

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**
***THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**
+ CIVIL MISCELLANEOUS APPEAL NO: 715 OF 2024

% 04.12.2024

The Divisional Railway Manager
and another

.....Petitioners

And:

\$ Kattam Prashanth Kumari and
others

....Respondents.

!Counsel for the petitioners

: Mallampalli Srinivas
(Central Government Counsel)

^Counsel for the respondents 1 to 3

: S.Raja Bhogendra Nath

<Gist:

>Head Note:

? Cases referred:

1. (2000) 2 SCC 431
2. (2000) 6 SCC 301

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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CIVIL MISCELLANEOUS APPEAL NO: 715 OF 2024*DATE OF JUDGMENT PRONOUNCED: 04.12.2024***SUBMITTED FOR APPROVAL:****THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****&****THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

1. *Whether Reporters of Local newspapers may be allowed to see the Judgments?* Yes/No
2. *Whether the copies of judgment may be marked to Law Reporters/Journals* Yes/No
3. *Whether Your Lordships wish to see the fair copy of the Judgment?* Yes/No

RAVI NATH TILHARI,J

CHALLA GUNARANJAN,J

APHC011490632010



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3509]

WEDNESDAY ,THE FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

CIVIL MISCELLANEOUS APPEAL NO: 715/2024

Between:

The Divisional Railway Manager And Another and ...**APPELLANT(S)**
Others

AND

Kattam Prashanth Kumari And 4 Others and ...**RESPONDENT(S)**
Others

Counsel for the Appellant(S):

1.MALLAMPALLI SRINIVAS(CENTRAL GOVT COUNSEL)

Counsel for the Respondent(S):

1.T D PANI KUMAR

2.RAJA BHOGENDRA NATH S

3.V CH NAIDU

The Court made the following:

JUDGMENT:- (per Hon'ble Sri Justice Ravi Nath Tilhari)

This appeal was filed with C.M.A.(S.R).No.43696 of 2010 along
with I.A.No.1 of 2010 for condonation of delay in filing the appeal.

After I.A.No.1 of 2010 was allowed condoning the delay, the present appeal was numbered as C.M.A.No.715 of 2024.

2. Heard Sri Mallampalli Srinivas, learned Central Government Counsel for the appellants and Sri S.RajaBhogendra Nath, learned counsel for respondent Nos.1 to 3. No representation for respondent Nos.4 & 5.

3. The appellants have filed this appeal under Section 384 of the Indian Succession Act,1925. The challenge is to the grant of succession certificate, vide order, dated 02.12.2009 in S.A.O.P.No.8 of 2008 on the file of the learned Principal District Judge, Ongole, in favour of the present respondents, to an extent as in the said order, partly allowing the said petition.

4. The S.A.O.P.No.8 of 2008 was filed by the respondents 1 to 3 herein, impleading the respondent Nos.4 & 5 and the appellants 1 & 2 herein (Respondents 3 & 4 in S.A.O.P). The succession certificate was prayed under Section 372 of the Indian Succession Act, in respect of a sum of Rs.5,74,048/- (P.F Assets amount of Rs.3,09,385/-, C.G.I.S., amount of RS.37,276/- D.C.R.G., amount of Rs.2,27,535/- and leave salary of Rs.302/-.)

5. The parties shall be referred as in the present appeal.

6. The respondent No.1 is the 2nd wife, the 2nd respondent is the daughter and the 3rd respondent is the son of late K.J.Prabhakara Rao, (an employee in South Central Railway, Gudivada), from the 2nd

wife. The respondent Nos.4 & 5 are the children of K.J.Prabhakara Rao from his 1st wife.

7. The respondent Nos.4 & 5, (respondents 1 & 2 in SAOP), filed counter and *inter-alia* denied the claim of the respondent Nos.1 to 3. They claimed that they were alone entitled to receive all the benefits.

8. All the respondents 1 to 5 referred to the O.S.No.8 of 1997 on the file of the learned Senior Civil Judge, Gudivada, between them and the award of the Lok Adalat, dated 30.06.2001 therein, which was filed as Ex.A1. The respondent Nos.1 to 3 also filed O.S.No.22 of 1999 on the file of the learned Senior Civil Judge, Chirala, adding respondent Nos.4 & 5, which was also settled and ended in dismissal on 04.08.2001. The respondent Nos.4 & 5 filed E.P.No.78 of 2005 against the appellants and the appellants pleaded that they were not parties in suits and the respondents shall obtain succession certificate.

