

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.10055 OF 2021

Between:

Kagne Pandari, S/o. Dondiram
Age : 63 years, Occ : Agriculture
R/o. Chinthalbori Village, Boath Mandal,
Adilabad District and 3 others.

.. Petitioners

Vs.

The State of Telangana rep. by its
Rep. by its Principal Secretary,
Social Welfare Department, Secretariat,
Hyderabad & 6 others

.. Respondents

DATE OF THE ORDER PRONOUNCED: **19.04.2023**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes
3. Whether his Lordship wishes to see the fair copy of the judgment? Yes

*** HON'BLE SRI JUSTICE J. SREENIVAS RAO**

+ WRIT PETITION No.10055 OF 2021

% DATED 19TH APRIL, 2023

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.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner: Sri S. Surender Reddy

^Counsel for Respondents : Govt. Pleader for Social Welfare
for respondent Nos.1 to 4
Deputy Solicitor General of India
for respondent Nos.5 & 6
Sri G. Chandra Mohan,
for respondent No.7.

? CASES REFERRED :

1. 1977 (2) SCC 435
2. AIR 1954 SC 340
3. AIR 1984 AP HC
4. (1981) 3 SCC 589
5. (2015) 5 SCC 423

HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.10055 OF 2021****ORDER:**

This writ petition is filed seeking Writ of Certiorari calling for the records relating to the orders passed by the respondent No.2 in Original Suit No.A4/CPC/138/2018, dated 01.04.2021 in holding that the respondent No.7 is the legally married wife of the deceased Kagne Santhosh and she is his legal heir and further holding that she is eligible for claiming the death benefits of the deceased, without giving any opportunity to the petitioners and without conducting the trial or enquiry as per the provisions of C.P.C., without considering the provisions of Agency Rules and without having jurisdiction and set aside the orders passed by the respondent No.2 in O.S.No.A4/CPC/138/2018, dated 01.04.2021 by declaring the same as illegal, arbitrary, abuse of process of law, violation of principles of natural justice and contrary to the rules.

2. Heard Sri S. Surender Reddy, learned counsel for the petitioners, learned Assistant Government Pleader for Social Welfare appearing for respondent Nos.1 to 4, learned Deputy Solicitor General of India, appearing for respondent Nos.5 & 6,

and Sri G. Chandra Mohan, learned counsel appearing for respondent No.7.

3. Learned counsel for the petitioners submits that petitioner Nos. 1 and 2 are parents of Kagne Santhosh, petitioner Nos.3 and 4 are his brothers. He further submits that respondent No.7 forcibly married Kagne Santhosh on 06.05.2013 and due to her harassment, their son has taken divorce on 05.06.2013 from her in the presence of caste elders and they returned the household articles and other amounts and also paid an amount of Rs.1,00,000/- (Rupees One Lakh only) towards her permanent alimony, and he died on 12.06.2013 due to electrocution.

3.1 He further submits that respondent No.7 filed a suit O.S. No.6 of 2013 on the file of Junior Civil Judge at Boath, seeking declaration to declare her as the wife and Class-I legal heir of her deceased husband. In the said suit the petitioners filed written statement contending that respondent No.7 is not entitled to the relief sought, on the ground that she has already taken divorce from her husband. The said suit was transferred to the Court of respondent No.2.

3.2 He also contended that as per the provisions of Rule 7 of “Telangana State Agency Rules, 1924” (hereinafter referred to as ‘Rules’ for brevity) the respondent No.2 is not having jurisdiction to adjudicate the matter as the value of the suit is below Rs.5,000/- but the respondent No.2 without considering the contentions raised by the petitioners, without giving opportunity, and without following due procedure as contemplated under the provisions of Code of Civil Procedure, 1908, (hereinafter called as ‘C.P.C.’) passed the impugned order and the same is contrary to the law and liable to be set aside.

3.3. In support of his contentions, he relied upon the judgment in **State of Madhya Pradesh Vs. Babu Lal and others**¹.

4. *Per contra*, Sri G. Chandra Mohan, learned counsel appearing for respondent No.7, vehemently contended that the respondent No.7 filed a suit O.S. No.6 of 2013 on the file of Junior Civil Judge at Boath, seeking declaration declaring her as legally wedded wife and Class-I legal heir of her deceased husband Kagne Santhosh and the same was transferred to the Court of respondent No.2. The respondent No.2 after following

¹ 1977 (2) SCC 435

the due procedure as contemplated under the provisions of the 'Rules', & 'C.P.C' passed the impugned order and there is no illegality, irregularity or error to interfere with the said order. He further submits that as per the provisions of the Rule 49 of the 'Rules' against the impugned order passed by the respondent No.2, the petitioners ought to have filed Appeal and the writ petition filed by them invoking the extraordinary jurisdiction of this Court under Article 226 of Constitution of India is not maintainable and the same is liable to be dismissed.

