



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

[3397]

MONDAY ,THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

FIRST APPEAL NO: 1474/1998

Between:

R. Satyavathi,

...APPELLANT

AND

The Zilla Praja Parishad W G Dist and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.M V SURESH

Counsel for the Respondent(S):

1.GP FOR APPEALS

2.T DURGA PRASAD RAO

3.S V BHARATHA LAKSHMI

FIRST APPEAL NO: 1692/1998

Between:

Remani Naga Venkata Krishnaveni&3ors

...APPELLANT

AND

Remani Satyavathi 4 Ors

...RESPONDENT

Counsel for the Appellant:

1.T DURGA PRASAD RAO

2.S V BHARATHA LAKSHMI

Counsel for the Respondent:

1.GP FOR APPEALS

2.M V SURESH

The Court made the following:

COMMON JUDGMENT: -

The **A.S. No.1474 of 1998** is filed by plaintiff against the Decree and Judgment, dated 16.03.1998, passed in O.S. No.11 of 1991, on the file of the Senior Civil Judge, Tadepalligudem. The **A.S.No.1692 of 1998** is filed by the defendant Nos.5 to 8 against the Decree and Judgment, dated 16.03.1998, passed in O.S. No.11 of 1991, on the file of the Senior Civil Judge, Tadepalligudem. Both the appeals are filed against the judgment passed in O.S.No.11 of 1991, on the file of the Senior Civil Judge, Tadepalligudem. The suit in O.S.No.11 of 1991 on the file of the Senior Civil Judge, Tadepalligudem is filed by the plaintiff for declaration that the plaintiff is entitled for a family pension for the suit amount of Rs.1,37,555/- and directing the defendant Nos.1 to 4 to pay family pension of Rs.1,070/- every month by a particular date and in default to pay the same with interest at 12% per annum till payment and for costs.

2. Both the appeals are filed against the judgment, dated 16.03.1998, passed in O.S. No.11 of 1991, on the file of the Senior Civil Judge, Tadepalligudem, they are heard together and are being disposed of by this common judgment.

3. It is expedient to refer the parties as they are originally arrayed in the suit so as to avoid any confusion and for better understanding of the matter.

4. The factual matrix, necessary and germane for adjudicating the contentions, issues between the parties *inter se* may be stated as follows:

(i) The plaintiff is the legally wedded wife of late Remani Venkata Sitarama Sastry. The marriage took place in May, 1959. She was neglected and abandoned by her husband when she was constrained to file O.S.No.44 of 1971, on the file of Sub-Court, Eluru, for arrears and future maintenance. The said suit was compromised and a compromise decree was passed on 10.03.1975. The husband of the plaintiff, late Remani Venkata Sitarama Sastry worked as a Teacher (Maths B.Ed., Assistant) in Zilla Parishad High School at Tadepalligudem. He used to pay the maintenance as per the compromise decree to the plaintiff. The marriage between the plaintiff and late Remani Venkata Sitarama Sastry was not dissolved by any decree of a Court of competent jurisdiction and the marriage is subsisting.

ii) The plaintiff expected that the gratuity, provide fund and other benefits payable consequent on the death of her husband to be paid to her, she being the sole legal heir. To her surprise, she came to know that one Krishnaveni i.e., 5th defendant clandestinely claimed Provident Fund, Gratuity and Pension under Pension Code No.20-GOF-892 and other amounts payable on the death of the plaintiff's husband styling herself as the widow of late Remani Venkata Sitarama Sastry by producing false certificates with the connivance of defendant Nos.1 to 4. It is the primary duty of defendant Nos.1 to 4 to insist a Succession Certificate at least when there are disputes relating to the claims. Defendant Nos.1 to 4 illegally and by their own acts of negligence, paid the amounts to the 5th defendant colluding with her. The alleged payments by defendant Nos.1 to 4 to an unauthorized person does not bind on the plaintiff. Krishnaveni i.e., 5th defendant, who is styling herself as Remani Krishnaveni, is not the legally wedded wife of late Remani Venkata Sitarama Sastry and there was no marriage, much less legally wedded marriage between 5th defendant and plaintiff's husband. Even if there is any

marriage, the marriage is illegal, bigamous and does not bind the rights of the plaintiff in the properties of late Remani Venkata Sitarama Sastry.

(iii) The plaintiff is entitled to receive Gratuity amount of Rs.36,000/-, Provident Fund amount of Rs.16,109/-, Family Pension of Rs.1,070/- per month from 08.12.1988 and also a sum of Rs.45,000/- payable under the Group Insurance Scheme. All the amounts have to be paid by defendant Nos.1 to 4.

(iv) Late Remani Venkata Sitarama Sastry possessed immovable properties and other movable properties for which the defendant Nos.1 to 4 have no way concerned and the plaintiff reserves to file a separate suit for recovery of movable and immovable properties against the persons, who are in wrongful possession of late Remani Venkata Sitarama Sastry.

