

(2014) 10 RAJ CK 0035
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 2534/2005

Seetu Shekhawat and Others

APPELLANT

Vs

Kailash Kanwar and Others

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Evidence Act, 1872 — Section 4
Hindu Marriage Act, 1955 — Section 11, 5, 5(i)
Negotiable Instruments Act, 1881 (NI) — Section 118, 139
Succession Act, 1925 — Section 372, 373, 383, 384

Citation : (2015) 1 WLN 329

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Prahlad Sharma, Advocates for the Appellant; Shivendra Singh Rathore, Advocates for the Respondent

Judgement

Alok Sharma, J.—The order dt. 18.07.2005, passed by the District Judge, Jhunjhunu dismissing the appellants"-applicants" (hereinafter "the applicants") application under Sec. 383 of the Indian Succession Act, 1925 (hereinafter "the Act of 1925") for revocation of succession certificate granted in favour of the respondents-non-applicants (hereinafter "the non-applicants") by the said Court on 31.10.2000 under Sections 372/373 of the Act of 1925 is under challenge in this civil misc. appeal. Briefly stated the facts of the case are that one Kripal Singh died on 25.04.1999 at Sriganganagar. On his death, an application was moved on 16.08.1999 by the non-applicants under Sections 372/373 of the Act of 1925 claiming that they were the only heirs of the deceased as his wife and son. Notices of the application were published as required in law and with no objection to oppose the application, succession certificate in favour of the non-applicants was granted by the trial Court entitling them inter alia to the benefits of State Insurance amounts, amount of Provident Fund, leave encashment, family pension as also arrears of salary due to the deceased Kripal Singh and right to be considered for appointment in government service under the

2. An application then came to be filed by the applicants on 06.11.2000 before the concerned Court, stating that the certificate of succession obtained by the non-applicants had been procured on the basis of misrepresentation, fraud and collusion with the brother of the deceased Kripal Singh, one Prithvi Singh, who had supported the case of the non-applicants before the trial Court. The applicants submitted that the newspaper in which the notices of the application under Sections 372/373 of the Act of 1925 laid by the non-applicant were published i.e. "Aas-Pass" was a local paper of Jhunjhunu and in these circumstances, the applicants resident of Sriganganagar had not come into the know of the proceedings before the trial Court for grant of succession certificate at the instance of the non-applicant Nos. 1 & 2. It was submitted that the applicant No. 1--Seetu Shekhawat and applicant Nos. 2 & 3--Reetu Shekhawat and Sandeep Shekhawat, respectively were the wife and children of the deceased Kripal Singh. At the time of marriage, Kripal Singh was a bachelor and unmarried, the claim that he was married to the non-applicant No. 1--Kailash Kanwar as alleged was false. After the marriage, the applicant No. 1--Seetu Shekhawat commenced co-habiting with Kripal Singh as wife and bore him two children i.e. applicant Nos. 2 & 3 and lived with him till his death on 25.04.1999 in Sriganganagar. The allegation of Kailash Kanwar as Kripal Singh's married wife was denied.

3. In response to the application under Sec. 383 of the Act of 1925, the non-applicants filed reply stating that Kailash Kanwar was married to Kripal Singh on 06.05.1967 at village Sehnali District Churu according to the Hindu custom and non-applicant No. 2--Virendra Singh borne out of the marriage. It was submitted that Kripal Singh having married could not have at all married the applicant No. 1--Seetu Shekhawat thereafter which he did not and in any event such a marriage, if at all, was a void marriage according to the Hindu Marriage Act, 1955 (hereinafter "the Act of 1955"). The legitimacy of applicant Nos. 2 & 3 as children of the purported marriage of the applicant No. 1 with Kripal Singh was questioned.

4. It was stated in the rejoinder that the applicant No. 1 having converted from Islam to Hinduism by Diksha on or about 02.04.1967 had married Kripal Singh on 08.04.1967 as per Hindu customs and rituals.

