



**IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH**

**DATED THIS THE 16<sup>TH</sup> DAY OF MARCH, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE C M JOSHI**

**REGULAR SECOND APPEAL NO. 7144 OF 2011 (DEC/INJ)**

**BETWEEN:**

1. SUJATA D/O CHANNABASAPPA HATTI,

2. VIDYAVATI D/O CHANNABASAPPA HATTI,

3. SANTOSH S/O CHANNABASAPPA HATTI.

.....APPELLANTS

**(BY SRI. BAPUGOUDA SIDDAPPA.,ADVOCATE)**

**AND:**

1. NEHRU @ KAMAGOND PATIL,

2. THE STATE OF KARNATAKA REPRESENTED BY,  
DEPUTY COMMISSIONER,  
BIJAPUR-586101.

3. THE DEPUTY DIRECTOR OF  
PUBLIC INSTRUCTIONS,  
BIJAPUR-586101.

...RESPONDENTS

**(BY SMT. MAYA.T.R, HCGP FOR R2 & R3;  
NOTICE TO R1 IS SERVED)**



THIS RSA IS FILED U/S. 100 OF CPC PRAYING TO MODIFY THE JUDGMENT AND DECREE DATED 04.03.2011 PASSED IN R.A.NO.11/2011 ON THE FILE OF THE PRINCIPAL DISTRICT JUDGE BIJAPUR. TO MODIFY THE JUDGMENT AND DECREE DATED 27.11.2010 PASSED IN O.S.NO.350/2005 ON THE FILE OF THE I ADDL.SENIOR CIVIL JUDGE, BIJAPUR. TO MODIFY THE JUDGMENTS AND DECREES OF THE LOWER COURT AND LOWER APPELLATE COURT. THE APPELLANTS HAVE FILED THE RSA BEFORE THIS HON'BLE COURT AND ALLOW THE SECOND APPEAL FILED BY THE APPELLANTS AND ALSO GRANT THE RELIEFS AS CLAIMED BY THE APPELLANTS IN THE SECOND APPEAL.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**JUDGMENT**

Heard the learned counsel appearing for the appellant and the learned High Court Government Pleader appearing for the respondent.

2. The present appeal is directed against the judgment of the learned Principal District Judge, Bijapur in R.A.No.11/2011 dated 04.03.2011 thereby the judgment in O.S.No.350/2005 by the I Addl. Senior Civil Judge, Bijapur was confirmed.

3. The brief facts are as below:

The appellants are the original plaintiffs and they had filed suit for declaration and injunction against the



defendant No.1 to declare that the plaintiffs' have become owners of Land in R.S.No.684/1 measuring 14 acres of Honawad village and also that they have right to receive the service benefits, insurance etc., which were bequeathed by the deceased Kalpana in favour of the plaintiffs under a Will dated 04.03.2005. They contended that the deceased Kalpana was the sister of the plaintiffs and she was working as a primary School Teacher in Athani taluk and she has married defendant No.1. They lead marital life for a period of 6 months and thereafter there was a difference among them. During the life time of deceased Kalpana, the respondent No.1 who happens to be her husband, contracted a second marriage and then he neglected the deceased Kalpana. It is contended that the deceased Kalpana died on 12.05.2005 when she was seriously ill and hearing about the ill-health, the respondent No.1 took her to Hulagabali village and after 4 days she died there. It is contended that the deceased Kalpana was suffering from illness since 2004 and she had executed a Will on 04.03.2005 bequeathing the land



allotted to her, the life insurance amount and also the service benefits to the plaintiffs. The said Will was duly registered. After the death of Kalpana, the respondent No.1 tried to get his name entered in revenue records of the land and attempted to receive service benefits. The same was objected by the appellants, which gave rise to the present litigation.

4. Before the Trial Court, the plaintiffs, who are the appellants herein contended that the deceased Kalpana had executed a valid and registered Will bequeathing all her belonging and she was competent to execute the Will. They contended that the respondent / defendant was not at all entitled for any relief concerning the service benefits as well as the estate of the deceased.

5. Per contra, the defendant who happens to be the husband of the deceased Kalpana filed his written statement contending that deceased Kalpana was suffering from ill-health and also admitted that she was working as



a Teacher. However, he denied that the deceased Kalpana has executed any Will in favour of the plaintiffs and it was the defendant who had taken her to the hospital and provided treatment and tried to save her. Therefore, he contended that the Will allegedly executed by deceased Kalpana is bogus invalid and suffers from various infirmities and that it was not at all executed by the deceased Kalpana. The defendant has also made a counter claim that the registered Will executed by the deceased Kalpana be declared as null and void as it is forged and created documents.

6. On the basis of the pleadings, the following issues were framed by the Trial Court.

1. Whether the plaintiffs prove that, their sister by name Kalpana executed valid registered Will on 04.03.2005, bequeathing suit property, insurance amount and her service benefits to the plaintiffs?
2. Whether the plaintiffs prove that on 04.03.2005, deceased Kalpana was competent to execute the alleged Will favour of the plaintiffs?



3. Whether the defendant No.1 proves that alleged Will executed by Smt. Kalpana is forged one?
4. Whether the defendant No.1 proves that, he has succeeded to the Insurance amount and service benefits of Smt. Kalpana as her legal heir?
5. Whether the Court fee paid by the defendant No.1 is proper and correct?
6. Whether the plaintiffs are entitled for the decree as sought for?
7. What order or decree?

