

VIDYADHARI AND ORS.

v.

SUKHRANA BAI AND ORS.
(Civil Appeal No. 575 of 2008)

JANUARY 22, 2008

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Indian Succession Act, 1925:

s.372 – Nominee – Right of – Claim for grant of Succession Certificate in respect of movable properties of deceased-husband – By first wife and separate claim by second wife and her children sired by deceased – Claim of second wife based on nomination in her favour – Trial Court granted Succession Certificate to the second wife on the ground that there was divorce between deceased and first wife and second wife was his legal widow – On appeal, High Court held that there was no evidence of divorce between first wife and deceased and granted Succession Certificate to first wife – Justification of – Held : The fact that second wife was nominee is proved – A nominee has a right to file application under s.372 – Deceased lived with the second wife for 20-25 years till his death and nominated her for availing death benefits – Under such circumstances, she was preferable even to legally wedded wife – High Court was not justified in granting claim of first wife to the exclusion not only of the nominee of deceased but also to the exclusion of his legitimate legal heirs – Therefore accepting the view of High Court that first wife was legitimate wife, yet, certificate is granted in favour of second wife who was mother of four children of deceased – To balance the equities, Succession Certificate is granted with a rider that second wife would protect 1/5th share of first wife.

One 'S' was working in mines of Western Coalfield. 'SB' was first wife of 'S'. There was no issue out of this wedlock. 'S' then married 'V'. Two sons and two daughters

A were born to 'V'. 'S' died while in service. Both 'SB' and
'V' filed separate application for obtaining the Succession
Certificate with respect to the movable properties of
deceased. It is admitted that 'S' had nominated 'V' to
receive the dues and death benefits. 'V' in her application
B besides herself disclosed names of her children as the
legal heirs of 'S'.

Trial Court held 'V' to be the legal widow of 'S' and
her children to be legal heirs of 'S' and held 'V' entitled to
grant of the Succession Certificate. The conclusion of Trial
C Court was based on the opinion that 'S' belonged to the
'Shudra' community and in Shudra community if the wife
deserted her husband and no effort was made by the
husband to take her back as his wife then under Hindu
law it is presumed that divorce had taken place between
D the two. Thus, a finding was given that 'S' had divorced
'SB' and thereafter solemnized second marriage with 'V'
and, therefore, the marriage of 'V' was legal.

On appeal, High Court held that there was no
evidence to hold that customary divorce had taken place
E between 'SB' and 'S' nor was there any pleading about
the factum of any customary divorce or existence of any
custom. Stopping here itself, the High Court directed that
the Succession Certificate should be granted in favour of
'SB'.

F In appeal to this Court, 'V' contended that while
granting certificate in favour of 'SB', the claim of four
children was altogether ignored as, admittedly, 'SB' had
sought the certificate for herself alone; and that even if
G there was no divorce between 'SB' and 'S' and 'V' was
not held to be his legal wife but since the children
admittedly were sired by 'S', they were legitimate children
entitled to inherit 'S'.

H Allowing the appeal, the Court

HELD: 1.1 There can be no dispute that 'V' had never pleaded any divorce, much less customary divorce between 'SB' and 'S'. There were no pleadings and hence no issue arose on that count. Therefore, the High Court was right in holding that marriage between 'SB' and 'S' was very much subsisting when 'S' got married to 'V'. Unfortunately, the High Court stopped there only and did not consider the question as to whether inspite of this factual scenario, 'V' could be rendered the Succession Certificate. The High Court almost presumed that Succession Certificate can be applied for only by the legally wedded wife to the exclusion of anybody else and completely ignored the admitted situation that this Succession Certificate was for the purposes of collecting the Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues in the nature of death benefits of deceased. The fact that 'V' was a nominee is not disputed by anyone and is, therefore proved. 'V' had claimed the Succession Certificate mentioning therein the names of four children whose status as legitimate children of 'S' could not and cannot be disputed. [Paras 9, 10] [1038-G-H; 1039-E-H]

Govind Raju v. K. Muni Swami Gonder & Ors. AIR 1997 SC 10; *Yamanji H. Jadhav v. Nirmala* (2002) 2 SCC 637 – distinguished.

Smt. Savitri Devi v. Manorama Bai AIR (1998) MP 114; *Rameshwari Devi v. State of Bihar & Ors.* (2000) 2 SCC 431 – referred to.