5. On the basis of the pleadings of the parties, the trial Court framed three issued which are as under:

6. A reading of the aforesaid issues indicates that the main question before the trial Court fundamentally was as to whether Kailash Kanwar was married to Kripal Singh prior to Kripal Singh's purported marriage with Seetu Shekhawat. And consequentially who amongst the applicants before the Court i.e. the non-applicants Nos. 1 & 2 on their application under Sec. 372 of the Act of 1925 filed

on 16.08.1999 and/or the applicant Nos. 1 to 3 who filed the application under Sec. 383 of the Act of 1925 on 06.11.2000 were entitled to a succession certificate qua the retiral and other non-immovable benefits of the deceased Kripal Singh.

7. Voluminous evidence was filed by the contesting parties. In support of the case of the non-applicants, six witnesses being the non-appellants as AW-1 & AW-2, real brother of the deceased Kripal Singh, one Prithvi Singh as AW-3, a member of the Rajput community to which Kripal Singh belonged, one Surat Singh as AW-4, Basanta Ram, the Naai who partook in the wedding of Kripal Singh with Kailash Kanwar as AW-5, Nandlal son of the Priest who purportedly conducted the marriage of Kripal Singh and Kailash Kanwar as AW-6 entered the witness box to support Kailash Kanwar's case. On her part, the applicant No. 1 alone appeared in Court in support of her application under Sec. 383 of the Act of 1925. The learned trial Court on a detail consideration of the documentary and oral evidence concluded as under:

(i) The marriage of Kripal Singh to Kailash Kanwar on 06.05.1967 was proved on the basis of oral testimony of the witnesses who were not shaken in the course of their cross-examination.

(ii) Documentary evidence in support of the aforesaid marriage, being the wedding card evidencing the betrothal of Kripal Singh with Kailash Kanwar Ex-2 and the receipt of body of Kripal Singh consequent to his death by consuming poison Ex-3 also established the case of the non-applicant No. 1--Kailash Kanwar being married to Kripal Singh and the non-applicants Nos. 1 & 2 being his family.

(iii) Letters of Kripal Singh (Exhibits 18 to 48) written in his own hand (the handwriting being compared and examined by the trial Court itself on a comparison of admitted documents signed by Kripal Singh and in fact produced by the non-applicant No. 1 before the trial Court) establishing the factum of his marriage to Kailash Kanwar clinched the case of the marriage of Kailash Kanwar to Kripal Singh.

(iv) Testimony of the applicant No. 1--Seetu Shekhawat with regard to her marriage to Kripal Singh on 08.04.1967 was not credible in view of the fact that the date of marriage was not initially disclosed in the application under Sec. 383 of the Act of 1925 but only in the rejoinder to the reply to the application after Kailash Kanwar had stated that she was married on 06.05.1967 to Kripal Singh and born him a son Virendra Singh, non-applicant No. 2. Further in her cross-examination, the applicant No. 1 was not able to state name of a single Barati, the place where the Barat stayed or even credibly state that her marriage to Kripal Singh was solemnized as per Hindu customs and rites. None entered in witness box to support her case of marriage to Kripal Singh on 08.04.1967 as alleged.

8. The trial Court thereupon came to the conclusion that the deceased, Kripal Singh was married to Kailash Kanwar on 06.05.1967, out of which marriage, non-

applicant No. 2--Virendra Singh was born. The Court below however concluded that the voluminous evidence on record clearly indicated that commencing 1972, Kripal Singh appeared to have abandoned but not divorced his wife Kailash Kanwar and minor son Virendra Singh and lived thereafter with Seetu Shekhawat as his wife usually at Sriganganagar where he had built her a home and out of the aforesaid relationship two children, i.e. applicant Nos. 2 & 3--Reetu Shekhawat and Sandeep Shekhawat respectively were borne. The conclusion of the trial Court was based upon the fact that there was voluminous evidence exhibited on record and proved to show that Kripal Singh had in fact even nominated Seetu Shekhawat, the applicant No. 1 as his nominee in his LIC policy as also in the government service record stating her to be his wife. The trial Court however held that as Kripal Singh was lawfully married to Kailash Kanwar on 06.05.1967 as evident from the testimony on record, his purported second marriage to Seetu Shekhawat that too unproved for lack of any evidence of probative worth regarding solemnization as per Hindu customs and rites was in any event no marriage in the eye of law being in the teeth of Section 5 read with Section 11 of the Act of 1955. On the basis of the aforesaid conclusion, the learned trial Court dismissed the application under Sec. 383 of the Act of 1925 filed by the applicants on 18.07.2005.