9. The appellants filed their counter denying the claim, and *inter-alia* submitting that the respondent Nos.1 to 3 did not submit any proof in support of their claim for death benefits of the deceased employee. In respect to the Lok Adalat award, they submitted that they were not party, so the said award was not binding on them. They also stated that as per Rule 75 (6) (iii) of the Railway Services (Pension) Rules,1993 (in short as 'Pension Rules 1993') a daughter, who is either beyond 25 years of age or married is not entitled to the family pension. They prayed to dismiss the petition for succession certificate.

10. The learned Principal District Judge, Ongole, on the pleadings and submissions advanced framed the following points for consideration :

- “1. Whether the petitioners are entitled to succession certificate along with respondents 1 & 2 to recover the death-cum-service benefits of late K.J.Prabhakara Rao from R.3 and R.4, if so, to what amount and what share and with what observations ?*
- 2. To what result ?”*

11. The 1st respondent examined her as P.W.1 and filed the documents, marked as Exs.A1 to A15.

12. On behalf of the respondents 4 & 5, respondent No.4 was examined as R.W.1 and on behalf of the appellants, the department examined R.W.2-Yousuf Sheriff, Office Superintendent, South Central Railways, Vijayawada and also marked Exs.B1 to B3.

13. The Point No.1 was answered in affirmative. On consideration of the oral and documentary evidence i.e., Exs.A7 to A15, it was observed that the award of the Lok Adalat, was admittedly arrived at, was valid and binding as decree of Court, the 2nd wife-1st respondent, was entitled for succession certificate. Thus considered, on point No.2, the petition was partly allowed, granting succession certificate in favour of the respondent Nos.1 to 5.

14. The operative portion of the order, dated 02.12.2009- is reproduced as under :

“The petition is partly allowed granting Succession Certificate for the family pension entitled by 1st petitioner for the arrears of pension after 01.07.2001 and on date of filing of S.O.P. subject to payment of stamp duty for the amount being arrived by calling for from R.3 and R.4 to submit and for other benefits due by R.3 and R.4 as on date since those that are already paid to R.1 and R.2 on ascertaining the particulars from R.3 and R.4 to engross by collection of stamp duty for grant of succession certificate in favour of petitioners 2 and 3 and respondents 1 and 2 each 1/4th.In the circumstances no costs. R.3 and R.4 are directed to submit the particulars within one month from today.”

15. Sri Mallampalli Srinivas, learned counsel for the appellants submits that the 1st respondent being the 2nd wife of the deceased employee, was legally not entitled for the payment of the family pension, for which, the Succession Certificate could not be granted. He placed reliance in the case of **Rameshwari Devi V. State of Bihar and others**¹. He also placed reliance in Rule 75(6) of the Pension Rules,1993 to contend that the 2nd wife is not entitled for family pension.

16. Any argument with respect to the respondents 2 to 5 in whose favour also the succession certificate has been granted, has not been raised, so as to put challenge to the order under appeal.

17. Learned counsel for the respondents 1 to 3 submits that the succession certificate has legally been granted. There is no illegality in

¹(2000) 2 SCC 431

grant of succession certificate. He submits that the finding is based on the evidence on record, which clearly established the 1st respondent to be the 2nd wife. He further submits that Rule 75(6) of the Pension Rules,1993, is no bar to grant of family pension to the 2nd wife.

18. We have considered the aforesaid submissions and perused the material on record.

19. The following point arises for our consideration and determination :

“Whether the order of the learned Principal District Judge, Ongole in granting the succession certificate, under challenge in this appeal, deserves to be maintained or deserves to be set aside ?