(v) Complaining about the illegal acts of defendant Nos.1 to 4, the illegal payments made by the defendant Nos.1 to 4 to 5th defendant illegally, unauthorisedly and in collusion with 5th defendant, the plaintiff got issued a notice under Section 80 of the Code of Civil Procedure to all the defendants on 09.02.1990. All the defendants received the notices and the 3rd defendant sent a reply that late Venkata Sitarama Sastry was not given any GPF Number for his account and does not appear to have been finalized. The 5th defendant sent a reply through her Advocate with all false allegations. She cannot style herself as Remani Krishnaveni, W/o Venkata Sitarama Sastry. She cannot claim to be a legally wedded wife. As long as the marriage between the plaintiff and late Sita Rama Sastry was not dissolved by a decree of any Court of competent jurisdiction, the 5th defendant is fully aware of the maintenance suit and the decree passed therein.

(vi) It is false to state that on 14.08.1988 late Sirarama Sastry executed a Will in a sound and disposing state of mind and it is his last Will. The said Will is a rank forgery brought into existence to defeat the rights of the plaintiff

from claiming the properties of late Sitarama Sastry as sole surviving heir. The alleged Will does not bind on the plaintiff and it has never seen the light of the day. Late Sitarama Sastry cannot make any directions with regard to the suit claims and he cannot be executed any Will contrary to the rules. The recitals in the Will are, therefore, not binding on the plaintiff and all the recitals in the Will are false and concocted. The 5th defendant is not entitled to receive any of the benefits relating to the suit claim by virtue of the alleged forged Will. Under the relevant provisions of the respective acts relating to the Provident Fund, Gratuity and Family Pension, all the benefits are payable consequent on the death of husband only to the legally wedded wife and to none others. Defendant Nos.1 to 4 are fully aware of the said provisions. The plaintiff is, therefore, compelled to file the suit for recovery of the amounts due to her and also for a declaration that she is entitled to receive the family pension at Rs.1,070/- per month.

5. The suit was resisted by the defendants by filing separate written statements by all the defendants.

The brief averments of the written statement of 1st defendant are as follows:

(i) The 1st defendant is not aware of the marriage of late R.V. Seetha Rama Sastry with the plaintiff. It is not known about the negligence and abandoning the plaintiff by R.V. Seetha Rama Sastry and the proceedings of the suit O.S.No.44 of 1971. The plaintiff never informed about the death of her husband and her legal claim immediately after 07.12.1988, the day of which her husband died. The 1st defendant came to know her alleged claim for the first time when the plaintiff through her Advocate issued the notice, dated 22.12.1988 which was received on 26.12.1989.

(ii) The 1st defendant contended that Remani Venkata Seetha Rama Sastry while working as B.Ed. Assistant in Zilla Praja Parishad High School,

Tadepalligudem, died on 07.12.1988. Then one R.N.V. Krishna Veni, the 5th defendant herein, has submitted an application, dated 15.02.1989 to the 1st defendant stating that her husband Remani Venkata Seetha Rama Sastry expired on 07.12.1988 and requested to refund the Provident Fund amount outstanding to the credit of her husband's Provident Fund Account No.11609. The said application has been submitted through the Head Master, Zilla Praja Parishad High School, Tadepalligudem, along with legal heir certificate, dated 11.01.1989, issued by Mandal Revenue Officer, Tadepalligudem and death certificate, dated 20.12.1988, issued by Bhimavaram Municipality. The said Head Master recommended and forwarded the said application, dated 28.02.1988 to the 1st defendant. The legal heir certificate issued by Mandal Revenue Officer, Tadepalligudem, reveals that Sri Remani Venkata Seetha Rama Sastry died on 07.12.1988 leaving behind him, his wife, three minor children (i.e., defendant Nos.5 to 8) as legal heirs and that since the children are minors, the amounts of Gratuity, Family Benefit Fund and Provident Fund due from Government may be paid to Remani Naga Venkata Krishna Veni, the wife of the deceased. As per the records of the 1st defendant, late Remani Venkata Seetha Rama Sastry, has not furnished any nomination proposals during his lifetime and as such the question of accepting the nomination proposals by the 1st defendant does not arise. In the absence of nomination, the 1st defendant has to pay the provident fund amount to the legal heirs of the deceased, such as, wife and minor children as per Provident Fund Rules. The Provident Fund amount of Rs.16,109/- was ordered to be paid to 5th defendant after observing the formalities such as recoveries against the subscriber and after getting the final bill pre-audited by the Audit Officer, Local Funds, Eluru. There are no disputes pending with the 1st defendant at the time of considering the payment of provident fund amount and other amounts due to the deceased teacher. The actual payment of provident fund amount has been made to 5th defendant after one year of the death of the Teacher. The 1st defendant has not committed any act of negligence in the said payment much less colluding with the 5th defendant. The 1st defendant did not know at the

time of payment of provident fund amount that the late Teacher had two wives.

