
(2017) 07 BOM CK 0253
In the Bombay High Court
Case No : 48 of 2016

Devendra s/o Bhalchandra Sapkal, & Ors. APPELLANT
Vs
Smt. Lata w/o Bhalchandra Sapkal RESPONDENT

Date of Decision : 07-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 125](#) — Order for maintenance of wives, children and parents
[Succession Act, 1925](#), [Section 372](#) - Application for certificate

Citation : (2017) 07 BOM CK 0253

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : U.J. Deshpande, V.B. Bhise

Judgement

1. By this revision the legality, validity and propriety of the order passed by the District Judge-1, Akola in Regular Civil Appeal No.35/2011 on 03.02.2014 is challenged. By the impugned the learned First Appellate Court has set aside the order passed by Civil Judge, Senior Division, Akola in M.J.C. No.335/2009 on 17.08.2011 rejecting the application for grant of succession certificate in favour of respondent herein and directed to issue succession certificate in the name of present applicants and also in the name of respondent Lata Sapkal.

2. Brief facts of the revision can be stated as follows: Respondent herein has filed an application under Section 372 of the Indian Succession Act, 1925 for grant of succession certificate in respect of the service benefits and dues of her deceased husband Bhalchandra. According to her, she was married with Bhalchandra on 31.03.2007 and the said marriage was also registered. Deceased Bhalchandra was serving in the Police Department as Assistant SubInspector at the time of his death on 08.07.2009 at Akola. He has left behind the respondent and also the present appellant Nos.1 and 2 who are his sons and applicant No.3, the married daughter from his first wife Kalpana. It was her case that as Police Department was not ready to give her share in the service benefits of deceased Bhalchandra,

she was constrained to ask for the succession certificate.

3. The applicants resisted her application contending inter alia that respondent is not in any way entitled for the succession certificate as she is not legally wedded wife of their father. It was submitted that their father Bhalchandra has performed the marriage with their mother Kalpana in the year 1980, whereas the respondent had married with one Narayan Trambak Sabale. She had two sons from Narayan Sabale, born on 12.05.1990 and 02.11.1992 respectively. After the death of her husband Narayan Sable on 13.03.2006, all his movable and immovable property devolved upon the respondent. Till today in the record respondent's name is continued as the wife of Narayan Sable and in such situation, it was contended, she cannot be entitled to get succession certificate in respect of the service dues of their father. Hence, they are alone entitled to get succession certificate.

4. In support of her claim respondent examined herself; one witness by name Rajendra Mune in whose house she was residing on rent along with deceased Bhalchandra and one more witness by name Ramakant Mallekar to prove that he was present at the time of her marriage with Bhalchandra. She has, further produced on record other documentary evidence by calling upon one Mr. Gajanan Shriram Ingale from police headquarter to prove the service record of Bhalchandra. As against it, the applicant No.1 examined himself and also lead the evidence of the brother of the deceased namely, Ashok Sapkal and Dr. Waghela.

5. On appreciation of this evidence, the learned Trial Court was pleased to reject the application filed by the respondent and allowed the claim of the applicants for succession certificate.

6. Being aggrieved, the respondent herein preferred an appeal before the District Court and the District Court has reversed the finding recorded by the Trial Court and held both the parties entitled for the succession certificate to get the service dues of deceased Bhalchandra.

7. This judgment and order of the Trial Court of First Appellate Court is challenged in this revision by learned counsel for applicants by submitting that there is absolutely no evidence on record to prove that respondent was the legally wedded wife of deceased. Her pleadings are conspicuously silent as to when, where and in which manner she got married with deceased Bhalchandra. The registration certificate of the alleged marriage cannot be a proof of the legality and validity of marriage. Moreover the date of the marriage mentioned in the registration certificate is also not correct. It is urged, that in evidence before the Court also, respondent has not given any particulars about the performance of the requisite ceremonies for proving the legality and validity of the marriage. Admittedly, her name was also not appearing in the nomination form filled in by deceased. In such circumstances, on the face of it also, when respondent has failed to prove her claim for succession certificate, the First Appellate Court has

committed an error in reversing the order passed by the Trial Court of rejecting her application and the claim. It is urged that the order passed by the Trial Court was on appreciation of oral and documentary evidence on record in a proper and just manner and it was not correct on the part of the First Appellate Court to set aside those findings of the learned Trial Court and allowed the appeal preferred by the respondent.

8. Per contra, learned counsel for the respondent has supported the order of the First Appellate Court and further submitted that within the limited scope of revisional jurisdiction, this Court should be slow in interfering into the order, as the view taken by the First Appellate Court is also a possible and proper view.

9. In the light of these submissions advanced by learned counsel for both the parties, the only point arising for my consideration is whether the impugned order passed by the First Appellate Court is just, legal and proper?

10. Facts of this case are not in the realm of dispute. It is admitted that Bhalchandra has first married with Kalpana and had three children from Kalpana, namely, the applicant Nos.1 to 3. Kalpana died on 24.03.1999. It is also not disputed by the respondent also that first she was married with Narayan Sable and she had two sons from him. Narayan Sable died on 13.03.2006 and thereafter she has claimed his property.