9. Mr. Prahlad Sharma, appearing for the applicants in this appeal has submitted that the order dt. 18.07.2005, passed by the Court below is wholly perverse to the evidence on record. He submitted that the applicant No. 1--Seetu Shekhawat was admitted by the wife of the deceased Kripal Singh as would be evident from her nomination as such in Kripal Singh's LIC policy as also in his service record with the government. It has been submitted that the case set up by the applicant No. 1 that she was married on 08.04.1967 to Kripal Singh subsequent to her conversion from Islam to Hinduism on 02.04.1967 was overlooked by the Court below without any justification. Or how else would have the voluminous service record of Kripal Singh be in her possession, if she were not to be his wife? It has been submitted that it was proved before the Court below on the basis of documentary evidence that the deceased Kripal Singh had under his own signature got Reetu Shekhawat and Sandeep Shekhawat admitted as his children to their respective schools. Further letters from the sister of Kripal Singh to him on record exhibited and proved showed that they were addressed to the residence of the applicant at Srigangapur. Therein the applicant No. 1 was referred to as "Bhabhi"--sister-in-law. It was further submitted that aside of the aforesaid clinching evidences before the Court below, it was found as proved that the applicant No. 1 had lived with Kripal Singh continuously at least since 1972 till his death in 1999. Hence the trial Court ought to have drawn a presumption that the applicant No. 1 and Kripal Singh were a married couple and were so accepted by society. It has been submitted in the alternative that in any event the applicant No. 1 having been nominated by Kripal Singh in his LIC policy as also in the government records as wife, a la Vidyadhari and Others Vs. Sukhrana Bai and Others, , the trial Court ought to have exercised its discretion in issuing

the certificate of succession in favour of the applicant No. 1 and her two children instead of excluding them altogether therefrom--as has done under impugned order dt. 18.07.2005.

10. Dr. Shivendra Singh Rathore, appearing for the non-applicants, Kailash Kanwar and Virendra Singh would submit that the case set up by the applicant No. 1 with regard to her purported marriage with Kripal Singh on 08.04.1967 was palpably false and so rightly found by the Court below inasmuch as in the application under Sec. 383 of the Act of 1925 it had not been disclosed in the first instance as to when she was married. Rather the date of marriage being 08.04.1967 was evidently an afterthought stated by way of rejoinder, subsequent to the filing of the reply to the application under Sec. 383 of the Act of 1983 by the non-applicant No. 1 stating that she was married to Kripal Singh on 06.05.1967 in village Sehnali District Churu according to the Hindu rites and custom. It was submitted that in the oral testimony before the trial Court the applicant No. 1 had not been able to produce any witness other than herself in support of her case. She only examined herself as the sole witness in support of her application under Sec. 383 of the Act of 1925 seeking cancellation of the succession certificate granted in the first instance to the non-applicants vide order dt. 31.10.2000. Further the evidence of the applicant No. 1 was found by the trial Court to be of little credibility inasmuch as she was not in a position even to state the name of a single Barati at the time of her purported marriage of 08.04.1967 or the place where the Barat stayed. It has been submitted that the applicant No. 1 subsequently only meekly asserted the name of the brother of the deceased Kripal Singh, i.e. Prithvi Singh as attending the wedding on 08.04.1967 which fact was denied by Prithvi Singh stating that he never attended the applicant No. 1's purported marriage to Kripal Singh on 08.04.1967 or at any other time at all. It was further submitted that neither the applicant No. 1, nor her two children Reetu Shekhawat and Sandeep Shekhawat were present at the time of cremation of Kripal Singh at Pilani and in fact if the applicant No. 1 were indeed married to the deceased Kripal Singh, it is inconceivable that she and her children would not have been present at the time of Kripal Singh's cremation at Pilani following his death on 25.04.1999. It was submitted that the learned Court below has found that the evidence of the applicant No. 1 with regard to her marriage to Kripal Singh was even otherwise inconsistent as it was reflective of the absence of any understanding at all of a Hindu marriage ceremonies tender which she was allegedly married to Kripal Singh. It has been submitted that the conclusion of the Court below on the lack of probative worth of the applicant No. 1's oral testimony ought not to be interfered with by this Court as no reason therefore exists. It has also been submitted that custody of official records of Kripal Singh with the applicant No. 1 or for that matter even her nomination by Kripal Singh in his LIC policy and in the government records may be reflective of Kripal Singh's live in relationship with the applicant No. 1 and even his fondness for her, but was not sufficient to find a case of the applicant No. 1 having been lawfully married to Kripal Singh. It was submitted