1.2. The law is clear that a nominee like 'V' who was claiming the death benefits arising out of the employment can always file an application under s.372 of the Indian Succession Act as there is nothing in that provision to prevent such a nominee from claiming the certificate on the basis of nomination. The High Court should have realised that 'V' was not only a nominee but also was the

A mother of four children of 'S' who were the legal heirs of 'S' and whose names were also found in Form A which was the declaration of 'S' during his life-time. In her application 'V' candidly pointed out the names of the four children as the legal heirs of 'S'. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of 'S'. She continued to stay with 'S' as his wife for long time and was a person of confidence for 'S'; who had nominated her for his Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like 'SB' who had never stayed with 'S' as his wife and who had claimed the Succession Certificate to the exclusion of legal heirs of 'S'. [Para 10] [1040-C-G]

1.3 In the grant of Succession Certificate, the court has to use its discretion where the rival claims, are made for the Succession Certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Though High Court was right in holding that 'SB' was the only legitimate wife yet, the certificate is granted in favour of 'V' who was his nominee and the mother of his four children. However, to balance the equities, the Succession Certificate is granted to 'V' but with a rider that she would protect the 1/5th share of 'SB' in 'S' properties and would hand over the same to her. As the nominee 'V' would hold the 1/5th share of 'SB' in trust and would be responsible to pay the same to 'SB'. For this purpose she is directed to give a security in the Trial Court to the satisfaction of the Trial Court. This Court is not in any way, deciding the status of 'V' finally. She may still prosecute her own remedies for establishing her own status independently of these proceedings. [Paras 10-12] [1040-B-H; 1041-C-F]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 575

of 2008.

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From the final Judgment and Order dated 20.9.2006 of the High Court of Madhya Pradesh at Jabalpur in Misc. Appeal Nos. 33 & 43 of 1998

Anuradha Mutatkar and Prakash Shrivastava for the Appellants.

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Sunita Sharma, Sudha Pal, Subramonium Prasad, Varuna Bhandari Gugvani, Rameshwar Prasad Goyal and Sunil Roy for the Respondents.

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V.S. SIRPURKAR, J. 1. Leave granted.

2. A common judgment of the High Court of Madhya Pradesh at Jabalpur, disposing of two Miscellaneous Appeals is in challenge before us. The appeals were filed by one Smt.Sukhrana Bai claiming herself to be the widow of one Sheetaldeen. Sheetaldeen was working as a CCM Helper in Mines P.K.1 of the Western Coalfields at Pathakheda and died on 9.5.1993 while in service. Two separate applications came to be filed under Section 372 of the Indian Succession Act for obtaining succession certificate with respect to the movable properties of deceased Sheetaldeen, one of them was filed by Vidhyadhari registered as Succession Case No.3/96 while the other came to be filed by Sukhrana Bai which was registered as Succession Case No.10/95. Both the cases were joined and tried together by the Trial Court which allowed the application filed by Vidhyadhari (SC No.3/96) and dismissed the one filed by Sukhrana Bai (SC No.10/95). Sukhrana Bai, therefore, filed two Miscellaneous Appeals being MA 33/1998 and MA 43/1998 which came to be allowed by the High Court in favour of Sukhrana Bai. Vidhyadhari, therefore, is before us in this appeal. Before we proceed with the matter, a factual background would be necessary.

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3. Admittedly, Sukhrana Bai was the first wife of Sheetaldeen, while during the subsistence of this marriage, Sheetaldeen got married with Vidhyadhari. Two sons and two

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A daughters were born to Vidhyadhari, they being Smt.Savitri, Naresh @ Ramesh, Ms.Chanda @ Durga and Baliram, while Sukhrana Bai does not have any children.

B 4. Vidhyadhari in her application before the Trial Court (SC No.3/96), besides herself, disclosed the names of her children as the legal heirs of Sheetaldeen. It was also revealed that deceased Sheetaldeen had nominated her for receiving amounts under the Provident Fund, Family Pension Scheme and Coal Mines Deposits Life Scheme. She also disclosed that she has received a sum of Rs.45036/- towards gratuity amount of the deceased from the employer of Sheetaldeen, i.e., Western Coalfields Ltd. She, therefore, claimed the Succession Certificate on the basis of the nominations besides her marriage with Sheetaldeen.

