

HIGH COURT OF MADHYA PRADESH: JABALPURSINGLE BENCH:HON. SHRI JUSTICE A.K. SHRIVASTAVACIVIL REVISION NO. 469/2006

.....Applicant : Sarita Bai,
W/o Late Mehtab Singh Gond
Aged about 35 years,
R/o Malanhwada Post Boria,
Police Station Kundipura,
Tehsil & District Chhindwara

Versus

..... Respondents : 1. Smt. Chandra Bai,
W/o Late Mehtab Singh Gond
Aged about 35 years,

2. Ku. Rajshri
D/o Late Mehtab Singh Gond
Aged about 10 years,

3. Ku. Jaishri
D/o Late Mehtab Singh Gond
Aged about 7 years,

Respondents No.2 and 3 are
minor therefore through their
natural guardian Chandra Bai

All Respondents No.1 to 3 are
R/o Gram Rohankalan, Tehsil
& District Chhindwara

4. Superintendent of Police,
Rajanandgaon,

District Rajanandgaon (CG)

.....
Applicant - Shri Sanjayram Tamrakar,
Advocate .
Respondents - Shri Pradeep Naveriya,
Advocate

O R D E R
(26/04/2011)

1. The order passed in this revision shall also govern the disposal of connected Civil Revision No. 470/2006 since both the revisions have arisen from a common order in two appeals passed by the learned District Judge, Chhindwara.
2. One Chandra Bai stating herself to be the wife of Mehtab Singh Gond filed an application under Section 372 of the Indian Succession Act, 1925 (in short, 'the Act of 1925') which was registered as Case No. 55/2003 at Chhindwara praying that she had been married to Mehtab Singh Gond and out of their wedlock, two daughters were born, they are applicants 2 and 3 in the application filed before the learned Trial Court. The Succession application was filed against Smt. Sarita Bai in which Superintendent of Police, Rajanandgaon was also arrayed as non-applicant no.2. In the Succession application it has been pleaded that

Sarita Bai is the wife of one Raghuveer Prasad and she is not entitled to receive GPF, GIS and gratuity amount of her late husband Mehtab Singh Gond who breathed his last on 24.5.2003 while serving as a Constable No.74 in the Police Department of the State of M.P.

3. After having served with the notice, the present applicant Sarita Bai filed a separate application which was registered as Case No.12/2004 in the same Court for obtaining succession certificate claiming herself to be legally wedded wife of Mehtab Singh Gond. *Inter alia* it has been pleaded that her marriage was solemnized with Mehtab Singh Gond in the year 1984. In the service record, her name has been mentioned as a nominee of her late husband. Since Mehtab Singh Gond had died, therefore, it has been prayed by her that the amount of GPF, GIS and gratuity be paid to her. The learned Trial Court rejected the application of Sarita Bai but partly allowed the application of Chandra Bai granting succession certificate to her two children born from the company of Mehtab Singh Gond.

4. The order of learned Trial Court was assailed by Sarita Bai by preferring two different appeals which were registered as Misc. Civil Appeal No.05/06 and 06/06. One

appeal was filed against the dismissal of her application under Section 372 of the Act of 1925 and another appeal was preferred assailing the order of the learned Trial Court by which the application of Chandra Bai was allowed in part granting succession certificate in favour of her two children born from the company of Mehtab Singh Gond. The learned First Appellate Court by the impugned order dated 31.10.2006 dismissed both the appeals.