7. The plaintiff No.3 deposed before the Trial Court as PW1 and two witness were examined as PW2 and PW3 and the Will was marked as Ex.P1. The defendant was examined as DW1 and he marked Ex.D1 to Ex.D11 on his behalf.

8. After hearing both the sides, the Trial Court answered that the Will is proved by the plaintiffs, but deceased Kalpana could not have bequeathed the service benefits to the appellants herein and only the estate of deceased could not have been bequeathed under a Will.



Holding so, it decreed the suit in part and held that the plaintiff No.3 is the owner of the land bearing RS No.684/1 of Honawad Village and he is entitled to receive the proceeds of the LIC policies.

9. It also held that the defendant No.1 being the legal heir of deceased Kaipana, he is entitled to service benefits of the deceased Kaipana as per Rule 302 of KCSR.

10. Aggrieved by the said judgment, the appellants / plaintiffs preferred a Regular Appeal in R.A.No.11/2011 assailing the findings given by the Trial court. The defendant No.1 also filed Cross Objections before the first appellate Court. The first appellate Court after going through the records as well as hearing the parties, dismissed the appeal as well as the Cross Objections and confirmed the judgment of the Trial Court.

11. Aggrieved by the judgment of the first appellate Court, the plaintiffs/appellants have approached this Court in second appeal. They contended that the first appellate



Court is not justified in placing reliance on Rule 302 of KCSR and when the deceased Kalpana had executed the Will, it would cover even the service benefits also. Therefore, they contended that the Will executed by the deceased Kalpana would take into purview the service benefit also and trial Court could not have bifurcated the service benefits from the estate of the deceased.

12. In view of the said contention, the following substantial questions of law were framed by this Court on 28.02.2013.

*"i) Whether the service benefits such as gratuity, the insurance, provident fund, leave encashment etc., of a Government Servant can be considered as part of the estate of the said official?*

*ii) Whether the consideration of pension is different from the consideration of other service benefits of a Government Official?"*

13 The Trial Court Records have been secured and I have perused the same.





14. Despite issuance of notice, respondent No.1/defendant No.1 did not appear. Learned HCGP has appeared for respondent Nos.2 and 3, who are the employers of deceased Kalpana.

15. Learned HCGP contended that in view of Rule 302 of KCSRs, family for the purpose of rule will include the Wife if the Husband is the Government Servant, Husband if Wife is the Government Servant, Son (including step children and adopted children), un-married, widowed or divorced Daughters, Brothers below age of 18 years and unmarried or widowed or divorced sisters. She contended that the appellants herein do not fit in any of these categories and therefore, they are not entitled for family pension and other service benefits that would accrue on the death of the deceased Government Servant. It is contended that these service benefits do not form the estate of the deceased over which the deceased had any control. They accrued to the Government Servant only because he was serving the Government and therefore,



they cannot be treated to be the estate of the deceased which would devolve upon the legatees under the Will. In other words it is submitted that the service benefits are not bequeathable under the Will and are not at the will and wish of the deceased Government Servant. Therefore, she contended that the judgments of the trial Court as well as the first appellate Court are proper and correct.

16. Learned counsel appearing for the appellants contended that the wish of the deceased are of paramount importance and at no stretch of imagination, the provisions of Rule 302 of KCSRs can over-ride the last wish of the deceased. He contended that when the deceased Kalpana bequeathed all her holdings and assets etc., in favour of the appellants herein, the same has to be respected and therefore the trial Court as well the first appellate Court erred in bifurcating the service benefits from the bequeathable property and assets of the deceased.



17. A perusal of the judgment of the trial Court as well as the first appellate Court shows that both the Courts below had placed reliance on the decision reported **SMT. VIOLET ISSAAC AND OTHERS Versus UNION OF INDIA AND OTHERS**<sup>1</sup>. In the said decision it was held that:

*"The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The employee has no title nor any control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition. Accordingly, in the present case the*

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<sup>1</sup> (1991) 1 SCC 725



*widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased."*

18. Therefore, no other persons except that designated under the rules, are entitled to receive the family pension. In coming to such conclusion the Apex Court also followed the earlier decision in the case of **JODH SINGH Versus UNION OF INDIA AND ANOTHER<sup>2</sup>**, wherein it was held that the family pension does not form part of the estate of the deceased and as such it cannot be disposed off during life time by testamentary disposition. In Para 10 of the said decision it is held as below:

*"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If*

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<sup>2</sup> (1980) 4 Supreme Court Cases 306



*it did not form part of the estate of the deceased it can never be the subject-matter of the testamentary disposition."*

19. In view of these authoritative to pronouncements, which has stood the test of time, it is clear that the service benefits do not form the bequeathable estate of any Government Servant. Under these circumstances, the judgments of the trial Court as well the first appellate Court cannot be found fault with. The substantial questions of Law raised by this Court are no more *res-integra*. It has been answered by the Apex Court in the aforesaid decisions. Therefore, the appeal is bereft of any merit and does not require any further consideration. Hence, the appeal is dismissed.

**Sd/-  
JUDGE**