2020 INSC 270

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).1835 OF 2020
(arising out of SLP (C) No(s). 23766 of 2017)

TULSA DEVI NIROLA AND OTHERS …APPELLANT(S)

VERSUS

RADHA NIROLA AND OTHERS …RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The appellants are aggrieved by the denial of succession certificate under Section 372 of the Indian Succession Act, 1925 by the District Judge, East District, Gangtok, affirmed by the High Court in appeal. Consequentially appellant no. 1 stands denied the family pension which has been granted to respondent no.1 alone.

2. The facts are undisputed. Appellant no.1 is the first wife of the deceased Ram Chandra Nirola. The two children born from the wedlock, appellant nos.2 and 3 are adults today. The deceased, during the subsistence of his first marriage, solemnized a second

marriage with respondent no.1 on 09.05.1987. Three children were born from this second marriage. The deceased during his life time, on 30.06.2008 executed a *Banda Patra* (settlement deed), christened as a partition deed, by which he divided his movable and immovable properties between the two wives before his retirement on 30.06.2009. He expired subsequently on 13.04.2015. The appellants applied for a succession certificate, which was denied in view of the settlement deed dated 30.06.2008. The appeal also having been dismissed, the appellants are before this Court staking their claim for family pension under the Sikkim Services (Pension) Rules, 1990 (hereinafter called "the Pension Rules").

3. Mr. Manish Goswami, learned counsel for the appellants, submits that equitable distribution of the family pension between the two wives was a statutory right of appellant no.1 under Rule 40(6) of the Pension Rules. Relying on ***Smt. Violet Issaac and ors. vs. Union of India & ors.***, (1991) 1 SCC 725, it is submitted that family pension was not a part of the estate of the deceased to justify debarring the appellant no.1 by reference to the settlement deed. Rule 38 provides for nomination with regard to the entitlement to

receive death-cum-retirement gratuity only, and not the receipt of family pension. In any event, a nomination only identifies the recipient who then is required to share it with other legal heirs. The second marriage with respondent no.1 during the subsistence of the first marriage with appellant no.1 was void in view of Rule 1 of the Rules to provide for registration and solemnization of a form of marriage in Sikkim vide Notification No.1520/H dated Gangtok, 03.01.1963 promulgated by His Highness the Maharaja of Sikkim (hereinafter called "the Sikkim Rules"). These rules held the field in Sikkim before the Hindu Marriage Act was extended to the State of Sikkim vide SO No.950(E) dated 12.10.1988 and the Act was enforced on 01.05.1989 vide SO No.311(E) dated 28.04.1989. Therefore, the second marriage itself being void, respondent no.1 is not entitled to family pension. Alternatively, the appellant in any event cannot be denied an equal share in the family pension.

4. Mr. Manish Pratap Singh, learned counsel for the respondents, submits that in absence of any assertion that the marriage with respondent no.1 was solemnised under the Sikkim Rules, the said rules have no application in facts of the case in view of Rule 27. The

second marriage of respondent no.1 with the deceased, during the subsistence of the first therefore does not stand invalidated. The deceased had nominated the respondent alone under Rule 38 of the Pension Rules for receipt of the family pension. The deceased consciously did not nominate appellant no.1 for receipt of family pension or for equal share in the same in view of the partition deed where he equitably balanced the interest of both his wives. The column for family pension contained provision for more than one name, but the deceased consciously did not nominate appellant no.1. Rule 40(6) does not vest a statutory right in appellant no.1 to demand equal share in the family pension. It is conditional in nature, only if the employee nominates more than one wife for purposes of family pension. The deceased did not nominate the appellant, therefore she has no claim for family pension. The other appellants having become major have no claim for family pension. Reliance was placed on ***Vidhyadhari & Ors. vs. Sukhrana Bai & Ors.***, (2008) 2 SCC 238, in support of the submission that the nomination in favour of the respondent to the exclusion of the appellant was valid.

5. The respective submissions on behalf of the parties and the relevant rules cited before us have been duly considered by us.

6. The deceased solemnized his second marriage with respondent no.1 on 09.05.1987. On that date the Hindu Marriage Act had not been brought into force in the State of Sikkim. Rule 27 of 1963 Rules reads as follows:

> "27. Nothing contained in this Rule shall effect the validity of any marriage not solemnized under its provisions; nor shall this Rule be, deemed directly or indirectly to affect the validity of any mode of contracting marriage."

No material has been placed by the appellants that the second marriage was solemnized under 1963 Rules, and therefore, we have no hesitation in holding that it does not invalidate the second marriage of the deceased with respondent no.1.

7. The deceased was keen to ensure that in future disputes do not arise between his two wives and their progeny. He therefore, executed a settlement deed on 30.06.2008 between his two wives,

both with regard to his movable and immovable properties. It is not the case of appellant no.1 that the settlement deed has not been acted upon or that she has not received her due share as provided therein. Having accepted and acted upon the deed it is not open to the appellant no.1 to now renegade from the same.

8. Family pension undoubtedly is not part of the estate of the deceased and will be regulated by the Pension Rules which confer a statuary right in the beneficiary eligible to the same. In ***Violet Issaac*** (supra), the family pension was sought to be paid to the brother of the deceased by virtue of nomination to the exclusion of the wife. The Rules did not provide for nomination but designated the person entitled to receive the family pension. It has therefore no application to the facts of the present case.

9. Rule 35 (5) provides that for the purpose of Rules 36, 37 and 38, family in relation to a government servant means wife or wives, including judicially separated wife. Rule 38 provides for nomination to be made by the government servant in Form 1 or 2 or 3 conferring on one or more persons, the right to receive death come

retirement gratuity that may be due to him. In view of the partition deed the deceased while filling his nomination in the prescribed Form under Rule 38 mentioned the name of respondent no.1 only as the sole beneficiary of family pension. We are of the considered opinion that Rule 40(6) is conditional in nature and does not vest an automatic statutory right in appellant no.1 to equal share in the family pension. The family pension would be payable to more than one wife only if the government servant had made a nomination to that effect and which option was open to him under the Pension Rules.

> "40. Family Pension-
> (6) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares…."

10. The Pension Rules therefore recognize the nomination of a wife or wives for the purpose of family pension. True, the family pension did not constitute a part of the estate of the deceased. If the settlement deed had not been executed and acted upon different considerations may have arisen. The right to family pension in more than one wife being conditional in nature and not absolute, in

view of nomination in favour of respondent no.1 alone, appellant no 1 in the facts of the case can also be said to have waived her statutory right to pension in lieu of benefits received by her under the settlement deed. The deceased resided exclusively with respondent no.1 and occasionally visited appellant no.1. The deceased was exclusively taken care of by respondent no.1 during his illness including the expenditure incurred on his treatment. In view of the statutory rules, it is not possible to accept the argument that respondent no.1 was nominated only for purpose of receipt of the family pension and *per force* was required to share it equally with appellant no.1.

11. In ***Vidhyadhari*** (supra), this Court accepted the claim of the second wife to receive inter alia pension based on nomination since, like the present case, the deceased was residing with the second wife to the exclusion of the first. The grant of succession certificate to the second wife was held valid. However, to balance equities, this Court granted 1/5th share to the first wife in the properties. We may have also considered the balancing the equities if the deceased had not executed a settlement deed with regard to his movable and

immovable properties and which was accepted and acted upon by the appellant no.1.

12. We, therefore, find no merit in the appeal. The appeal is dismissed.

..............................J.
(Ashok Bhushan)

..............................J.
(Navin Sinha)

New Delhi,
March 04, 2020.