(iii) The 5th defendant had submitted family pension proposals on 15.02.1989 along with an undertaking letter, dated 10.05.1989 to the Headmaster, Zilla Praja Parishad High School, Tadepalligudem which had been recommended and forwarded by the said Headmaster, vide his letter No.12/88-89, dated 10.05.1989 to the 1st defendant. It was stated in the said proposals of R.N.V. Krishna Veni that she is the wife of late Remani Venkata Seetha Rama Sastry, which was supported by the legal heir certificate issued by the Mandal Revenue Officer, Tadepalligudem vide L.Dis.No.48/89-B, dated 11.01.1989, declaring that R.N.V. Krishna Veni is the next legal heir of the deceased Teacher to get the Gratuity, Family Benefit Fund and Provide Fund due to the deceased teacher from the government. The District Educational Officer, Eluru sent a letter vide Rc.No.194/A2/89, dated 16.12.1989 to the 1st defendant returning the service register of the deceased which was received from the Accountant General, Hyderabad. The Office of Accountant General has accorded sanction for payment of death-cum-retirement Gratuity, Family Pension, etc., to the 5th defendant. After sanctioning the family pension and Gratuity, the payment would be made by the Sub-Treasury as the deceased being a Teacher. As regards payment of Group Insurance amount, it is submitted that late Remani Venkata Seetha Rama Sastry has nominated R.N.V. Krisyhna Veni, the 5th defendant.

6. The brief averments of the written statement of 2nd defendant are as follows:

(i) The family pension proposals on behalf of the 5th defendant was received from the District Development Officer, Zilla Praja Parishad, Eluru vide Rc.No.D3-7059/89, dated 31.05.1989 and they were sent to the Accountant General, Andhra Pradesh, Hyderabad in letter Rc.No.194/A2/89, dated 16.12.1989 of the 2nd defendant basing on the recommendation of the District

Development Officer, Zilla Praja Parishad, Eluru basing on the death certificate issued by Bhimavaram Municipality and legal heir certificate issued by Mandal Revenue Officer, Tadepalligudem, pension verification report was received from the Accountant General, Hyderabad, dated 18.09.1989 and basing on the legal heir certificate issued by the Mandal Revenue Officer, Tadepalligudem, sanction was accorded by the Accountant General for payment of gratuity and other pensionary benefits to the 5th defendant. The payment of gratuity and other pensionary benefits should be made by the Sub-Treasury Officer concerned desired by the 5th defendant in the pension proposals.

(ii) The 2nd defendant does not know the alleged dispute or the plaintiff is alleged first wife at the time of submission of family pension proposals to the Accountant General, Hyderabad that late Remani Venkata Seetharama Sastry had two wives. The plaintiff was not declared as legally wedded wife by any competent authority and did not produce any evidence to that effect. Prior to the sanction of the said benefits, she has not raised any objection in writing to the 2nd defendant within the reasonable time immediately after the death of Remani Venkata Seetharama Sastry. Therefore, the suit itself is not maintainable unless plaintiff prayed for declaration of legally wedded wife of late Remani Venkata Seetharama Sastry, Teacher, the rest of the prayers does not come in the light of the suit.

7. The brief averments of the written statement of 5th defendant are as follows:

(i) The plaintiff was mentally got not sound and continued to be so. She is not neglected or abandoned as falsely alleged by her husband R.V.S. Sastry. The suit O.S.No.44 of 1971 filed by her against him was compromised and her maintenance was being paid by late R.V.S. Sastry and after his demise, by the 5th defendant regularly till March, 1991 when the plaintiff refused to receive the same. Late R.V.S. Sastry worked for about 8 years at

Vedangi, later at Pandithavilluru and Nadipudi besides Tadepalligudem. The plaintiff never lived with late R.V.S. Sastry and there was no relationship of wife and husband between them at any time.

(ii) Late R.V.S. Sastry executed a Will in a sound and disposing state of mind on 14.08.1988 bequeathing all his properties to the 5th defendant and his two sons through her, the defendant Nos.7 and 8 besides directing the 5th defendant to take the provident fund, Gratuity, Family Pension, Insurance and other benefits arising out of his employment as Teacher. She is the legally wedded wife of late R.V.S. Sastry. The marriage between 5th defendant and R.V.S. Sastry took place in Sri Rama Temple at Vedangi of erstwhile Narsapur Taluk, West Godavari District on the night of 28.02.1970 at 4-30 a.m., according to Hindu and customary rites. It was witnessed by Chitti Kameswara Rao and others of the locality. Cheruvu Rama Seshayya officiated at the marriage as purohit. The 5th defendant is the legally wedded wife of R.V.S. Sastry and also nominated her to receive all the amounts such as Provident Fund, Gratuity, Pension, Insurance and other family benefits. In view of the nomination and the recitals in the Will of R.V.S. Sastry, the 5th defendant is alone entitled to receive the Provident Fund, Gratuity, Pension, Insurance and other benefits arising out of the employment of R.V.S. Sastry. The defendant Nos.1 to 4 acted on the basis of the nomination and on the basis of the Will and paid the amounts to the 5th defendant. There is no necessity for production of any succession certificate by the 5th defendant. There is no negligence on the part of defendants 1 to 4 and they are not in any way colluding with the 5th defendant. The plaintiff has no right in any of those amounts and she cannot question the payment to the 5th defendant.