5. In this manner, these two civil revisions have been filed by Sarita Bai.

6. The contention of learned counsel for the applicant is that since Mehtab Singh Gond solemnized second marriage with Chandra Bai when the valid marriage of Sarita Bai was subsisting without obtaining any divorce from her, the children born from the company of Mehtab Singh Gond cannot be said to be legitimate children of Mehtab Singh Gond and learned two Courts below erred in granting succession certificate to them. In support of his contention, learned counsel has placed reliance on a decision of this Court in **Ramkali and another Vs. Mahila Shyamwati and others 2000(3) M.P.L.J. 361.**

7. On the other hand, Shri Pradeep Naveriya, learned counsel appearing for the respondents argued in support of the impugned orders. Learned counsel has placed heavy reliance on the decision of the Supreme Court in **Gurnam Kaur (Smt.) and another Vs. Puran Singh and others, (1996) 2 SCC 567** and in case of **Smt. Parayankandiyal Eravath Kanapraavan Kalliani Amma and others Vs. K. Devi and others, AIR 1996 SC 1963.**

8. Having heard learned counsel for the parties, I am of the view that both these revisions deserve to be allowed in part.

9. On bare perusal of the findings of the learned two Courts below, it is gathered that applicant Sarita Bai got married with Mehtab Singh Gond in the year 1984. Without obtaining any decree of divorce during the subsistence of his first marriage with Sarita Bai, Mehtab Singh Gond solemnized second marriage with Chandra Bai. Thus, the marriage of Mehtab Singh Gond with Chandra Bai is in contravention to Section 5 of the Hindu Marriage Act, 1955 (in short, the Act of 1955). The findings recorded by the two Courts below in this regard is a pure finding of fact and cannot be interfered with in this revision. Hence, it is hereby

held that during the subsistence of first marriage with Sarita Bai without obtaining divorce from her, deceased Mehtab Singh Gond solemnized second marriage in the year 1987 with Chandra Bai which is in contravention to Section 5 of the Act of 1955, therefore, it is a void marriage under Section 11 of the Act of 1955. Hence, rightly, the claim of Chandra Bai claiming succession certificate has not been allowed by learned Courts below. However, the learned two Courts below erred in law in not allowing prayer to grant succession certificate to the applicant Sarita Bai who was a legally wedded wife of Mehtab Singh Gond.

10. The question would now rest on the pivot whether the children born out of the company of Mehtab Singh Gond and Chandra Bai are entitled for any relief or not. In this regard, Section 16 of the Act of 1955 is quite clear. According to this section, even if the second marriage is null and void under Section 11, any child born out of such marriage who would have been legitimate if the marriage would have been valid, shall be the legitimate child and therefore, respondents no.2 and 3 namely Ku. Rajshri and Ku. Jaishri are the legitimate children of Mehtab Singh Gond and thus are entitled to obtain succession certificate.

11. The Supreme Court in **Rameshwari Devi Vs. State of Bihar and others 2000(2) SCC 431** has held that deceased employee who is a Hindu contracting a second marriage during subsistence of his first marriage and the children born out of the second marriage would be the legitimate children under Section 16 of the Act of 1955.

12. Hence, I am of the view that the findings rendered by learned two courts below that daughters of Chandra Bai respondents no.2 and 3 namely Ku. Rajshri and Ku. Jaishri born from Mehtab Singh Gond are entitled for the succession certificate.

13. For the reasons stated herein above, this revision succeeds in part and it is hereby held that applicant Sarita Bai and respondents no.2 and 3 namely Ku. Rajshri and Ku. Jaishri, daughters of late Mehtab Singh Gond and Chandra Bai are entitled for 1/3rd share each for the entire service dues of Mehtab Singh Gond. The order of two Courts below is accordingly modified. The application filed under Section 372 of the Act of 1925 by Sarita Bai and the application under the same Act filed by Chandra Bai are partly allowed and disposed of to the extent indicated

herein above. The learned Succession Court is hereby directed to issue succession certificate accordingly.

14. Looking to the facts and circumstances, the parties are hereby directed to bear their own costs.

(A.K. SHRIVASTAVA)
JUDGE

rao

Civil Revision No. 469/200626.04.2011

Shri Sanjayram Tamrakar, learned counsel for the applicant.

Shri Pradeep Naveriya, learned counsel for the respondents.

They are heard.

Order dictated. Signed and dated separately.

(A.K. SHRIVASTAVA)
JUDGE

rao