D 5. As stated above, both the Succession Cases came to be consolidated and tried together. In SC No.10/95, filed by Sukhrana Bai, Vidhyadhari raised an objection that Sukhrana Bai was not the heir of deceased Sheetaldeen and though Sheetaldeen initially nominated Sukhrana Bai to receive the dues after his death as per Form A, subsequently he cancelled that nomination and filled in a second Form A in which he had nominated Smt.Vidhyadhari and in description of his family members he had indicated her to be the wife, one Naresh as his son and Ms.Chanda @ Durga as his daughter. It was also pointed out that Sukhrana Bai had not claimed any dues from the office of Sheetaldeen. WCL which is a party, contended that the non-applicant had no knowledge about the valid marriage between the deceased and Sukhrana Bai and it was also admitted that Sheetaldeen had nominated Vidhyadhari to receive the total amount and had registered her as his nominee.

F Following issues came to be framed by the Trial Court:

G “(1) Whether the legal widow of the deceased Sheetaldeen is the applicant Smt.Sukhrana of Case No.10/95 or Vidhyadhari of Case No.3/96?

H (2) Whether Smt.Savitri, Naresh aias Ramesh,

Ms.Chanda alias Durga and Baliram, as mentioned in the application of Case No.3/96 are the children of applicant Vidhyadhari, sired by deceased Sheetaldeen?

(3) If yes, whether they are the heirs of deceased Sheetaldeen?

(4) For receiving the amount due to deceased Sheetaldeen, issuance of Succession Certificate in whose favour would be just and proper?

(5) Relief and expenses?

Both oral and documentary evidence was led by both the parties. Sukhrana Bai examined herself as AW1 along with three other witnesses, namely, Kanhaiyalal (AW2), Ram Prasad (AW3) and Shivnath (AW4). On the basis of the evidence led, the Trial Court held Vidhyadhari to be the legal widow of deceased Sheetaldeen. It was also held that the children Smt.Savitri, Naresh @ Ramesh, Ms.Chanda @ Durga and Baliram mentioned in SC No.3/96 were sired by deceased Sheetaldeen and were his children. They were also held to be heirs of deceased Sheetaldeen. The Trial Court also held that the Succession Certificate was liable to be issued in favour of Vidhyadhari and not in favour of Sukhrana Bai. In its judgment the Trial Court referred to an admission made by Vidhyadhari in her affidavit Exhibit C-7 wherein she had stated on oath that she is the second wife of Sheetaldeen and Sukhrana Bai was the first wife. The Trial court also referred to the proved fact that Sheetaldeen initially had nominated Sukhrana Bai as a nominee indicating her to be his wife in Form A. After discussing the voluminous oral evidence led by the parties, the Trial Court held that Sukhrana Bai was earlier married to Sheetaldeen and there were no issues out of this wedlock and thereafter Sheetaldeen married Vidhyadhari and for about 20 to 25 years he lived with Vidhyadhari till his death while Sukhrana Bai never came to stay with him. The observation of the Trial Court in para 18 of the its Judgment is as under:

A "...which means that either Sukhrana Devi deserted him or Sheetaldeen left her."

B The Trial Court then proceeded to hold in Para 19 that Sheetaldeen belonged to the 'Shudra' community and in Shudra community if the wife deserts her husband and no effort is made by the husband to take her back as his wife then under Hindu law it is presumed that divorce has taken place between the two, as has been held by the Supreme Court in **Govind Raju vs. K. Muni Swami Gonder & Ors.** [AIR 1997 SC 10]. A finding was given that Sheetaldeen had divorced Sukhrana Bai and solemnized second marriage with Vidhyadhari and, therefore, C the marriage of Vidhyadhari could not be said to be illegal. On that basis the Trial Court excluded the claim of Sukhrana Bai and granted the claim of Vidhyadhari holding that she was entitled to receive the amount of Rs.1,30,000/- from WCL D towards Sheetaldeen's Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues payable to the successor of Sheetaldeen on his death. It was also observed in para 23 as under:

E "...In that amount, applicant Vidhyadhari and her sons and daughters will have equal share. On receipt of the said amount, applicant Vidhyadhari shall distribute the amount to her sons and daughters as per their share....."

F Resultantly the Trial Court dismissed Sukhrana Bai's application.

G 6. The High Court, however, concluded that the theory of customary divorce between Sukhrana Bai and Sheetaldeen was a myth. It was noted that there was no evidence on record to hold that customary divorce had taken place between Sukhrana Bai and Sheetaldeen nor was there any pleading about the factum of any customary divorce or existence of any custom. Relying on a reported decision in **Smt. Savitri Devi v. Manorama Bai** [AIR 1998 MP 114], the High Court came to the conclusion that the alleged customary divorce between H Sukhrana Bai and deceased Sheetaldeen was not established.