(iii) In view of the terms of the Will executed by R.V.S. Sastry and also by virtue of the Hindu law, the 5th defendant and her sons are entitled for all his movable and immovable properties and the plaintiff has no claim or share in the same. The children of the 5th defendant through late R.V.S. Sastry are quiet legitimate and are entitled for the properties of late R.V.S. Sastry. The

Will, dated 14.08.1988 executed by R.V.S. Sastry is true and binds on the plaintiff. The plaintiff, in fact, has no such intention. One Madhira Subba Rao wants to get benefited by this litigation, he is responsible for the suit. The 5th defendant is the widow of late R.V.S. Sastry and she is alone entitled to receive the benefits by virtue of the Will and also on being the widow of R.V.S. Sastry. There is no cause of action for the suit and that alleged cause of action is false.

8. Based on the above pleadings, the following issues were settled by the trial Court in O.S. No.11 of 1991:

- (1) Whether the Will, dated 14.08.1988 executed by R.V.S. Sastry is true, valid and binding on the plaintiff?
- (2) Whether the plaintiff lived with late R.V.S. Sastry as wife and husband?
- (3) Whether the Will, dated 14.08.1988 executed by R.V.S. Sastry in a sound and disposing state of mind?
- (4) Whether the plaintiff is entitled only maintenance?
- (5) Whether the plaintiff is entitled for family pension, if so, at what rate?
- (6) Whether the 5th defendant is legally wedded wife of late R.V.S. Sastry?
- (7) Whether the 5th defendant has to furnish succession certificate?
- (8) To what relief?

9. During the course of trial in the trial Court, on behalf of the Plaintiff, PW1 and PW2 were examined and Ex.A1 to Ex.A16 were marked. On behalf

of the Defendants, DW1 to DW5 were examined and Ex.B1 to Ex.B11 were marked.

10. After completion of the trial and on hearing the arguments of both sides, the trial Court decreed the suit in part, declaring the plaintiff is entitled to claim family pension only and dismissed the rest of the claims, vide its judgment, dated 16.03.1998, against which A.S.No.1692 of 1998 is preferred by the defendant Nos.5 to 8 in the suit questioning the Decree and Judgment passed by the trial Court insofar as granting relief of declaration that the plaintiff is entitled to claim family pension and the plaintiff in the said suit also filed A.S.No.1474 of 1998 insofar as rejecting the other reliefs.

11. Heard Sri M.V. Suresh, learned counsel for the appellants; heard Smt. S.V. Bharatha Lakshmi, learned counsel for the respondent Nos.5 to 8; heard learned Government Pleader appearing for respondent Nos.1 to 4 in A.S.No.1474 of 1998 and Heard Smt. S.V. Bharatha Lakshmi, learned counsel for the appellants; heard Sri M.V. Suresh, learned counsel for the respondent Nos.1 & 6 and heard learned Government Pleader appearing for respondent Nos.2 to 5 in A.S.No.1692 of 1998.

12. Now the points for determination for both the appeals are:

- (1) Whether Ex.B.21 Will is proved in accordance with law by defendant Nos.5 to 8?
- (2) Whether the trial Court justified in decreeing the suit in awarding family pension to the plaintiff and other benefits viz., Group Insurance Scheme, Gratuity, Public Provident Fund of Remani Venkata Sitarama Sastry to the 5th defendant?

13. **Point No.1:**

Whether Ex.B.21 Will is proved in accordance with law by defendant Nos.5 to 8?

The case of the 5th defendant is that after marriage of the plaintiff with R.V.S. Sastry, the plaintiff lived with him only for few days in the beginning of the marriage and she was mentally got not sound and continued to be so. The 5th defendant further pleaded that she neglected and abandoned her husband R.V.S. Sastry and the suit O.S.No.44 of 1971 was filed by her against him was compromised and maintenance was awarded to the plaintiff from R.V.S. Sastry. She further pleaded that subsequently R.V.S. Sastry married her and defendant Nos.6 to 8 are born to both of them. She further pleaded that R.V.S. Sastry executed a Will in a sound and disposing statement of mind on 14.08.1988 bequeathing all the properties to the 5th defendant and their two sons, defendant Nos.7 and 8 besides directing the 5th defendant to take the Provident Fund, Gratuity, Family Pension, Group Insurance and other benefits arising out the employment as a Teacher.