20. The submission of the learned Central Government Counsel is that the 2nd wife is not entitled for the grant of family pension, and consequently, the succession certificate could also not be granted. But, as to why the 2nd wife (1st respondent) is not entitled, could not be argued. It has not been argued that the marriage of the 2nd wife with the deceased employee was during the continuance of his marriage with the 1st wife. It could not be pointed out from the counter affidavit of the appellants filed in SAOP case that any such stand was taken before the learned Court. We have also perused the counter of the appellant's filed in the succession case, placed before us. There is only general denial of the contents of the petition for succession certificate. It is not their case,

that the marriage of 2nd wife was void. The learned Court considered the documentary evidence filed before it. It consisted of Exs.A7 to A15 including the Marriage Certificate, Voter Card, Voters List, House Hold Card, to show the 1st respondent is recorded as the wife of the deceased employee. The learned Court has also observed that they were living together since long, and two children (respondent Nos.2 & 3) were born. The 1st wife of K.J.Prabhakara Rao had died is not in dispute. So we do not find force in the submission of the learned counsel for the appellants that the respondent No.1 was not entitled for grant of succession certificate.

21. In **Rameshwari Devi**(supra), the 2nd marriage was performed when the 1st wife was alive. It was held that the marriage being in contravention of Section 5 of the Hindu Marriage Act,1955 was void. Such is not the case here. No such case was set up here. The judgment in **Rameswari Devi** (supra), therefore, has no application to the facts of this case.

22. Rule 75 (6) of the Pension Rules,1993, upon which reliance has been placed by the learned counsel for the appellants is as under :-

“(6) The period for which family pension is payable shall be as follows:-

(i) in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier,

(ii) in the case of a son, until he attains the age of twenty five years, and

(iii) in the case of an unmarried daughter, until she attains the age of twenty five years or until she gets married, whichever is earlier:

Provided that if the son of daughters earlier way servant is suffering from any disorder or disability of mind or physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-five years, the family pension shall be payable of such son or daughter for life subject to the following conditions, namely: -

(a) the family pension shall be paid to such minor sons or daughters through the guardian on the basis of guardianship such minor so the guardian appointed by a Court :

Provide that in respect of such sons or daughters who have attained the age of majority, it shall not be necessary to obtain guardianship certificate or appointment of a guardian by a Court either for grant continuance of family pension to be sanctioned or continued to be paid to them subject to satisfaction of other eligibility conditions, under these rules;

(b) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such, prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Divisional Medical Officer setting out, as far as possible, the exact mental or physical condition of the child;

(c) the person receiving the family pension as a guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of Divisional Medical Officer to the effect that the son or daughter continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

23. A reading of the above rule, does not show that the 2nd wife is not entitled for the family pension. Rule 75(6) (i) specifically mentions “*in the case of a widow or a widower, up to the date of death or remarriage, whichever is earlier*”. The 1st respondent herein being the 2nd wife, it cannot be said that she is not the widow and is not covered under Rule 75 (6)(i) of the Pension Rules,1993. The 1st respondent being the widow, is also entitled under the Pension Rules.

24. So far as the Lok Adalat award is concerned, that is an arrangement by compromise between the persons entitled for the death benefits of the deceased employee. That would be binding on them. That may not be binding on the appellants, but they should have no concern with such arrangement made amongst the persons entitled for the death benefits, in as much as, the appellants have to discharge their liability, by making payments under the Pension Rules to 1st respondent and pursuant to the succession certificate issued by the learned Court. Only because of the award between the respondent Nos.1 to 5, in which, the appellants are not parties, they cannot take such plea to avoid their liability for payment of family pension to respondent No.1.

25. At this stage, we reproduce Section 381 of the Indian Succession Act,1925 :

“381. ***Effect of certificate.***—*Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as*

against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted”.

26. In ***Madhvi Amma Bhawani Amma and others Vs. Kunjikutty Pillai Meenakshi Pillai and others***², the Hon'ble Apex Court after considering Section 381 of the Indian Succession Act observed and held that this certificate merely affords full indemnity to the debtor for the payments he makes to the person holding such certificate. Thus when the debtor pays the debts or the securities as specified in the certificate, to the holder of such certificate, then on such payment, he is absolved from his obligation to pay to any one else as it conclusively concludes his part of his obligation and such payment is construed to be in good faith. This safeguards such debtor or person liable to pay, that, he may not be later dragged into any litigation which may arise subsequently inter se between the claimants. The Hon'ble Apex Court further observed that the use of words "good faith" in Section 381 reinforces that decision in these proceedings are not final. When statute recognizes such payment to be in good faith it gives clear under

² (2000) 6 SCC 301

current message that there may be in future better claimant but that would not affect the indemnification of the debtor.