Stopping here itself, the High Court allowed both the appeals and directed that the Succession Certificate should be granted in favour of Sukhrana Bai.

7. Learned counsel appearing for the appellant Vidhyadhari strenuously urged that the High Court could not have straightaway granted the claim of Sukhrana Bai. Learned counsel pointed out that in grant of certificate in favour of Sukhrana Bai, the claim of four children was altogether ignored as, admittedly, Sukhrana Bai had sought the certificate for herself alone. Learned counsel points out that even if the theory of divorce between Sukhrana Bai and Sheetaldeen is described and even if Vidhyadhari is not held to be his legal wife since the children admittedly were sired by Sheetaldeen, they were legitimate children entitled to inherit Sheetaldeen. On this point, learned counsel relied on *Rameshwari Devi v. State of Bihar & Ors.* [(2000) 2 SCC 431]. Learned counsel pointed out that in her application Vidhyadhari had specifically mentioned the names of four children as the legal heirs besides herself, while Sukhrana Bai had claimed that she was the only legal heir of Sheetaldeen. Learned counsel tried to urge, relying on a reported decision in *Yamanji H. Jadhav v. Nirmala* [(2002) 2 SCC 637], that in this case the customary divorce should have been held to be proved.

8. As against this, learned counsel appearing for respondent Sukhrana Bai supported the judgment of the High Court and contended that she being the only legal heir of deceased Sheetaldeen, she alone was entitled to the grant of Succession Certificate as ordered by the High Court.

9. There can be no dispute that Vidhyadhari had never pleaded any divorce, much less customary divorce between Sukhrana Bai and Sheetaldeen. There were no pleadings and hence no issue arose on that count. In our opinion, therefore, the High Court was right in holding that marriage between Sukhrana Bai and Sheetaldeen was very much subsisting when Sheetaldeen got married to Vidhyadhari. Learned counsel tried

- A to rely on the reported decision in **Govind Raju's case** (supra). We are afraid the decision is of no help to the respondent as basically the issue in that decision was about the legitimacy of the children born to a mother whose first marriage was not dissolved and yet she had contracted the second marriage. This
- B is apart from the fact that in the present case there were no pleadings about the existence of custom and alleged divorce thereunder. Therefore, there was no evidence led on that issue. In our opinion the decision in **Govind Raju's case** is not applicable. Even the other decision in **Yamanaji's case** is not
- C applicable as the facts are entirely different. In **Yamanaji's case** there was a Deed of Divorce executed by the wife. The question was whether there was a customary divorce. There was a custom permitting divorce by executing deed existing in the community to which the parties belonged. Such is not the situation here.
- D There is neither any Divorce Deed nor even the assertion on the part of Vidhyadhari that Sheetaldeen had divorced Sukhrana Bai. We, therefore, accept the finding of the High Court that Sukhrana Bai was the legally wedded wife while Vidhyadhar could not claim that status.
- E 10. However, unfortunately, the High Court stopped there only and did not consider the question as to whether inspite of this factual scenario Vidhyadhari could be rendered the Succession Certificate. The High Court almost presumed that Succession Certificate can be applied for only by the legally
- F wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this Succession Certificate was for the purposes of collecting the Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues in the nature of death benefits of
- G Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the Succession Certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed. This Court in a reported decision in **Rameshwari Devi's case** (supra) has held that
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even if a Government Servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an application for Succession Certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application under Section 372 of the Indian Succession Act as there is nothing in that Section to prevent such a nominee from claiming the certificate on the basis of nomination. The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his life-time. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the Succession Certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of Succession Certificate the court has to use its discretion where the rival claims, as in this case, are made for the Succession Certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally

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- A wedded wife that by itself did not entitle her to a Succession Certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had born his four children and had claimed a Succession Certificate on behalf children also. In our opinion, the High Court was not justified in granting
- B the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

11. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would chose
- C to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be $1/5^{\text{th}}$. To balance
- D the equities we would, therefore, chose to grant Succession Certificate to Vidhyadhari but with a rider that she would protect the $1/5^{\text{th}}$ share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the $1/5^{\text{th}}$ share of Sukhrana Bai in trust and would be
- E responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the Trial Court to the satisfaction of the Trial Court.

12. It should not be understood by the above that we are, in any way, deciding the status of Vidhadhari finally. She may
- F still prosecute her own remedies for establishing her own status independent of these proceedings.

13. In the result the appeal is allowed. In the facts and circumstances of the case, there will be no order as to costs.

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Appeal allowed.