14. In the plaint itself, the plaintiff pleaded that she came to know that 5th defendant clandestinely claimed Provident Fund, Gratuity, Pension and other amounts after the death of plaintiff's husband styling herself as widow of late R.V.S. Sastry by producing false certificates. She further pleaded that no Will was executed by her husband R.V.S. Sastry and said Will is a forged and fabricated one and the marriage in between the plaintiff and R.V.S. Sastry is not dissolved by a competent Court and that she is entitled all the death benefits and family pension from the Government consequent to the death of her husband R.V.S. Sastry.

15. As stated supra, the case of the appellants/defendant Nos.5 to 8 in A.S.No.1692 of 1998 is that R.V.S. Sastry executed Ex.B.21 Will on 14.08.1988 in a sound and disposing state of mind and bequeathed all the properties including family pension, gratuity and all other benefits in favour of 5th defendant and also sons of 5th defendant and R.V.S. Sastry. The

defendant Nos.5 to 8 in order to discharge their burden, they produced the original Will said to have been executed by R.V.S. Sastry and got exhibited as Ex.B.21. The two attestors in Ex.B.21 Will are examined as D.W.4 and D.W.5.

16. It is well settled that the onus probandi lies in every case upon the party propounding a will and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. The legal position in this regard is no more *res integra* and the same has been well settled by the Apex Court in a case of ***Lalitaben Jayantilal Popat vs. Pragnaben Jamnadas Kataria and others***¹. In the aforesaid case the Apex Court held "it is trite law that execution of will must be held to have been proved not only when the statutory requirements for proving the will are satisfied but the will is also found to be ordinarily free from suspicious circumstances when such evidences are brought on record, the Court may take aid of the presumptive evidences also".

17. It is a well settled principle that in every case the burden lies on the propounder of the will and it is the duty of the propounder of the will, he has to satisfy the conscience of the Court that the instrument as propounded is the last will of a free and capable testator, meaning thereby obviously that the testator at the time when he subscribed his signature on a will in a sound and disposing state of mind and memory and ordinarily however, the onus is discharged as regards the due execution of the will, if the propounder leads evidence to show that the will bears the signature and mark of the testator and the will is duly attested. This attestation however shall have to be in accordance with Section 68 of Indian Evidence Act which requires that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution and the same is so however in the event of there being an attesting witness alive and capable of giving evidence. The law is also equally

¹ (2008)15 SCC 365

settled that in the event of there, being circumstances surrounding the execution of will, surrounded in suspicion, it is the paramount duty on the part of the propounder to remove the suspicion by leading satisfactory evidence. As stated supra, in the case on hand, no satisfactory evidence is produced by the plaintiff to prove the title of her vendors.

18. In order to prove the alleged Ex.B.21 Will, the original un-registered Will is produced and marked as Ex.B.21. As noticed supra, the two attestors to the alleged Ex.B.21 Will were examined as D.W.4 and D.W.5. D.W.4 in his evidence deposed that Sitarama Sastry married 5th defendant and they lived together for about 5 or 6 years in their village and they blessed with one male and one female child in their village and Sitarama Sastry brought a Will to him and signed in the Will and asked him to sign on the Will. He further deposed that one Valavala Venkata Rao also attested the said Will and Sitarama Sastry signed in his presence and in the presence of other attestors. It is typed Will and both the attestors including him signed in the presence of Sitarama Sastry and by that time Sitarama Sastry was working in a School at Tadepalligudem. As per the evidence of D.W.5, he also worked as Teacher in Vedangi Village and he knows Sitarama Sastry and Sitarama Sastry married 5th defendant at Ramalayam Temple in the year 1970 and he also attended the said marriage and they blessed two children in their village. He further deposes that Sitarama Sastry executed a Will and he attested the said Will and D.W.4 also attested the said Will and Sitarama Sastry brought typed Will and Sitarama Sastry signed in his presence and both attestors attested in the presence. Though both D.W.4 and D.W.5 are cross-examined, their evidence is not shattered in cross-examination on the material aspects of the case with regard to the execution of Ex.B.21 Will.

