

(2018) 03 GAU CK 0152
In the Gauhati High Court
Case No : WP(C) 4615 of 2010

MUSTT HALIMA BEGUM

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 29-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0152

Hon'ble Judges : HRISHIKESH ROY

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. S.C. Biswas, the learned Counsel appearing for the petitioner. The respondent Nos.1, 2 & 3 are represented by Mr. D. Nath, the learned

Addl. Sr. Govt. Advocate, Assam. The learned Standing Counsel Mr. C. Baruah appears for the Accountant General (A&G). The respondent No.4 is

represented by Mr. B. Gogoi, the learned Standing Counsel for the Finance Department. However, no Counsel appears for the rival litigant Mustt.

Nurangini Begum (respondent No.5).

2. The petitioner is the 2nd wife of Late Khabir Ali, who retired as Armed Branch Constable and was receiving pension, under the PPO

No.919403002167. When he died on 9.5.2000 the first wife Mstt. Nurangini Begum filed the Succession Case No.61/2002, where the 2nd wife

(petitioner) was arrayed as the Opposite Party. The learned Court, under the judgment dated 30.6.2004 (Annexure-5), issued direction for disbursal of

50% share of the dues, to the 1st wife (respondent No.5).

3. In this case, the stand of the Government is that the 1st wife is entitled to the family pension but Mr. S.C. Biswas, the learned counsel contends that

the 1st wife was divorced by the Armed Branch Constable Khabir Ali and therefore the petitioner as the 2nd wife, has the sole right to the family pension.

4. The divorce of the 1st wife Mustt. Nurangini Begum (respondent No.5) is projected by Mr. Biswas on the basis of the decision in the village

meeting held on 19.11.1986 (Annexure-2). But it is relevant to note that the validity of the decision in that village meeting was examined as Exbt-Ka,

in the Succession Case No.61/2002. The learned Ad-hoc Addl. Sessions Judge No.1, Guwahati noted that Exbt-Ka (produced by the petitioner Mustt.

Halima Begum as the Opposite Party in the Succession Case No.61/2002), was never signed by the husband Khabir Ali and on that basis it was held

to be of no legal consequence. Thus the learned Court answered the 2nd issue in the Succession Case by declaring that the divorce of the 1st wife

Mustt. Nurangini Begum (respondent No.5) is not proved. Thus relief was granted to the 1st wife Mustt. Nurangini Begum by declaring that she is

entitled to 50% of the assets of her husband Late Khabir Ali.

5. The present petitioner as the 2nd wife, challenged the verdict in the Succession Case in the High Court and initially in the Misc. Case No.1249/2005

in the Intestate Case No. 7/2005, the learned Judge on 16.11.2005 stayed the operation of the judgment and order dated 30.6.2004 in the Succession

Case No.61/2002. But when we requisitioned the records of the Intestate Case No.7/2005, we find that on 21.7.2015, the High Court after hearing the

petitioner's counsel Mr. S. Biswas, dismissed the case on 21.7.2015 with the following observation :-

8. The learned trial court allowed the petition of Nurangini Begum to the extent of 50% property only on the ground that the plea of divorce could not

be proved by the opposite party Halima Begum in accordance with law. Halima Begum produced a Talaqnama Exhibit-K and Certificate given by

Kazi as Exhibit-Kha. Exhibit-K appears to be a proceeding of village 'Vichar' wherein assembled villagers resolved that the husband Khabir Ali gave

Talak to Nurangini Begum . The learned trial court noticed that this Talaqnama Exhibit-K is not signed by Khabir Ali. However, local Kazi issued

certificate vide Exhibit-Kha whereby it was stated that Talaqnama given by Khabir Ali has become final. I have perused Exhibit-K. It shows that it

was written by one Bapdhan Ali on 19.11.1986. It is true that it does not contain

