

HIGH COURT OF ORISSA: CUTTACK.

RSA. NO. 183 of 2013

From the judgment and decree dated 18.04.2013 passed by the learned District Judge, Balasore in R.F.A. No. 64 of 2012.

Sarojini Rana @ Moharana & anr	Appellants
	Versus.	
Smt. Subasini @ Kanka Moharana & ors.	Respondents

For Appellants : M/s.Himanshu S.Panda, S.Pattnaik,
advocates.

For Respondents: M/s.Debaraj Mohanty, Abhilash,
Mishra, advocates.
Additional Standing Counsel.

PRESENT:

THE HONOURABLE SHRI JUSTICE D.DASH

Date of hearing- 18.06.2015	:	Date of judgment-30.06.2015
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This appeal has been filed challenging the judgment and decree passed by the learned District Judge Balasore in R.F.A. Case No. 64 of 2012 confirming the judgment and decree passed by Civil Judge (Sr. Division), Balasore & Civil Suit No. 121 of 2002 decreeing the suit filed by the respondent no. 1-plaintiff.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to as they have been arraigned in the trial court.

3. The case of the plaintiff-respondent no. 1 is that she is the legally married wife of Prafulla Chandra Moharana, they had married in the year 1963 when Prafulla was in Government service. It is alleged that after marriage, plaintiff's husband developed illicit relationship with defendant no. 2 and it was resisted by the plaintiff. So, she was driven out of his house. Since then, the plaintiff with her four children took shelter at her parents house. She filed a petition under section 125 of the Code of Criminal Procedure numbered as Misc. Case No. 132 of 1997 for maintenance which had been allowed on 05.11.1997 and revision filed by the Prafulla only ended with some modification on the quantum of monthly maintenance. The plaintiff had also filed Misc. Cases bearing No. 24 & 25 of 1999 for enhancement of maintenance and realization of the maintenance amount respectively. Prafulla had appeared in these Misc. Cases and had filed objections. Thereafter, Prafulla had filed Original Suit bearing No. 704 of 1999 for divorce against the plaintiff and in that proceeding, the plaintiff contested. However, on 27.12.2001, Prafulla expired. Therefore, the plaintiff obtaining necessary documents when went to take steps for grant of family pension found that it has already been ordered to be paid to the defendant no. 2. So the present appellant as the plaintiff filed suit for declaration that she is entitled to get the family pension further seeking a direction restraining the defendant no. 3 from the disbursing the family pension to defendant no. 2.

4. The son of defendant no. 2 and defendant no.4 had contesting the suit. While traversing the plaint averments, the maintainability of the suit was challenged. It is further asserted that defendant no. 2 is the legally married wife of Prafulla and two sons and one daughter have been born out of the said wedlock. Defendant no. 4 contested the suit by filing written statement.

5. The trial court framed five issues and the out of which the most important are the followings:-

- (3) Whether the plaintiff is entitled to get the family pension of her deceased husband?
- (4) Whether the plaintiff is entitled to the relief, as prayed for in the suit?

Taking up issue No. 3 and 4 together for decision, the trial court having gone through the evidence of plaintiff and documents as also the evidence of the witnesses examined from the side of the defendant no. 2 and 4 and their supporting documents rendered a finding that the plaintiff is the legally married wife of deceased Prafulla Ch. Moharana and as such she is entitled to get family pension. In view of such finding of the said status of the plaintiff, the disbursement of the family pension in favour of the defendant no. 2 by the defendant no. 1 and 3 has been held to be illegal and they have been restrained from doing so. The answers on the other issues have been accordingly given.

The defendant no. 2 and 4 being aggrieved by the said judgment and decree in decreeing the suit filed by the respondent no. 1 preferred

appeal in the court of learned District Judge, Balasore. Upon hearing and on going through the evidence of both oral and documentary on record the lower appellate court has ruled in favour of the plaintiff declaring her to be the legally married wife of Prafulla and as such her entitlement to receive the family pension due on account of death of Prafulla after his retirement has been so found.

6. The following substantial questions of law have been formulated for the purpose of admission of this appeal:-

- (1) Whether under the provisions contained in section 28 of the Orissa Administrative Tribunals Act, 1985, the suit is maintainable in Civil Court?
- (2) Whether the Civil Court has the jurisdiction to adjudicate the dispute between the parties?

7. Learned counsel for the appellant submits that in view of section 28 of Orissa Administrative Tribunals Act, 1985, the suit is not maintainable and the civil court has no jurisdiction to adjudicate the dispute concerning the entitlement to the benefits towards the service of Prafulla. Further, banking upon the provision of section 28 of Orissa Administrative Tribunals Act, he contends that the dispute between the parties squarely falls within the dispute specified in section 28 for their adjudication by the State Administrative Tribunal.