19. The learned counsel for the appellant in A.S.No.1474 of 1998 would draw the attention of this Court that the date of alleged Will is 14.08.1988 and Sitarama Sastry died on 07.12.1988 and 5th defendant submitted an application to the 1st defendant on 03.02.1989 and Ex.B.3 legal

heir certificate is issued by Mandal Revenue Officer on 11.01.1989 and there is no reference in Ex.B.1 application submitted by 5th defendant to the 1st defendant about Ex.B.21 Will and that Ex.B.21 Will is subsequently created and it is a fabricated document. Whereas, the contention of the 5th defendant is that soon after receipt of legal notice from the plaintiff, she saw the Will Ex.B.21 and they did not inform Ex.B.21 Will to anybody prior to her reply notice. She also further admits that after death of Sitarama Sastry, they sent all the documents to 1st defendant and they did not send the copy of Will to the 1st defendant and after receipt of the legal notice from the plaintiff only, they have noticed Ex.B.21 Will. Moreover, except the plaintiff, nobody is questioning the Ex.B.21 Will. The plaintiff admitted in her evidence in cross examination itself that her husband executed a Will in favour of 5th defendant for all his death benefits viz., Provident Fund, Gratuity, Family Pension, Group Insurance amount and other amounts, on 14.08.1988. Therefore, it is clear that the person, who questioned the Ex.B.21 Will, is admitted the execution of Ex.B.21 Will.

20. Perused the evidence of P.W.1/plaintiff. P.W.1/plaintiff admits in her evidence in cross examination itself that she did not inform to 1st defendant to enter her name as nominee for her husband for Provident Fund and other benefits and she did not file any claim before the 1st defendant about death benefits of her husband after the death of her husband. She further admits that she came to know that the 1st defendant was paid provident fund for an amount of Rs.16,109/- and the said amount was paid to defendant Nos.5 to 8 being on legal heir certificate produced by her through the Headmaster. She further admits in her evidence in cross examination itself that her husband Sitarama Sastry got married 5th defendant in 1970 and by the time she filed the suit O.S.No.44 of 1971, her husband is working at Vedangi and as per compromise Rs.130/- per month was given as maintenance. She further admitted that the 5th defendant is daughter of maternal uncle of her husband and her husband sent maintenance as per compromise during his lifetime and

5th defendant sent some quantum of maintenance till 1991 and thereafter, she refused to receive the maintenance and she issued notice to the defendants. She further admitted that the son of 5th defendant conducted obsequies to her husband Sastry and her husband informed to the Department that 5th defendant is his wife and he nominated 5th defendant to receive Provident Fund and Gratuity and she did not attend the obsequies of her husband and her mother-in-law and her brother gave instructions to their Advocate to give suit notice and she was not present when the plaint was drafted and that her signatures were obtained at her house. Another crucial admission made by plaintiff in her evidence in cross examination itself by the defendant Nos.2 to 4 is that she came to know about the death of her husband after 10 days and she did not send any notice to the defendant Nos.1 to 4 demanding the death benefits of her husband. As stated supra, one of the important admissions made by plaintiff in her evidence is that she came to know about the death of her husband after 10 days and she did not attend the obsequies of her husband and also her mother-in-law. As seen from the conduct and attitude of the plaintiff, undoubtedly, she is not having any equities.

21. The evidence on record inspires confidence about the execution of Ex.B.21 Will and there are no suspicious circumstances surrounded the execution of Ex.B.21 Will, therefore, Ex.B.21 Will is proved in according with law by the defendant Nos.5 to 8.

Point No.1 is answered accordingly.

22. **Point No.2:**

The learned counsel for the plaintiff would contend that there was no dissolution of marriage between plaintiff and Remani Sitarama Sastry and so-called marriage between 5th defendant and Remani Sitarama Sastry is not a valid one. Admittedly, there is no evidence on record to show the marriage in between plaintiff and Remani Sitarama Sastry was dissolved by a Court law.

It is not the case of either parties the marriage between plaintiff and Remani Sitarama Sastry was dissolved. In fact, in Ex.B.21 Will also Remani Sitarama Sastry referred his marriage with the plaintiff prior to his marriage with 5th defendant. Moreover, the own admissions of the plaintiff shows that she abandoned Remani Sitarama Sastry and she does not know the death of her husband and she came to know about the death of her husband after 10 days and she even not attended the obsequies of her husband and her mother-in-law, therefore, the aforesaid circumstances clearly goes to show that the plaintiff abandoned Remani Sitarama Sastry and his mother. It is relevant to say during the pendency of the first appeal, the plaintiff died and her brother is representing her in the first appeal proceedings and during the pendency of the first appeal, 5th defendant also died in the month of February, 2025 and her children are already on record.

23. Learned counsel for the plaintiff placed a reliance of **Smt. K. Satyavathi vs. The Regional Director, Employees State Insurance Corporation, Hyderabad and another**², wherein the composite High Court of Andhra Pradesh at Hyderabad held as follows:

So far as the amount covered by death-cum-retirement gratuity is concerned, in my opinion, the second respondent is entitled to the same exclusively for the following reasons. Death-cum-retirement gratuity is covered by Rule 50 of Central Civil Services Pension rules (hereinafter referred to as 'the Rules' which is as follows:

"Rule 50. Death-cum-retirement gratuity"

(1) x x x x

(2) If a Government servant, who has become eligible for a service gratuity or pension, dies within five years from the date of his retirement from service including compulsory retirement as a penalty and the sums actually received by him at the time of his death on account of such

² 1990 (3) ALT 253

gratuity or pension including ad hoc increase, if any, together with the death-cum-retirement gratuity admissible under sub-rule (1) and the commuted value of any portion of pension commuted by him are less than the amount equal to 12 times of his emoluments, a residuary gratuity equal to the deficiency may be granted to his family in the manner indicated in sub-rule (1) of Rule 51.

