
(2017) 04 RAJ CK 0152
In the Rajasthan High Court
Case No : 9264 of 2005

Sunita Devi

APPELLANT

Vs

State of Rajasthan & Ors.

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

[Rajasthan Civil Services \(Pension\) Rules, 1996](#), Rule 67, Rule 62

Citation : (2017) 04 RAJ CK 0152

Hon'ble Judges : Sanjeev Prakash Sharma

Bench : SINGLE BENCH

Advocate : Ashok Joshi, Sanjay Sharma

Judgement

1. The only point involved in the present writ petition is that the petitioner, who is stated to be the second wife of deceased-Shri Bala Prasad Sain and surviving wife at the time of his death, is entitled to family pension or not ?
2. The case, as arisen, is that there was some dispute between the petitioner and son Sunil Kumar. The name of Sunil Kumar was mentioned in the nomination form alongwith name of the first wife who had expired on 14/12/1995. In the civil suit between the petitioner and Shri Sunil Kumar a compromise was arrived at and a judgment and decree was passed on 27/04/2005 whereby th petitioner and her son divided equally the benefits of PF, Gratuity of the deceased. However, the petitioner was not granted family pension by the respondents on the specious plea that she had no proof to show that she was legally wedded wife of the deceased and a succession certificate was sought from the petitioner vide letter dt.17/06/2005.
3. Learned counsel for the petitioner submits that the petitioner was admittedly living with her late husband and even if she has no legal proof to show that she was legally wedded wife, a presumption in law has to be drawn in terms of the fact that she has been continuously living with her husband for years together since death of the first wife. Copy of the voter list as also LIC have also been

placed on record by way of rejoinder to show that the petitioner was legally wedded wife of the deceased Bala Prasad Sain.

4. Learned counsel for the respondents submits that in the decree awarded, the learned trial court has not given a finding with regard to the petitioner being wife of the deceased Bala Prasad Sain.

5. Having heard learned counsel for the parties, this Court finds that there is no provision under the Rajasthan Service Rules for submitting succession certificate by a wife for release of family pension. Although it is true that in cases where there is no nomination mentioned under Rule 58, succession certificate is required. Admittedly, it is not a case relating to Rule 58 of the Rajasthan Service Rules which is only with regard to release of Gratuity and it is also an admitted position that gratuity had already been released and has been shared by the petitioner as well as son of deceased Shri Bala Prasad Sain.

6. Learned counsel for the petitioner has relied upon a judgment in the case of Karedla Parthasaradhi Vs. Gangula Ramanamma (dead) through legal representatives and others: (2014) 15 SCC 789 wherein the Apex Court has held that continuous cohabitation as husband wife would be sufficient to draw a presumption of their marriage and held as under:- "21. Coming now to the facts of this case, we consider it apposite to reproduce the finding of the High Court on this issue in verbatim, which is contained in paras 26 to 30 in the judgment:

"26. When the first defendant asserted that she is the legally wedded wife of late Satyanarayana, we have to examine the material placed by her to establish the said fact. It is an undisputed fact that the first defendant lived with late Satyanarayana. The first defendant claims that their marriage took place at Rajahmundry about 30 years ago. They lived at Rajahmundry for about 10 years. During their wedlock, she became pregnant twice and those pregnancies were got abort at the instance of her husband. Ultimately, she got her sister's son adopted during the lifetime of late Satyanarayana. Later, they shifted to Rajahmundry, constructed the house and performed the house warming ceremony. Her name was included in the voters list as the wife of late Satyanarayana. She also stated that the deceased being the Pracharak of Viswa Hindu Parishad, he took all care to see that no photographs are taken either for the marriage or house warming ceremony or any other occasion. In support of her contention, DW-2, the neighbour at Vijayawada, was examined, who stated that the deceased Satyanarayana was the husband of the first defendant. They resided in the said house to the knowledge of one and all as wife and husband. The deceased used to take the first defendant to some camps along with him. D-1 also looked after the construction work of the house. D-1 and late Satyanarayana sat as wife and husband for performing pooja at the time of house warming ceremony. The plaintiff and the second defendant did not attend the said function. He finally said that D-1 is the wife of late Satyanarayana, but not his maidservant. In the cross-examination also, he stated that he heard that Satyanarayana and D-1 married at the temple near their house even prior to the

