

(2003) 01 MP CK 0001
In the Madhya Pradesh High Court
Case No : Miscellaneous Appeal No. 1664/97

Gyantibai

APPELLANT

Vs

Rampyaribai and Others

RESPONDENT

Date of Decision : 03-01-2003

Acts Referred:

Madhya Pradesh Civil Services (Conduct) Rules, 1965 — Rule 22

Citation : (2003) 1 MPHT 352 : (2003) 3 MPLJ 284

Hon'ble Judges : Bhawani Singh, C.J.; Sugandhi Lal Jain, J

Bench : Division Bench

Advocate : S.K. Garg, for the Appellant; Atulanand Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.

This appeal is directed against the order dated November 21, 1997, of the Additional District Judge, Dindori, in Succession Case No. 2/95.

Sukhram (dead) was Assistant Teacher with the Government of Madhya Pradesh. He died on 16-1-1995 leaving behind Rampyaribai (wife/respondent No. 1) and four daughters, namely, Ku. Sandhya (11), Ku. Swati (9), Ku. Sunyana alias Wali (7) and Ku. Sonal (3).

Gyantibai (appellant) also claims to be wife of Sukhram. She alleges that she married Sukhram, remained with him, performed his last rites, therefore, his wife, accordingly claimed succession. However, this claim is disputed by Rampyaribai (respondent No. 1). She states that Gyantibai was not married to Sukhram, therefore, case of succession in her favour does not arise.

Trial Court examined the matter on the basis of evidence placed before it. It came to the conclusion that custom of having two wives was not proved nor Sukhram could marry another wife without permission of the Government. Accordingly, the claim has been rejected, hence this appeal.

Shri S.K. Garg, learned Counsel appearing for the appellant, reiterates the submissions raised before the Trial Court. It is alleged that Sukhram could marry second wife according to customs prevalent amongst Gonds, therefore, Gyantibai (appellant) is entitled to succession along with Rampyaribai and children. Shri Atulanand Awasthy, learned Counsel appearing for the respondents, opposes the submissions and submits that the custom has not been proved. That apart, under Rule 22 of the M.P. Civil Services (Conduct) Rules, 1965 (for short "Rules of 1965"), a Government servant can contract another marriage only with the permission of the Government, even if he can do so under the personal law for the time being applicable to him. In this case, neither the custom is specifically pleaded nor proved. Further permission of the Government has not been sought. For these reasons, Shri Atulanand Awasthy urges that custom has not been proved,

Giving consideration to the submissions of the learned Counsel for the parties, we find substance in the submission of Shri Atulanand Awasthy. Rule 22 of the Rules of 1965 reads as under :--

"Rule 22. Bigamous marriages.--(1) No Government servant, who has a wife living, shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person, who has a wife living without first obtaining the permission of the Government."

From the Rule quoted above, it is absolutely clear that the Government servant, who has a wife living, cannot contract second marriage without first obtaining the permission of the Government, even if it is permissible under the personal law for the time being applicable to him. Whether the appellant belongs to Gond Tribe and how the custom is prevalent and how it is being followed has not been satisfactorily proved. Moreover, the deceased has not obtained permission of the Government. That apart, Ex. P-1 does not reflect taking place of marriage between Gyantibai (appellant) and Sukhram. Rather, it demonstrates that he kept Gyantibai with him, which does not mean that keeping by solemnization of marriage. Alternatively, assuming custom is applicable in this case, permission of the Government is not obtained. Therefore, for all these reasons, Gyantibai (appellant) cannot claim to be legally wedded wife of Sukhram. Accordingly, we find no merit in this appeal and the same is dismissed.

Costs on parties.