(3) x x x x

(4) x x x x

(5) x x x x

(6) For the purposes of this rule and Rules 51, 52 and 53, 'family' in relation to a Government servant, means -

(i) wife or wives (including judicially separated wife or wives) in the case of a male Government servant;

(ii) husband, (including judicially separated husband) in the case of a female Government servant;

(iii) sons including step-sons and adopted sons.

(iv) unmarried daughters including step-daughters and adopted daughters;

(v) widowed daughters including step-daughters and adopted daughters;

(vi) father, including adoptive parents in the case of individuals

(vii) mother, whose personal law permits adoption,

(viii) x x x x

(ix) x x x x

(x) x x x x

(xi) x x x x

The learned counsel for the plaintiff placed another reliance of **D. Leelavathi @ Lavanya and others vs. Director of Mines and Geology,**

Hyderabad and others³, wherein the composite High Court of Andhra Pradesh at Hyderabad held as follows:

“This Court in *G. Vijaya Bhaskar and others v. Mandal Revenue Officer, Manopad Mandal, Mahaboobnagar District*, unreported decision dated 1.2.2001 in WP No.7430 of 2000, held that the issue relating to legal heirs of deceased persons has to be decided by the competent Court of civil jurisdiction and it is open to the parties to pursue the remedies available in law and it is not open to Mandal Revenue Officer/Tahsildar to issue certificates about family members. In view of the decision in *G. Vijaya Bhaskar’s* case (supra), it has to be held that certificates dated 25.4.2002 and 29.5.2002 issued by 4th respondent are without jurisdiction and are therefore *null* and *void*. Therefore the consequent orders dated 17.7.2002 and 20.11.2003 of 2nd respondent recognizing 1st petitioner and *Thirupallamma* as successor lessees of *D. Siva Sankar Reddy* and *D. Chinna Subba Reddy* basing on the said family member certificate s issued by 4th respondent are also not legal and valid as no independent enquiry was done by 2nd respondent before granting them.”

In a case of **Rameshwari Devi vs. State of Bihar and others**⁴, the Apex Court held as follows:

“In the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long drawn affair. Doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course,

³ 2013 (5) ALD 658

⁴ AIR 2000 Supreme Court 735

inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. Decision has to be taken in a bona fide reasonable and rational manner. In the present case an inquiry was held which cannot be termed as sham. Result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnisation of the second marriage with due observance of rituals and ceremonies has been insisted upon.”

In the aforesaid case law, the Apex Court further held as follows:

“The Government need not wait for the Civil Court to pronounce that there was a marriage between deceased employee and the second wife in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of second wife. The Government can itself make an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of second wife.”

In the case on hand, the Government paid gratuity to the 5th defendant and except Group Insurance Scheme, all other benefits are paid to the 5th defendant. The learned trial Judge after conclusion of trial, on hearing both sides, held that by virtue of Ex.B.21 Will, the 5th defendant is entitled death benefits of Remani Sitarama Sastry and since there is no dissolution of the marriage in between the plaintiff and Remani Sitarama Sastry, the plaintiff is entitled family pension. This Court came to a conclusion that Ex.B.21 Will is duly proved by defendant Nos.5 to 8 in accordance with law.

24. The learned counsel for the plaintiff placed a reliance of **Smt. Sarbati Devi and another vs. Smt. Usha Devi**⁵, wherein the Apex Court held as follows:

“A mere nomination made under Section 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.”

In the case on hand, it is not the case of either parties that the deceased had taken a policy from Life Insurance Corporation of India and a nomination was also given by the deceased in the Life Insurance Corporation of India policy. Therefore, the facts and circumstances in the aforesaid case law are different to the instant case.

25. The learned counsel for the defendant Nos.5 to 8 placed a reliance of **Smt. Hardev Kaur vs. Chowdhry Jodh Singh**⁶, wherein the High Court of Punjab and Haryana held as follows:

“That provident fund can be disposed of by will is also a view of a Division Bench of Walmsley and Chakravarti JJ. in Kalisadhan Mitra v. Prafulla Chandra Mitra, AIR 1926 Cal 1061. In that case, a person holding a deposit in the Railway Provident Fund filed a declaration in favour of a person who in the event of his death was entitled to receive payment, and it was added by the subscriber that "I make this my will so far as regards such deposit." It was held that the rules of the Fund did not prevent a declaration from being treated as a will. Apart from the rule

⁵ AIR 1984 Supreme Court 346

⁶ AIR 1969 Punjab & Haryana

on which Mr. Atma Ram has relied that the money becomes payable to a dependent if there is no nomination, there is no provision in the relevant rules to suggest that the deceased officer did not have disposing power over his provident fund. Nor do we see our way to accede to his submission that the widow is at any rate entitled to the benefit of the provident fund under subsection (2) of section 3 h of the Act. The observations in some of the rulings that the provident fund is to be administered in accordance with the relevant rules, do not preclude the legal right of a subscriber to dispose it of by a will.”