that in any event, one way or the other, proof of the non-applicant No. 1 Kailash Kanwar having married Kripal Singh on 06.05.1967 had been established on the basis of unshaken oral testimony of six witnesses, the wedding card (Ex-2) as also letters in Kripal Singh's own handwriting (Ex-18 to Ex-48) establishing the non-applicant No. 1 as his wife. And consequently, any purported marriage of the applicant No. 1 to Kripal Singh was a void marriage in terms of Section 5 read with Section 11 of the Act of 1955 and did not entitle the applicant No. 1 or her children to a succession certificate under Sec. 372 of the Act of 1925 or a right to seek under Sec. 383 of the Act of 1925 cancellation of the succession certificate issued by the trial Court in favour of the non-applicant No. 1 Kailash Kanwar and non-applicant No. 2 Virendra Singh as the wife and son of the deceased Kripal Singh on 31.10.2000.

11. Heard. Considered.

12. In *Challamma Vs. Tilaga and Others*, , the Hon''ble Supreme Court has held that the issue as to marriage is essentially on a question of fact and the trial Judge in this regard is entitled to analyze the evidence brought on record by the parties so as to come to the conclusion as to whether all the ingredients of a valid marriage as contained in Section 5 of the Act of 1955 stand established or not. Similarly, proof a marriage has been held by the Hon''ble Supreme Court in the case of *Kanwal Ram and Others Vs. The Himachal Pradesh Admn.*, to entail evidence of probative worth establishing the performance of essential ceremonies required for solemnization of a Hindu marriage. In *Shantinath Ramu Danole and Another Vs. Jambu Ramu Danole and Others*, , it has been held by the Hon''ble Supreme Court that evidence of a relative if unshaken and reliable is sufficient to find proof of marriage. A similar view has been taken by the Hon''ble Supreme Court in the case of *Rajan Baboo Vs. U.P. Public Service Commission and Others*, albeit in a different context. The evidence in the case at hand establishes that Kailash Kanwar had proved her marriage to Kripal Singh on 06.05.1967 at village Sehnali District Churu on the basis of unshaken testimonies of six witnesses. These included the real brother of the deceased Kripal Singh one Prithvi Singh as AW-3, a member of Rajput community to which Kripal Singh belonged as AW-4, as also the evidence of Naai (Barber) and the son of the priest as AW-5 and AW-6 who had married Kripal Singh and Kailash Kanwar. Exhibit-2 wedding card announcing the marriage of Kailash Kanwar and Kripal Singh was also taken into account.

13. The applicant No. 1, Seetu Shekhawat however brought on record of the trial Court her own evidence alone aside of the voluminous documents relating to service record of the deceased Kripal Singh as also his LIC Policy and service record evidencing her nomination as his wife. Counsel on her behalf has submitted that even otherwise in view of the admitted position that the applicant No. 1--Seetu Shekhawat stayed with Kripal Singh for over two decades at Sriganganagar as his companion was sufficient for invoking the presumption of marriage between the two.