4.1. He further submits that the allegations made by the petitioners that respondent No.7 had already obtained divorce during the lifetime of her husband and she received an amount of Rs.1,00,000/- (Rupees One Lakh only) towards permanent alimony, is not true and correct. He also submits that till date the respondent No.7 has not contracted second marriage after the death of her husband and she is eking out her livelihood by depending upon her parents and she is legally entitled to claim the death benefits of her deceased husband in respect of her share.

5. The learned Asst. Government Pleader also contended that the petitioners have contested the matter before respondent No.2 and he passed the impugned order on merits. The

petitioners without availing the statutory remedy of appeal filed the writ petition and the same is not maintainable under law.

6. Having considered the rival submissions made by the respective parties, and upon perusal of the record, the following points would arise for consideration:

- (i) Whether the impugned order dated 01.04.2021 passed by the respondent No.2, declaring the respondent No.7 as legally wedded wife and Class-I legal heir of deceased Kagne Santhosh and she is eligible to claim the death benefits of her late husband, is sustainable under law?
- (ii) Whether the writ petition filed by the petitioners questioning the impugned order passed by the respondent No.2 dated 01-04-2021 is maintainable, especially when the statutory remedy of Appeal is provided under Rule 49 of Agency Rules, 1924?
- (iii) Whether the petitioners are entitled for any relief in the writ petition?

POINT NOS.i to iii

7. According to the pleadings and material evidence on record, it reveals that the marriage of respondent No.7 was performed with Kagne Santhosh, who is none other than the son of petitioner Nos.1 and 2 on 06.05.2013 and he died on 12.06.2013. After his death, respondent No.7 filed a suit O.S. No.6 of 2013 on the file of Junior Civil Judge at Boath, against the petitioner Nos.1 to 4 as well as respondent Nos.5 and 6 seeking declaration declaring her as legally wedded wife and

Class-I legal heir of her deceased husband. She specifically averred in the suit that the petitioner Nos.1 to 4 are necked out her from their house after the death of her husband when she approached the petitioners to provide shelter in their house and to give her share in the death benefits of her late husband to lead her life, the petitioners refused to accept the same and she further averred that she being legally wedded wife, entitled to claim death benefits of her late husband from respondent Nos.5 and 6. The petitioners filed written statement on 17.11.2013 denying the allegations made in the suit contending that respondent No.7 has obtained divorce on 05.06.2013 from her husband and they paid amounts including permanent alimony of Rs.1,00,000/- and she is not entitled to claim any relief's as sought in the suit. The said suit was transferred to the Court of respondent No.2 and the same was renumbered as O.S. No. A4/CPC/138/2018.

8. It further reveals from the record, that the petitioners have filed their objections before respondent No.2 dated Nil-10-2020. The respondent No.2 after considering the contentions, material documents i.e., Family Member Certificate, FIR report, Marriage Certificate, passed the impugned order on 01.04.2021 by giving specific findings holding that as per the provisions of

the Hindu Succession Act, 1956 the respondent No.7 is legally wedded wife of late Kagne Santhosh, who worked as B.S.F. Constable, and she is eligible to claim death benefits of her deceased husband. It is also held that though the petitioners pleaded that respondent No.7 has already taken divorce from her deceased husband during his lifetime, but they failed to produce any iota of evidence to that effect.

9. Insofar as the contention raised by the learned counsel for the petitioners that, the respondent No.7 sought relief in the suit only seeking declaration declaring her as legally wedded wife, whereas the respondent No.2 passed the impugned order not only granting decree, declaring her as legally wedded wife, but also held that the respondent No.7 is eligible to claim the death benefits of her deceased husband, though there is no such relief sought by the respondent No.7 and the respondent No.2 is not entitled to grant the said relief.

10. Admittedly, respondent No.7 filed a suit against the petitioner Nos.1 to 4 and also respondent Nos.5 & 6, who are the employers of her deceased husband, seeking declaration, declaring her as legally wedded wife and Class-I legal heir of her deceased husband, wherein she specifically pleaded that for the

purpose of claiming death benefits of her late husband, she filed the said suit. It is very much relevant to extract the relief sought by the respondent No.7 in the suit as under:

- “(i) Declaring the plaintiff as the wife and Class-I Legal heir of the deceased Santhosh.
- (ii) Any other relief or reliefs to which the plaintiff is entitle in the facts and circumstances of the case”.