11. In backdrop of these factual aspects, the case of respondent is that she was residing with deceased Bhalchandra as his wife and their marriage was also solemnized on 31.12.2007. Their marriage was also registered and she has produced that registration certificate. It is her case that her name also came to be added in the wedding invitation card of applicant No.3 Poonam, as the wife of deceased. According to her case, therefore, she is also entitled to get succession right in the service dues of her husband along with his children from the first wife Kalpana.

12. As against it, the case of the applicants is that the marriage has to be proved by evidence of performance of the requisite ceremonies like "Kanyadan" and "Saptapadi". Mere production of the marriage certificate is not sufficient to prove the legality and validity of marriage, especially in the facts of the present case as there is dispute relating to the date of the marriage mentioned in the certificate. It is urged that in the application filed by the respondent she has not at all given the details as to when she got married with deceased, at which place and by which way? Though the factum of her marriage with deceased Bhalchandra was specifically denied in the reply filed by the applicants, she has not amended her application to give those details. In evidence before the Court she has admitted the fact that she does not know the name of the priest who has performed her marriage and she has also not given the details of the marriage in her application.

13. Thus, according to learned counsel for the applicants mere proof of respondent residing with deceased or mere production of the registration certificate cannot be sufficient to confer the status of husband and wife. To

substantiate this submission, learned counsel for the applicants has relied upon the judgment of the Apex Court in the case of Surjit Kaur vs. Garja Singh and others (1994) 1 SCC 407, wherein it was held that, "the bare fact of a man and a woman living as husband and wife does not, at any rate, normally give them the status of husband and wife even though they may hold themselves out before society as husband wife and the society treats them as husband and wife." It was held that prima facie, the expression "whoever marries" must mean validly married and whose marriage is valid one. By placing reliance on the judgment of this Court in the case of Shubhangi Krishna Patil vs. Rupali Krishnant Bachhe (Patil) and another 2010(1) Mh.L.J. 253; it is urged that, without proof of the customary ceremony, the marriage cannot be proved by production of the registration certificate. It is also urged that in the instant case, at the most the evidence is only of deceased and respondent residing together, but without the proof of the performance of the proper ceremonies their marriage cannot be proved. Therefore, status of "validly married" cannot be conferred on the respondent as despite opportunity given to her she has failed to prove the performance of the ceremonies or even the name of the priest who has performed those ceremonies.

14. Learned counsel for the applicants has then submitted that in the instant case even the nomination form filled in by deceased was in the name of his first wife Kalpana and the children from her i.e. present applicants. Therefore, applicants alone are entitled to get certificate. It is submitted that if Bhalchandra had really married with the respondent, he would have made the necessary changes in the nomination form, which he has not done.

15. Per contra, learned counsel for the respondent has relied upon the judgment of the Apex Court in Vidyadhari and Ors. v. Sukhrana Bai and Ors. AIR 2008 SC 1420 to submit that in this authority though the claimant was not legally wedded wife, but as she had stayed for long time as wife of the deceased and was also the mother of his four children, she was held entitled to succession certificate.

16. Learned counsel for petitioners has however, tried to distinguish the facts of this judgment by pointing out that in that case she was made the nominee by the deceased, and therefore having regard to this fact, it was held that she is entitled to grant of succession certificate.

17. Learned counsel for the respondent has then placed reliance on the judgment of Chanmunia vs. Virendra Kumar Singh Kushwaha and another (2011) 1 SCC 141 to submit that proof of long cohabitation without valid marriage can raise the strong presumption of the marriage and can entitle the lady to get all the rights of the legally wedded wife. Learned counsel for petitioners has distinguished this judgment by submitting that the issue raised for consideration in this judgment pertains to the entitlement of a woman for maintenance under Section 125 of the Code of Criminal Procedure. Moreover, in this judgment Apex Court has referred this issue to be decided by larger Bench. According to learned counsel for respondent, Section 125 of the Code of Criminal Procedure refers to a legally

wedded wife and despite that it was held that long cohabitation can confer such marital status, in the present case, Section 372 of the Indian Succession Act does not require for a "wife" to be "legally wedded wife" to get the succession certificate.

18. Reliance is placed by learned counsel for petitioners on the judgment of this Court in the case of Smt. Lata w/o Eknath Patil vs. Kum. Tanuja d/o Eknath Patil 2009(2) ALL MR 331 to submit that even in the case of alleged "Gandharva Vivah" it was held that there was no proof about the "legal marriage" and hence, such lady cannot be entitled to get succession certificate.

19. Thus perusal of all these judgments relied upon by learned counsel for both the parties makes it clear that ultimately each case depends upon the facts and circumstances of that case and there cannot be any hard and fast format or a strait jacket formula to decide whether succession certificate should be issued particular case or not, in favour of a lady who claims to be the legally wedded wife.