8. Learned counsel for the respondent no. 1 submits that the suit is essentially one for declaration of status of the plaintiff as the legally married wife which has been disputed by the defendant no. 2

and 4 as can be seen from their version, and as she is being denied her right to get the family pension of that basis. Thus, according to him, the State Administrative Tribunal is not proper forum for adjudication of such dispute basically concerning the status of the plaintiff when defendant no. 2 also claims to be the legally married wife of Prafulla Chandra Moharana. Thus, he contends that the suit squarely comes within the jurisdiction of the civil court for being adjudicated upon.

9. In order to address the rival submission, it is apposite to look at the provision of section 9 of the Code of Civil Procedure. It reads that the court shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature except suit of which their cognizance is either expressly or impliedly barred. It is not in dispute, the deceased Prafulla was a Government servant. In the present suit, the plaintiff no doubt has claimed the relief of declaration of her right to receive the family pension, nonetheless said claim is based upon her status as the legally married wife of Prafulla. On the other hand, defendant no. 2 claims to be the legally married wife of Prafulla. The case of **Pratap Chandra Rout and Others v. State of Orissa and Others**; 62(1986) CLT 244 was in relation to the conditions of the deceased employee and in that view of the matter; it has been held that such dispute touching the service condition of a deceased employee under the State is to be adjudicated upon under the provisions of Administrative Tribunals Act. In another case of **Manjulata Jena and Others Vrs. Parvati Lena and Others**; 2010(1) OLR 301, this Court

was sitting over an order of rejection of an application under section 7 Rule 11 (d) of the Code of Civil Procedure. In the said suit on the basis of admitted status of the plaintiff as mother and sisters of the deceased in presence of wife, son and daughter of the deceased employee, the relief prayed for was for declaring 40% share of the plaintiff over the service benefits of the deceased employee and accordingly direction to the employer and the restraint order against the wife and children of deceased from receiving that 40% share was sought for. The Hon'ble Court referring to the provision section 28 of the Orissa Administrative Tribunals Act as also section 29 held that it is the Orissa Administrative Tribunal to adjudicate the dispute and as such the civil court was directed to transfer the suit to the Tribunal.

10. On a bare reading of section 28 of the Act, it becomes as clear as the noon day that the Tribunal's jurisdiction, power and authority remains in relation to recruitment and matters concerning recruitment to service or post or service matters or posts or service concerning members of the service or persons appointed to any service or posts. In the instant case, when the rival case of the parties is seen, it is found that the dispute does not concern with the service matters of deceased Prafulla. It is a dispute concerning the status of the plaintiff who claims to be the legally married wife of Prafulla and defendant no. 2 who also claims the same status. The claim of relief of entitlement to the family pension payable on account of the service conditions of deceased employee is wholly dependent upon the such declaration of status. The

dispute is of civil nature. Therefore, it is held that the civil court has the jurisdiction to adjudicate the dispute as has arisen between the parties concerning the status of the plaintiff and defendant no. 2 as to who is the legally married wife of Prafulla. And such dispute between the parties is not cognizable by the Administrative Tribunal constituted under the Orissa Administrative Tribunals Act.

The substantial questions of law as formulated at the time of admission of appeal are accordingly answered.

11. In the instant case, the trial court as it appears has made an elaborate discussion of evidence let in by the parties concerning their claimed status upon going through the evidence on the basis of the documents proved in the case showing that Prafulla had filed a suit against the plaintiff for divorce coupled with the findings rendered in the summary inquiry in the proceedings for maintenance having gone unchallenged by Prafulla and those are held to be enough to hold the plaintiff to be the married wife of Prafulla.

12. The lower appellate court has gone for reappraisal of evidence and as is seen from the para – 9 of the judgment, there has been elaborate analysis of the evidence let in by the parties. Undertaking a strenuous exercise, the lower appellate court has independently arrived at the said finding as that of the trial court as regards the status of the plaintiff and her entitlement flowing therefrom.

Learned counsel for the appellant in course of hearing has not been able to place any such material so as to persuade this Court to

hold that the said findings of the Court below have been rendered overlooking any such material evidence and those if would have been considered in their proper prospective, the said finding in favour of the plaintiff in declaring her status as the wife of Prafulla ought not to have been the outcome.

13. When this Court has found sustainability of the finding as regards the status of respondent-plaintiff as the married wife of Prafulla Chandra Maharana, her entitlement to the family pension in accordance with the provision of Rule 56 of Orissa Civil Service Pension Rules, 1992 as it stands after amendment certainly comes in. The competent authority under the said Rules in view of the declaration of the status of this plaintiff are called upon to accordingly act in the matter of disbursement of family pension afresh strictly in adherence to the provision of Rule 56 of the said Rules.

14. In the upshot of the above discussion, the appeal stands dismissed with observation as aforesaid. In the peculiar facts and circumstances of the case, the parties are to bear their respective cost of litigation although out.

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D.Dash, J.