11. It is needless to mention here that the respondent No.2 after considering the pleadings of the respective parties and material evidence on record rightly passed the impugned order dated 01.04.2021 declaring the respondent No.7 as legally wedded wife and further held that she is also entitled to claim death benefits of her deceased husband. Hence, the contention raised by the learned counsel for the petitioners that the Court below passed the impugned order exceeding the jurisdiction in the absence of relief claimed by the petitioners, is not tenable under law.

12. In respect of other ground raised by the learned counsel for petitioners’ that the respondent No.2 is not having pecuniary jurisdiction to adjudicate the suit and pass the impugned order, the respondent No.7 filed suit before the Junior Civil Judge, at Boath and the same was transferred to the Court of respondent No.2 and the petitioners have filed their objections on Nil-10-

2020 before respondent No.2 and contested the matter. The petitioners have not raised any objections before the respondent No.2 either in the written objections or during the pendency of the proceedings, on the other hand they have proceeded with the matter and invited the orders on merits. Now the petitioners are estopped to contend that respondent No.2 is not having pecuniary jurisdiction to pass the impugned order.

13. In **Kiran Singh Vs. Chaman Paswan**² the Hon'ble Supreme Court in Para No.7 held as under:

7. "The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits"

14. In **Special Secretary to the Government of Rajasthan (Finance), Jaipur, Rajasthan Vs. Vedakantara Venkataramana Seshaiyer**³ the Division Bench of this Court in Para No.22 held that:-

² AIR 1954 SC 340

³ AIR 1984 AP HC

“In view of the authoritative pronouncement of the Supreme Court that all the three “conditions must co-exist” we are of the opinion that the appellants have not made any attempt to prove how there is any failure of justice within the meaning of the said expression in Section 21 of Civil Procedure Code. On this ground alone the objection relating to jurisdiction is liable to be rejected.”

15. In **Koopilan Unseen’s Daughter Pathnumma V. Koopilan Unseen’s son Kuntalan Kutty died by L.Rs⁴** the Hon’ble Apex Court held that:-

“in order that an objection to the place of suing may be entertained by an appellate or revisional Court, the following three conditions are essential; (i) the objection was taken in the court of the first instance; (ii) it was taken at the earliest possible opportunity and in cases where the issues are settled, at or before such settlement of the issues; and (iii) there has been a consequent failure of justice. All these three conditions must co-exist”.....

16. It is already stated *supra* that in the instant case also the petitioners have not raised any objections in the suit about the jurisdiction before the respondent No.2. In view of the authoritative pronouncement of the Hon’ble Apex Court as well as Division Bench of this Court, the objection relating to Jurisdiction is liable to be rejected.

17. With regard to the maintainability of the writ petition is concerned, as per the provisions of Rule 49 of Telangana State Agency Rules, 1924, against the impugned order passed by the respondent No.2, a regular appeal lies. The petitioner without

⁴ (1981) 3 SCC 589

availing the remedy of appeal as provided under statute filed the writ petition invoking the jurisdiction of this Court under Article 226 of Constitution of India and the same is not maintainable under law.

18. The judgment relied upon by the learned counsel for the petitioners in **State of Madhya Pradesh** (*supra*) wherein the Hon'ble Supreme Court held as under:

“5. One of the principles on which Certiorari is issued is where the Court Acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by Certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing Writ of Certiorari”.

19. The principle laid down by the Hon'ble Supreme Court in the above said judgment is not applicable to the facts and circumstances of the case on hand on the ground that the respondent No.2 after following the procedure, considering the contentions, documentary evidence on record, and also after hearing both the parties, had passed the impugned order.

20. It is very much relevant to mention hereunder that the Hon'ble Apex Court in the case of **Radhey Shyam v. Chhabi Nath**⁵, after analyzing the previous decisions held that Writ

⁵ (2015) 5 SCC 423

Petitions under Article 226 of Constitution of India, challenging the Judicial Orders are not maintainable.

21. Viewed from any angle, there is no illegality, irregularity or error in the impugned order passed by the respondent No.2 dated 01-04-2021, to invoke the jurisdiction of this Court under Article 226 of Constitution of India, and there are no merits in the writ petition and the same is liable to be dismissed. Point Nos. i to iii are answered accordingly.

22. In the result, the writ petition is dismissed without costs.

In view of the dismissal of main writ petition, interlocutory applications pending if any, pending in this writ petition shall stand closed.

JUSTICE J. SREENIVAS RAO

19th April, 2023

Note

L.R. Copy to be marked

B/o.
Skj