14. The trial Court has evaluated the evidence on behalf of the non-applicant No. 1--Kailash Kanwar on the one hand and the applicant No. 1--Seetu Shekhawat on the other and concluded that the evidence of the non-applicant No. 1 with regard to her marriage with Kripal Singh on 06.05.1967 was more reliable than the vague assertion of the applicant No. 1 herself without any definiteness as to the date of marriage notwithstanding that she had in her rejoinder to the reply to the application under Sec. 383 of the Act of 1925 filed by Kailash Kanwar had submitted belatedly and as if as an afterthought that she has been married to Kripal Singh on 08.04.1967. In coming to this conclusion, the trial Court also appeared to have been swayed by the fact that in her own testimony in Court, the applicant No. 1 was vague with regard to the manner of the Hindu ceremonies purportedly conducted for her marriage to Kripal Singh, was unable to state as to where the alleged Barat stayed and was even not in a position to state the name of any independent Barati who purportedly participated in her marriage of 08.04.1967. Prithvi Singh (AW-3) who was stated to have been present at the marriage of the applicant No. 1--Seetu Shekhawat with Kripal Singh on 08.04.1967 denied the said marriage or his having ever participated therein at Bikaner as alleged.

15. The Hon"ble Supreme Court in the case of *Narbada Prasad Vs. Chhaganlal and Others*, has held that even though a statutory appeal may be a matter of right (as in this appeal under Sec. 384 of the Act of 1925 is) and the question before the appellate Court wide open both on fact and law, yet the practice of Courts has uniformly been to give the greatest assurance to the assessment of evidence made by the trial Judge, who hears the witnesses, watches their demeanour and judges their credibility in the first instance. It has been held that the burden is on the appellant to establish before the appellate Court the errors in the judgment under appeal and to do this, the appellate Court cannot merely be required to reassess the evidence but has to be shown where the assessment of evidence by the trial Court has gone wrong. The trial court's conclusion on the credibility of the witnesses before it is to be accorded highest respect as the parties before the trial Court are not before the appellate Court. In *Chinthamani Ammal Vs. Nandagopal Gounder and Another*, , the Hon"ble Supreme Court has held that the first appellate Court cannot reverse the finding arrived at by the trial Court on the basis of appreciation of oral evidence unless there are significant and sufficient reason therefore. While so holding reliance was placed on the case of *Madholal Sindhu vs. Official Assignee of Bombay*, AIR 1950 FC 21 where it was held that even though a Judge of the first instance is not infallible in determining where the truth in the case of a dispute and conflicting evidence lies yet if the evidence on the whole can reasonably be regarded as justifying the conclusion arrived at by the trial Court, the appellate Court should not lightly interfere therewith. In *Rajbir Kaur and Another Vs. S. Chokesiri and Co.*, the Hon"ble Supreme Court quoted with approval Lord Thankerton in *Watt vs. Thomas*, 1947 AC 487-88 wherein it was inter alia held that where a question of fact has been tried by a Judge without a jury, there is no question of misdirection

of himself by the Judge and hence for an appellate Court to come to a different conclusion on "printed evidence" it has to be satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witness could not be sufficient to explain or justify the trial Judge's conclusion. Reference was also made to A.L. Goodhart's article in 71 LQR 402 at 405 in which it was stated that a Judge sitting without a jury performs a dual function: the first of which is of establishment of the particular facts of a case and is described as the perceptive function i.e. what the Judge perceives by his five senses and gathers a datum of experience as distinct from a conclusion (which is second aspect of judging). And consequently it is obvious that almost in all cases tried by a Judge without jury, an appellate Court, which has not had an opportunity of seeing the witness must ordinarily accept the trial court's conclusion of fact because it cannot tell on what ground the trial Court reached them and what impression the various witnesses made on the trial Court. In *Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others*, the rule limiting the exercise of power of the first Court on a question of fact dependant upon the credibility of witnesses before the trial Court was well stated as under:

"Here was a case where the controversy related to a pure question of fact which had to be determined by weighing and appraising of conflicting oral testimony adduced by the parties. It cannot be denied that in estimating the value of oral testimony, the trial Judge, who sees and hears the witnesses, has an advantage which the appellate Court does not possess. The duty of the appellate Court in such cases is to see whether the evidence taken as a whole can reasonably justify the conclusion which the trial Court arrived at or whether there is an element of improbability arising from proved circumstances which, in the opinion of the Court, outweighs such finding of the trial Court."