27. Para 14 of ***Madhvi Amma Bhawani Amma*** (supra) reads as under:

“14. So, this certificate merely affords full indemnity to the debtor for the payments he makes to the person holding such certificate. Thus when the debtor pays the debts or the securities as specified in the certificate, to the holder of such certificate, then on such payment, he is absolved from his obligation to pay to any one else as it conclusively concludes his part of his obligation and such payment is construed to be in good faith. This safeguards such debtor or person liable to pay that he may not be later dragged into any litigation which may arise subsequently inter se between the claimants. The use of words "good faith" in Section 381 reinforces that decision in these proceedings are not final. When statute recognizes such payment to be in good faith gives clear under current message that there may in future better claimant but that would not affect the indemnification of the debtor. Thus we find accumulatively because of the grant of Succession Certificate being for a limited purpose, limited in its sphere, the declaration of title being prima facie, payment tendered is declared to have been made in good faith, leads to only one conclusion that any decision made therein cannot be treated to be final adjudication of the rights of the parties, except such declaration being final for the purpose of these proceedings. If that be so, the amount received by the holder of such certificate can yet be questioned, and in subsequent proceeding it may bold it to belong to other claimant, including the contesting party.”

28. Thus, it is well settled in law that the payment to the holder of the succession certificate affords full immunity to the debtor. He is then absolved from his obligation to pay any one else.

29. We hold that the order of grant of succession certificate does not suffer from any illegality. It does not call for any interference in the exercise of the appellate jurisdiction.

30. The appeal is devoid of merit and is dismissed.

31. Pursuant to our order, dated 13.11.2024, the appellants have deposited an amount of Rs.41,70,324/-, *vide* DD bearing No.608282, dated 19.11.2024, in the name of the Registrar (Judicial), High Court of Andhra Pradesh, as per their calculation of the arrears of the family pension, payable to the 1st respondent, with the Registrar (Judicial) on 20.11.2024, subject to the orders to be passed in this appeal.

32. In the order granting of Succession Certificate, the court concerned provided for payment of the stamp duty. Consequently, if the stamp duty has not been paid the same shall be paid by the respondent before the court of the Principal District Judge, Ongole in S.A.O.P.No.8 of 2008 and the Succession Certificate shall be submitted to the appellant, which shall issue acknowledgement of its receipt to the 1st respondent. The 1st respondent shall submit proof of payment of stamp duty and furnishing of the succession certificate to the appellants, before the Registrar (Judicial) of this Court, upon which the amount under Demand Draft, shall be paid to the 1st respondent in her bank account,

connected to her Aadhar card with due verification and identification of the 1st respondent who shall submit the proof of her bank account details, to the Registrar (Judicial).

33. If the payment of stamp duty has not been made and the 1st respondent, for any reason, is not able to pay the stamp duty, as aforesaid, on her application to that effect if submitted, the Registrar (Judicial) shall get the amount of stamp duty ascertained in respect of the 1st respondent herein and such amount, after deducting from the amount deposited, shall be sent to the Principal District Judge, Ongole. The Succession Certificate shall be issued. Then, on compliance by the 1st respondent, with other conditions of filing it with the appellant etc., as mentioned in para 32 (supra), the remaining amount shall be paid to the respondent No.1 in the same manner as in para 32 (supra).

34. It is clarified that the stamp duty would be for the amount for which the claim for succession certificate was filed by 1st respondent.

35. As the aforesaid exercise is bound to take some time, we direct the Registrar (Judicial) to withdraw the demand draft amount and invest the same in short term fixed deposit receipt in some Nationalized bank, preferably in the State Bank of India.

36. Learned counsel for respondent Nos.1 to 3 submits that the 1st respondent is also entitled for payment of interest on the amount of arrears of family pension. They have filed a memo to that effect as well.

This appeal is confined to the legality of the order under challenge. The respondents 1 to 3, if so advised, may take appropriate proceedings before appropriate forum for their prayer for payment of interest.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Date : 04.12.2024.

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**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

(DISMISSED)

CIVIL MISCELLANEOUS APPEAL NO: 715 OF 2024

Date: 04.12.2024

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Note: L.R. copy be marked

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RPD.