signature of Nurangini Begum or Khabir Ali although the proceeding shows that local public after hearing the statements of both sides came to know that Nurangini Begum was divorced by Khabir Ali as Nurangini Begum had eloped with another man. In this connection, a police case was registered by Jahlukbari P.S. It is further mentioned in the said proceeding that Nurangini Begum promised not to make any claim against Khabir Ali. Thus , recital of Exhibit-K shows that there was bilateral proceeding by local public where both the sides placed their respective case and once a decision was taken that Khabir Ali has given Talaq to Nurangini Begum, she also promised not to make any claim against Khabir Ali. But strangely, neither Khabir Ali nor Nurangini Begum put their signature or thumb impression on this paper. Had Khabir Ali been alive it would have been easy to know as to whether such a proceeding had at all taken place on 19.11.1986. This document has been placed on record by the 3rd party Halima Begum and so burden fell heavily on her to show that such a proceeding had at all taken place. This burden could have been discharged by examining any of the persons who signed on the documents as witnesses. Even Bapdhan Ali has not been examined to prove the veracity. Exhibit-Kha has not been accepted by the trial court on the ground that the Kazi who had issued the certificate was not examined. True, the learned trial court was not called upon to decide the correctness or veracity of the divorce given by Khabir Ali to Nurangini Begum, but learned trial court was called upon to examine a prima facie case as to whether Nurangini Begum was given Talaq by her deceased husband. Learned trial court noticed that in the absence of any deposition by any witness of the Talaq proceeding, the same was not believable. Exhibit-K is not signed by either of the party to marriage. It is nothing but a proceeding of a public meeting wherein Khabir Ali had given Talaq to Nurangini Begum. Such a fact could have been proved by examining someone who had witnessed the fact to happen. That being the position, the learned trial court does not appear to have committed any error in holding that divorce of Nurangini Begum was not proved. But after making observation as aforesaid, the learned trial court proceeded to order for issuance of succession certificate in favour of Halima Begum as well as Nurangini Begum in equal share considering that both of them were wives of Khabir Ali. In so doing, learned trial court

committed two errors. Firstly, even on their own showing, second party had already withdrawn the amount more than Rs.50,000/- from the office of the S.P. Mangaldoi and that being the position, the requirement for issuance of succession certificate had already been over and the very purpose of issuance of succession certificate had ceased to exist. The debts and securities for which it was issued having ceased to exist, there was no point in granting succession certificate to such property. Under such circumstances, the learned trial court could have left the parties to settle their claims in civil court. Secondly, the learned trial court could not have granted succession certificate to both the wives of Khabir Ali. Under such circumstances, the learned court ought to have decided as to whether both the wives of a deceased Mohameddan are entitled to benefit accruing from Government services of deceased Mohameddan. This being the position, there was neither any cause of action for succession certificate nor for the present appeal. Accordingly, the appeal stands dismissed. â?|â?|â?|â?|â?|â?|â?|â?|â?|

6. In the counter affidavit filed by the Accountant General (A&E) on 23.2.2011, how the family pension claim on account of Late Khabir Ali, Ex.

Armed Branch Constable was dealt with by the departmental authorities and also by the Accountant General, is indicated. Mr. C. Baruah, the learned

Standing Counsel reads paragraph 5 thereof to project that Mustt. Nurangini Begum (respondent No.5) as the 1st wife, is entitled to family pension on account of Late Khabir Ali.

7. However, it is seen here that in the Succession Case No.61/2002, the 1st wife Mustt. Nurangini Begum was granted relief to the extent of 50% of

the assets of her husband. Therefore, it is necessary for the Court to clarify whether for the Armed Branch Constable, who married twice, the family

pension can be claimed by only the 1st wife (respondent No.5) or the 2nd wife (writ petitioner) is also entitled to a proportionate share.

8. In a similar situation, the Division Bench of this Court on 15.12.2017 in the W.A. No.244/2017 (Musstt. Khadija Begum vs. Musstt. Rejina Begum)

declared as follows :- â?? â?|â?|â?|â?|â?|â?|.

3. The sole question for our consideration is whether second wife of a Mohammedan employee is entitled to any share in the family pension of her late husband. And a Division Bench of this Court in Sirazun Nessa vs. State of Assam, 2011 (4) GLT 751, after examining Rule 143 (i), has already

answered this question in affirmative. In that case, the Division Bench has held that Rule has not ruled out taking into consideration the valid marriage

of two or more wives of a Mohammedan employee and directed that second wife was entitled to the proportionate family pension which could be

determined by the office of the Accountant General, Assam. This being the settled legal position, we find the impugned order of the learned Single

Judge contrary to the Division Bench decision of this High Court. In Khursheed Ahmad Khan vs. State of U.P. 2015 (8) SCC 439, the Supreme Court

has nowhere stated that second wife of an Mohammedan employee is not entitled for family pension of her husband. The decision of the Supreme

Court is therefore not applicable in the present case.

4. We accordingly set aside the impugned order and direct that appellant shall be entitled to the proportionate family pension which could be

determined by the office of the Accountant General, Assam and, for this purpose, the said authority may ask the appellant and Respondent No.1 to

clarify the ratio of their claim in accordance with the Mohammedan Law. â?|â?|â?
|â?|â?|â?|â?|â?|.â??

9. In view of the above declaration of the law and the litigation history between the two surviving wives of the Armed Branch Constable Late Khabir

Ali, the authorities are directed to ensure proportionate family pension for Mustt. Halima Begum (2nd wife) and Mustt. Nurangini Begum (1st wife)

respectively. The necessary process in this regard be completed within 3 months from today. It is ordered accordingly.

10. With the above direction, the case stands disposed of. The copy of the judgment passed in the Intestate Case No.7/2005, be kept in the case

records. This judgment be furnished to all Counsel appearing in the proceeding.