today along with server copy of this order and shall act upon the same as directed in this Judgment.

41. Civil Revision Application is dismissed.

Amberkar

[ MILIND N. JADHAV, J. ]

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