In the case on hand, the plaintiff is a legally wedded wife of the deceased employee by name Remani Sitarama Sastry. In view of the strained relations in between both the plaintiff and Sitarama Sastry, they are residing separately. As stated supra, the plaintiff abandoned Sitarama Sastry and also his mother and the plaintiff and Sitarama Sastry are also not obtaining any divorce from a competent Court. The plaintiff has not obtained any divorce from Sitarama Sastry and Sitarama Sastry married 5th defendant, who is her close relative without obtaining divorce from plaintiff. The relationship of 5th Defendant with Sitarama Sastry is admitted by the plaintiff. The plaintiff also admits 5th defendant gave birth to Defendant Nos.6 to 8 through Sitarama Sastry, the same is admitted by the plaintiff.

26. In this contest, it is relevant to say some of the important admissions made by the plaintiff in her evidence. The plaintiff admitted in her evidence in cross examination itself that she did not inform to 1st defendant to enter her name as nominee for her husband for Provident Fund and other benefits and she did not file any claim before the 1st defendant about death benefits of her husband after the death of her husband. She further admits that she came to know that the 1st defendant was paid provident fund for an amount of Rs.16,109/- and the said amount was paid to defendant Nos.5 to 8 being on legal heir certificate produced by her through the Headmaster. She further admits in her evidence in cross examination itself that her husband Sitarama

Sastry got married 5th defendant in 1970 and by the time she filed the suit O.S.No.44 of 1971 her husband is working at Vedangi and as per compromise Rs.130/- per month was given as maintenance. She further admits that the 5th defendant is daughter of maternal uncle of her husband and her husband sent maintenance as per compromise during his lifetime and 5th defendant sent maintenance amount till 1991 and thereafter, she refused to receive the maintenance and she issued notice to the defendants. She further admitted that the son of 5th defendant conducted obsequies to her husband Sastry and her husband informed to the Department that 5th defendant is his wife and he nominated 5th defendant to receive Provident Fund and Gratuity and she did not attend the obsequies of her husband and her mother-in-law and her brother gave instructions to their Advocate to give suit notice and she was not present when the plaint was drafted and that her signatures were obtained at her house. Another crucial admission made by plaintiff in her evidence in cross examination itself by the defendant Nos.2 to 4 is that she came to know about the death of her husband after 10 days and she did not send any notice to the defendant Nos.1 to 4 demanding the death benefits of her husband. As stated supra, one of the important admissions made by plaintiff in her evidence is that she came to know about the death of her husband after 10 days and she did not attend the obsequies of her husband and also her mother-in-law.

27. The aforesaid own admissions of the plaintiff clearly shows about the conduct and attitude of the wife/plaintiff and she herself abandoned her husband Remani Sitarama Sastry and also her mother-in-law and staying at her parents' house on her own accord and that she is undoubtedly not having any equities. Moreover, the plaintiff died during the pendency of the first appeal itself without any children and her brother is added as a legal representative on behalf of the plaintiff. Furthermore, 5th defendant also died during the pendency of the first appeal in the month of February, 2025. Now

the children of Remani Sitarama Sastry and 5th defendant are fighting for group insurance amount.

28. The learned counsels on record contend that except group insurance benefits, all other benefits are paid to the 5th defendant and the family pension was awarded to the plaintiff. On appreciation of the entire evidence on record, the learned trial Judge came to a conclusion that the plaintiff is entitled family pension soon after the death of Sitarama Sastry and 5th defendant is entitled death benefits of Sitarama Sastry viz., Provident Fund, Gratuity, and group insurance scheme from the concerned by virtue of Ex.B.21 Will, I do not find any illegality in the said decree and judgment passed by the learned trial Judge. The decree and judgment passed by the learned trial Judge is sustainable under law and there is no need to interfere with the said judgment.

29. In the result, both the appeals A.S. No.1474 of 1998 and A.S.No.1692 of 1998 are dismissed, confirming the decree and judgment, dated 16.03.1998, passed in O.S. No.11 of 1991, on the file of the Senior Civil Judge, Tadepalligudem. Considering the facts and circumstances, each party do bear their own costs in the appeal suits.

As a sequel, miscellaneous petitions, if any, pending in the Appeals shall stand closed.

V.GOPALA KRISHNA RAO, J

Date: 21.04.2025

PGR