

(2010) 06 AP CK 0007

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 3979 of 2009

Shaik Tara Begum and Others

APPELLANT

Vs

Shaik Sartaj Begum and Others

RESPONDENT

Date of Decision: June 1, 2010

Acts Referred:

- Andhra Pradesh Civil Services (Conduct) Rules, 1964 - Rule 25
- Constitution of India, 1950 - Article 227

Citation: (2010) 5 ALD 290

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: M.N. Narasimha Reddy, for the Appellant; Arifulla, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The petitioner is the younger sister of the 1st respondent. The latter was married to Shaik Anwar Basha, on 28.12.1975, who was employed as attender in the Commercial Tax Department. The 2nd respondent was said to have been born out of that wedlock, in the year 1979. Anwar Basha died due to heart attack on 07.05.2004.

2. Respondents 1 and 2 filed succession O.P. No. 13 of 2004 in the Court of Principal Junior Civil Judge, Kadapa, in relation to the service benefits of the deceased. The 1st petitioner herein was impleaded as the sole respondent. She filed a counter stating, inter alia, that the 2nd respondent is not the son of the 1st respondent at all. She stated that with the consent and approval of the 1st respondent, she married Anwar Basha, according to Muslim Law, on 15.05.1976, and out of their wedlock, petitioners 2, 3, and 4 and respondent No. 3 were born. An objection, as to

non-joinder of necessary parties, was raised.

3. Through its order, dated 26.07.2006, the trial Court partly allowed the O.P., holding that the 1st respondent, petitioners and the 3rd respondent are the legal heirs of the deceased, and they are entitled to receive his death-cum-pensionary benefits. It was further held that the 2nd respondent is not entitled to receive any benefits.

4. Respondents 1 and 2 filed A.S. No. 112 of 2006 in the Court of I Additional District Judge, Kadapa. They raised the plea that the alleged marriage between the deceased and the 1st petitioner is prohibited in law, i.e., the A.P. Civil Service and Conduct Rules, 1964 (for short "the Rules"). Certain other grounds were also raised. The lower Appellate Court allowed the appeal through its judgment dated 16.04.2009, and held that the 1st respondent alone is entitled to receive all the service benefits of the deceased. Hence, this revision petition, under Article 227 of the Constitution of India.

5. Sri M.N. Narasimha Reddy, learned Counsel for the petitioners, submits that the lower Appellate Court erred in not following the law of succession, applicable to Muslims, at the relevant point of time. According to the learned Counsel, the Rules would govern the service conditions, in the context of disciplinary action and they would not have any bearing upon the law of succession. It is also his case that the circular memo, dated 20.08.1991, which was relied upon by the lower Appellate Court, cannot change the course of succession under the personal law.

6. Sri Arifulla, learned Counsel for respondents 1 and 2, submits that the marriage of the 1st petitioner with the deceased was not proved at all and that even if it is true, it does not lead to any legal consequences vis-à-vis the service benefits of the deceased employee. Learned Counsel submits that assuming that the bar contained under Rule 25 of the Rules does not apply, the alleged marriage between the 1st petitioner and the deceased is illegal, since she happens to be the sister of the wife of the deceased, a degree prohibited under law. He contends that the lower Appellate Court has applied the correct principles of law and the judgment rendered by it, does not warrant interference.

7. The dispute between the parties is about the succession to the service benefits of the deceased. It is rather unfortunate that the dispute is between two sisters. On the death of the deceased, respondents 1 and 2 filed the O.P. They did not make any mention about the relationship of the 1st petitioner with deceased, though she alone was impleaded as the respondent. It was urged that there are no other legal heirs to the deceased except themselves. In her counter, the 1st petitioner narrated the series of events, such as the marriage of the 1st respondent with the deceased; the subsequent marriage between herself and the deceased; the birth of petitioners 2 to 4 and the 3rd respondent out of that wedlock; and the death of the deceased. Objection was also raised as to non-joinder of necessary parties. It appears that the

trial Court framed only one point for its consideration, viz.,

Whether the petitioners are entitled for a grant of succession certificate enabling them to receive the death-cum-pensionary benefits of the deceased employee.