shifting of their residence to his locality and as they have no issues, they brought up one boy by name Sanjeeva Rao. Though the plaintiff cross-examined DWs 1 and 2, he could not elicit any favourable information in support of his contention that the first defendant lived in the house of late Satyanarayana only as a cook, but not in any capacity. Ex. X-1 is a Kalpatharuvu deposit receipt of Andhra Bank, Vijayawada. DW-1, an officer of the Andhra Bank, deposed that the deceased Satyanarayana and the first defendant kept an amount of Rs.42,650/- in Kalpatharuvu fixed deposit. Satyanarayana wrote letters to the bank informing that after maturity, the amount may be paid either to him or to the first defendant. The application was signed by both of them at the time of depositing the amount. But, he does not know their relationship. In the fixed deposit receipt, the first defendant was described as K. Ramanamma, but not as G. Ramanamma, which is her parents' surname. Had the first defendant lived in the house of late Satyanarayana as a cook, he would not have allowed her to join him in making the deposit and he would not have written letters to the bank asking them to pay the amount to her after its maturity. This is also one of the strong circumstances to draw an inference that the first defendant was the wife of late Satyanarayana. After maturity, D-1 withdrew the amount as per the authorization given by the deceased Satyanarayana. In the voters lists covered by Exs. B-42 and 44, the name of D-1 was shown as the wife of late Satyanarayana. Had she not been the wife of Satyanarayana, he would have definitely raised an objection not to designate her as his wife, therefore, this is also one of the strong circumstances to establish that the first defendant is the wife of the deceased Satyanarayana. In 1983, the deceased was 53 years old and the first defendant was 32 years old. Though there is difference of age of 20 years between them, on account of long association and continuous living in the same house, the deceased might have developed affection towards the first defendant and married her as wife. For sake of society, he might have taken precautions to indicate that he remained as a bachelor. The postman of the locality was examined as DW-5, who stated that he saw the first defendant in the house of the deceased from 1980, but he does not know the relationship and the first defendant used to receive letters in her name to the said address. Ex. B-46 is one of such letters addressed by late Satyanarayana, wherein the address of the first defendant is described as K. Ramanamma indicating his surname. In the said letter, the deceased described the first defendant as Chiranjeevi Ramanamma and mentioned that she has to take care of the domestic needs and perform karthika Monday festival without caring for the expenditure and also advised to instruct Sanjeeva Rao (their foster son) to study well. The manner in which the letter was written is also reflecting the affection of the deceased towards the first defendant. Had the first defendant was not his wife, the deceased would not have mentioned her name as K. Ramanamma instead of her parents' surname as Gangula Ramanamma.

27. In the letter addressed to the bank covered by Ex. X-2, the deceased described the first defendant as Smt. K. Ramanamma, which is also an indication

that he is treating her as his wife for all practical purposes except describing her as his wife. DW-6, an ex-corporator of Vijaywada Municipality deposed that after the construction of house, the first defendant, her mother and a boy name Sanjeeva Rao resided there along with late Satyanarayana till his death. Late Satyanarayana and the first defendant lived together. Their names find place in the voters list. Late Satyanarayana and the first defendant used to take treatment from him, as he was a Doctor and Satyanarayana himself used to bring D-1 for treatment. In the crossexamination, DW-6 stated that the first defendant was residing in the house of late Satyanarayana in the capacity of his wife. He knows the said fact as both of them performed Satyanarayana Vratam at the time of house warming ceremony. He asserted in the cross-examination that late Satyanarayana and the first defendant are the husband and wife and they brought up one Sanjeeva Rao, who is no other than the sister's son of the first defendant. DW-7, the fostered son of the defendant also, stated that the first defendant is his fostered mother and late Satyanarayana was his fostered father. He was brought up by both of them. No relatives of Satyanarayana attended the function when Satyanarayana Vratam was performed by late Satyanarayana and D-1 at the time of house warming ceremony. He also performed the obsequies of late Satyanarayana in the suit schedule premises.

28. The above evidence is also lending support to the contention of the first defendant that she is the wife of late Satyanarayana. A presumption can be drawn that a woman is the wife of a man with whom she lived for a very long period and on account of their long association and she can be recognised as his wife. Various circumstances placed by the first defendant by way of oral and documentary evidence also indicate that she was recognised as the wife of late Satyanarayana, therefore, she can be treated as wife of late Satyanarayana.

29. Though the plaintiff and the second defendant claimed that they are the brother and sister of the deceased, they severed connections with the deceased about four decades prior to the filing of the suit and his whereabouts were also not known to those persons. There was no exchange of visits and they never helped and financed late Satyanarayana either for the construction of the house or for any other purpose. Since there is house in the name of the deceased, they entertained an idea of claiming the same as legal heirs of the deceased Satyanarayana.

30. On account of long association of the first defendant with the deceased for more than 33 years and on account of the conduct and affection shown by the deceased towards first defendant, it can be said that she was married by him surreptitiously pretending to be a bachelor to the outside world and with a view to provide shelter to her, he constructed the house and fostered her sister's son to be the successor to D-1. The totality of the circumstances would indicate that D-1 was the legally wedded wife of late Satyanarayana, therefore, she is entitled to the house property being Class-I heir."

22. Mere perusal of the afore-quoted finding would go to show that it is based on

proper appreciation of evidence and being just, legal and proper, it does not call for any interference by this Court under Article 136 of the Constitution. That apart, the High Court while exercising its first appellate jurisdiction under Section 96 of the CPC had ample jurisdiction to appreciate the evidence independent to that of the appreciation done by the trial court and come to its own conclusion. Indeed, this being the well-settled principle of law laid down by this Court in several decisions, no elaborate discussion is necessary on this question."

7. Although the aforesaid is relating to succession, one can draw an analogy with regard to the presumption to be drawn specially when compromise between the son and second wife has already been recorded by a competent court which shows that she recognized her as wife of late deceased.

8. Admittedly, there is no other person claiming family pension apart from the petitioner and in such circumstances, there was no occasion for demanding succession certificate. Perhaps the situation where there are more than one claimants for seeking family pension may invoke demand of succession certificate, however, such a case does not arise in the present facts.

9. In the circumstances, there is no further requirement of obtaining succession certificate and the petitioner would be entitled to receive family pension in terms of Rule 62 and 67 of the Rajasthan Civil Services (Pension) Rules, 1996 and the family pension now be released to the petitioner by the respondents within a period of three months from the date of receipt of certified copy of this order and the arrears of the family pension be also released within the same period alongwith interest @9% per

annum.

10. The writ petition stands disposed of with the observations/directions as indicated above.