20. Herein the case there is definitely a certificate of registration of the marriage, which is issued in respect of the marriage between the respondent and deceased Bhalchandra. As per the said registration certificate, the marriage was performed on 31.03.2007. It is also a matter of record that in the invitation card of Bhalchandra's daughter, Poonam, who is applicant No.3 herein the name of the respondent was mentioned as invitee, in her capacity, as the wife of Bhalchandra. There is also the evidence of two witnesses by name Rajendra Mune and Ramakant Mallekar proving that they had seen that deceased Bhalchandra and respondent were residing and cohabiting together as husband and wife. The witness Rajendra Mune, in whose house they were residing on rent along with applicant No.3 Poonam, has deposed about the same. He has further stated that his parents were present for the wedding of Bhalchandra with respondent. Further, there is evidence of witness Ramakant Mallekar who has stated that he had occasion to go the house of the deceased and he was introduced by deceased with respondent as his wife. He has further stated that after deceased was admitted in the hospital and succumbed to death, it was respondent, who has performed the funeral rights and at that time he was present. Thus, as rightly submitted by learned counsel for the respondent, there is sufficient evidence on record of long cohabitation between deceased and, respondent as husband and wife.

21. As regards the legality of the marriage, admittedly at the time Bhalchandra married with respondent, his first wife Kalpana was not alive as she has died on 24.03.1999 itself. Similarly, respondent's first husband Narayan Sable had also died on 13.03.2006, and therefore, none of the spouses of either deceased or respondent was living at the time of their marriage on 31.03.2007.

22. Now, whether the marriage was performed as per the rights and customs of Hindu religion, on this aspect it is true that there is no pleading about the

performance of particular religious ceremonies, but these were the matters of the evidence. In the application she has stated the fact that she was wife of deceased Bhalchandra. Both the Courts, Trial Court and the First Appellate Court have in this respect rightly held that the absence of material particulars in the pleading is not sufficient to discard her evidence as those particulars were the matter of evidence and only the facts are to be pleaded and not the evidence. Respondent has stated that in her evidence that she got married with Bhalchandra in one temple. Her own relatives were present for the marriage. However, the relatives of the deceased were not present. It may be true that she is not remembering the name of the priest and the manner in which the ceremonies took place, but her evidence shows that marriage had taken place. Then there is also the evidence of the witness Ramakant Mallekar who was present for the said wedding. If at all anything remains, then there is marriage registration certificate, which reveals that the marriage was registered and as stated above deceased Bhalchandra had given the respondent status of his wife, by entering her name in the invitation card of his daughter, as invitee. It is also brought on record that she was residing with Bhalchandra and has performed funeral and other rights after his death, she has also got the dues of Bhalchandra from L.I.C. and the funeral expenses from the Police department.

23. In the above said backdrop, marriage registration certificate needs to be looked into, as it is challenged on the ground that the date of marriage mentioned in the registration certificate is different. However, respondent has tried to explain the said fact by deposing that the marriage certificate was in the custody of Bhalchandra and hence, she was not aware about the date mentioned in it as 31.03.1990 though actually it was 31.03.2007. Learned First Appellate Court has considered that how the date of 31.03.1990 can be a wrongly mentioned date, because if married had really taken place on 31.03.1990, then there was no explanation why the registration thereof was done after so many years.

24. The registration certificate is however, disbelieved by the Trial Court on the count that Bhalchandra was admitted in the Hospital of Dr. Waghela for blood pressure and other cardiac problem upto 30.03.2007, and therefore, it was highly improbable that his marriage with respondent will take place immediately on the next date on 31.03.2007. The First Appellate Court has considered this aspect also in para 16 of this judgment. The First Appellate Court has held that after realizing his health problem, there is nothing unnatural in Bhalchandra performing the marriage with respondent immediately after his discharge from the Hospital, as otherwise also she was also cohabiting and residing with the respondent since long. The First Appellate Court has also considered the evidence that on 31.03.2007 Bhalchandra was not on duty though he was discharged from the Hospital on 30.03.2007 itself. The First Appellate Court therefore, accepted the case of respondent that her marriage has taken place with deceased on 31.03.2007, as reflected in the registration certificate.

25. Thus, after considering the entire evidence on record in its proper perspective if the First Appellate Court has taken a possible view, then as per the settled position of law as the scope of revisional jurisdiction of this Court is limited and confined only to decide whether the view taken by the First Appellate Court is a just, legal and a possible view of the matter, this Court cannot substitute its opinion in the place of the view taken by the First Appellate Court, merely because it can also be a possible view. In exercise of the revisional powers, it is not permissible for this Court to go into the findings of fact recorded by the Lower Court. The jurisdiction of this Court in revision is only to the extent of correction of errors relating to exercise or nonexercise of jurisdiction or some illegality or material irregularity affecting prejudicially rights of parties.

26. In this case, the First Appellate Court has also considered and given the weightage to the rights of the applicants also in the service benefits of the deceased and has directed to issue the succession certificate in the name of respondent as well as in the name of applicants also.

27. Considering this entire evidence on record, it cannot be said that the First Appellate Court has exercised its discretion in an illegal or perverse way, so as to warrant interference therein. The revision therefore, holds no merits. Hence, stands dismissed.