16. Reverting to the case at hand, counsel for the applicants has not been able to satisfy this Court as to in what manner and for what reason the appreciation of evidence by the trial Court in spite of its advantageous position of looking at the demeanour of the witnesses and having their testimony recorded in its presence should be overturned by this Court. From the evidence on record, the initial marriage of Kailash Kanwar to the deceased Kripal Singh on 06.05.1967 was amply proved from the oral testimony, documentary evidence and circumstances of the case where the dead body of the deceased Kripal Singh was cremated not at Sriganganagar where he resided with Seetu Shekhawat for over two decades, but at Pilani at his parental home where Virendra Singh, the non-applicant No. 2 led the ceremonies following the death of a Hindu male, lit the funeral pyre, and Kailash Kanwar alone participated in the rituals for a Hindu widow.

17. Counsel for the applicants has however submitted that this Court should invoke the presumption of marriage of the applicant No. 1--Seetu Shekhawat to Kripal Singh from the admitted fact that the two had cohabited as man and wife at Sriganganagar for over two decades.

18. It is no doubt true that presumption of marriage as a fact can be drawn in

circumstances of a long live in relationship between a man and woman and their acceptance as such by the society in which they reside Thakur Gokalchand Vs. Parvin Kumari, But such presumption is a mere rule of evidence and not substantive law. And rebuttable one and operating only in a vacuum/absence of evidence to the contrary. The Hon"ble Supreme Court in the case of Kumar Exports Vs. Sharma Carpets, albeit in the context of a case under Sections 118 and 139 of the Negotiable Instrument Act, 1881 has held that the definitions of "may presume" and "shall presume" as set out in Section 4 of the Evidence Act make it clear that when a presumption is a rebuttable one, it only entails that, the party on which the duty lies going forward with the evidence has to produce evidence to reasonably show that the presumed fact is unsustainable and the presumption cannot be operative in the context of overall evidence in the given case. In Sobha Hymavathi Devi Vs. Setti Gangadhara Swamy and Others, , the Hon"ble Supreme Court has held that even though law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years, yet if there are circumstances which weaken or destroy that presumption, the Court cannot ignore them and the presumption being rebuttal can be held to be so rebutted from the evidence, both oral, documentary and circumstantial on record setting up broad probabilities of a case. In the context of the facts of this case, the presumption of marriage arising from decades of co-habitation between Kripal Singh and Seetu Shekhawat stands roundly rebutted by the testimony of witnesses i.e. Prithvi Singh (AW-3), Surat Singh (AW-4), Basanta Ram (AW-5) and Nandlal (AW-6) stating categorically that Kripal Singh was married to Kailash Kanwar on 06.05.1967 and at the time Kripal Singh was unmarried. The presumption was also equally and conclusively rebutted by Ex-2 (duly proved) which was the wedding card announcing the betrothal of Kailash Kanwar and Kripal Singh on 06.05.1967 as also by letters Ex-18 to Ex-48 written by Kripal Singh admitting to his marriage to Krishna Kanwar.

19. Consequently, in my considered opinion even though Seetu Shekhawat, applicant No. 1 admittedly cohabited with the deceased Kripal" Singh for a couple of decades and more, she cannot be entitled to the presumption of a valid marriage in view of the substantive evidence to the contrary on record. The case of a valid marriage between Seetu Shekhawat, applicant No. 1 and Kripal Singh prior to the marriage of Kailash Kanwar on 06.05.1967 was rightly disbelieved by the trial Court for the reason that in the first instance in the application filed by her under Sec. 383 of the Act of 1925 no specific date of marriage was set out. Thereafter 08.04.1967 being the date of marriage was only set up by Seetu Shekhawat, the applicant No. 1, only by way of rejoinder to the reply by Kailash Kanwar to the application filed under Sec. 383 of the Act of 1925 stating that her marriage with Kripal Singh was solemnized on 06.05.1967 under Hindu customs and rites. Aside of that even though the applicant No. 1, Seetu Shekhawat stated that she had after conversion from Islam to Hinduism married Kripal Singh on 08.04.1967, no witness who attended the conversion or the marriage to Kripal