8. On behalf of respondents 1 and 2, PWs.1 and 2 were examined and Exs.A.1 to A.5 were filed. On behalf of the 1st petitioner, RWs.1 to 3 were examined and Exs.B.1 to B.17 were filed. The trial Court disbelieved Ex.B.1, an agreement, said to have been entered into between the deceased and the 1st petitioner on 15.05.1976, paving the way for the marriage between the latter and the deceased. A finding was recorded to the effect that the 2nd respondent is not the child of the 1st respondent, and as such, he cannot be treated as the legal heir of the deceased. The petitioners and the 3rd respondent were held to be legal heirs of the deceased. The lower Appellate Court modified the decree passed by the trial Court, and held that the 1st respondent alone is entitled for all the service benefits of the deceased.

9. One of the grounds that weighed with the lower appellate Court is the prohibition contained in service rules applicable to the deceased. The parties profess Islam religion. A Muslim male, according to his personal law, is entitled to marry more wives than one, not exceeding four, at a given point of time. The law prohibiting bigamy needs to be viewed, in this context. The prohibition contained under the Rules would certainly have entailed in disciplinary action against the deceased. However, no such proceedings were initiated. A condition in a service rules, howsoever relevant it may be for efficient administration or for other related purposes, does not have the effect of defeating the rights of the citizens under their respective personal law. Further, it is possible to contend that, even if an employee is liable to be dismissed from service, on the grounds of bigamy, a second, or third marriage, contracted by a Muslim, does not become void, on that basis, if the marriage is otherwise valid. Therefore, the service rule, which imposed restriction on number of marriages, does not have the effect of defeating the rights of the petitioners under their personal law.

10. The second ground, on which the lower Appellate Court reversed the decree passed by the trial Court, is that Shaik Anwar Basha did not obtain the permission of the Government to marry the 1st petitioner. It has already been mentioned that the prohibition contained in the service regulations, does not have the effect of defeating the rights of inheritance.

11. Another ground urged on behalf of the respondents was that the marriage between the 1st petitioner and the deceased was void. The reason pleaded was that the 1st petitioner and the 1st respondent are sisters and the personal law does not permit a male to marry the sister of his existing wife. It is true that the Muslim personal law discourages the marriages on grounds of consanguinity, affinity or fosterage. Sections 260 to 263 of the Principles of Mohamedan Law summarized by Mulla, are devoted to this. Section 263 reads as under:

Unlawful conjunction: A man may not have at the same time, two wives who are so related to each other by consanguinity, affinity or fosterage, that if either of them had been a male, they could not have lawfully intermarried, as for instance, two sisters, or aunt and niece. The bar of unlawful conjunction renders a marriage irregular, not void.

12. From this, it is clear that, in case a man professing Islam, marries two women, who are sisters, such marriage is only irregular and not void. In Section 267 , it is stated that irregular marriage can be terminated by either party, as in the case of a voidable contract. No such development has taken place between late Shaik Anwar Basha and the 1st petitioner, nor did the 1st respondent challenge the said marriage. The sequence of events, on the other hand, disclose that she has acquiesced in the said marriage. She cannot assail the validity of such marriage, particularly, after the death of their common male spouse.

13. This Court finds that the judgment of the lower Appellate Court, not sustainable in law. At the same time, the decree passed by the trial Court cannot be restored as it is. It needs to be modified to certain extent. The decree did not specify the extent of shares. The Muslim law of succession is somewhat complicated. Existence of one class of heirs would either eliminate other category of heirs, or restrict their entitlement. The petitioners and the 1st respondent are sharers. The record is not clear as to whether there are other category of heirs. The evidence in this regard was not clear. As a measure of equity, even while respecting the law of succession to certain extent, it is felt that it would be just and reasonable, if the 1st petitioner and the 1st respondent are held to be entitled to one-third share of the service benefits, each, and petitioners 2, 3 and 4 and respondent No. 3 are entitled for the rest of the one-third, in equal shares.

14. Hence, the C.R.P., is allowed and the decree passed by the trial Court is modified to the effect that the 1st petitioner and the 1st respondent are entitled to receive one-third share, each, of the death-cum-service benefits of late Shaik Anwar Basha and that petitioners 2, 3 and 4 and respondent No. 3 are entitled to receive the remaining one-third of the service benefits in equal shares.

15. There shall be no order as costs.