Singh was got examined before the trial Court. The trial Court also found the evidence of the applicant No. 1 vague, general, non-specific and overall incredible and hence rightly overlooked the claim of a valid marriage on 08.04.1967 between the applicant No. 1 and Kripal Singh. Conversely the marriage of Kailash Kanwar to Kripal Singh on 06.05.1967 was duly proved from various evidence referred to hereinabove.

20. Aside of the aforesaid, if it were to be assumed that applicant No. 1, Seetu Shekhawat was married to Kripal Singh, it was after 06.05.1967 and as Kripal Singh admittedly had not nullified his marriage with Kailash Kanwar prior thereto (and even thereafter), his purported second marriage to Seetu Shekhawat was void ipso jure in terms of Section 5(i) read with Section 11 of the Act of 1955.

21. That however is not the end of the matter as the issue in the present appeal fundamentally pertains to the grant of succession certificate under the Act of 1925. The Hon''ble Supreme Court in the case of Vidyadhari (Supra) has held that where the claimant for a succession certificate was one who had married the deceased during the subsistence of his earlier marriage and hence could not claim the status of a legally wedded wife but yet was a nominee of the deceased and the mother of his children and whose name was also found as a nominee in the declaration form submitted by the deceased with his office during his life time, she could claim a succession certificate under Sec. 372 of the Act of 1925. It was held by the Hon''ble Apex Court that there was nothing in Section 372 of the Act of 1925 to prevent a nominee of a deceased albeit not his legally wedded wife from claiming a succession certificate on the basis of nomination. It was held that in fact in situations such as the one then before the Hon''ble Supreme Court as in Vidyadhari (Supra) the discretion of the Court could even be exercised for the grant of a succession certificate to such a nominee and her children begotten through a second albeit illegal marriage to a male with a prior subsisting marriage. It was held that in such situations the grant of a succession certificate to a legally wedded wife to the exclusion not only of the nominee of the deceased, but also her children borne of her liaison with a married man would be unjust. The Court however hastened to add that the legally wedded wife in such situations would be also entitled along with other claimants to pro rata share in the moveable assets of the deceased.

22. In the context of the judgment of the Hon''ble Supreme Court in the case of Vidyadhari (Supra), I am of the considered view that even though it has been proved from the evidence before the trial Court that Kailash Kanwar was married to Kripal Singh, at the time a bachelor, on 06.05.1967 and bore to him a son, i.e. Virendra Singh entitling the two to be the legal heirs of Kripal Singh, yet taking into consideration the fact that the applicant No. 1 Seetu Shekhawat admittedly cohabited with Kripal Singh for over two decades in Sriganganagar and bore him two children, Reetu Shekhawat and Sandeep Shekhawat out of the said liaison, Kailash Kanwar and Virendra Singh on the one hand, and Seetu Shekhawat, Reetu Shekhawat and Sandeep Shekhawat on the other would be entitled to a

succession certificate in equal measure. Consequently, I would modify the impugned order dt. 18.07.2005, passed by the trial Court and hold that Kailash Kanwar and Virendra Singh as also Seetu Shekhawat alongwith Reetu Shekhawat and Sandeep Shekhawat would also be entitled in equal measure to the grant of succession certificate in respect of retiral dues of the deceased Kripal Singh except to the extent otherwise provided for in law i.e. in respect of family pension payable only to the legally wedded wife of the deceased. It is made clear that the family pension following the death of Kripal Singh on 25.04.1999 would be payable to Kailash Kanwar till her death and any arrears of family pension due as unpaid owing to the pendency of this appeal would be paid to Kailash Kanwar or Virendra Singh as her legal heir as the case may be.

Appeal accordingly disposed off.