

KAKB820006902023



Presented on : 03-11-2023
Registered on : 03-11-2023
Decided on : --
Duration :

**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.
AT. KALABURAGI.**

**C/C. IN THE COURT OF THE C.J. & J.M.F.C.AT.
SHAHABAD**

-:Present:-

SRI. SANTOSH SRIVASTAVA. B.A.L, LL.B.
Prl. Civil Judge & JMFC.,
Kalaburagi.

O.S. No. 25/2023.

DATED THIS THE 24TH DAY OF APRIL- 2024.

Plaintiff:

Shakuntala W/o Gunadhar,
Age: 65 years, Occ: Agriculture,
R/o: Malagatti, tq: Chittapur, dist: Kalaburagi.

(By Sri. Ramchandra K., Advocate)

//VERSUS//

Defendants:

1. The Managing Director,
GESCOM, Kalaburagi.
2. The Executive Engineer (O & M)
Rural Division-II
Attal Bihar Vajapee Batawane,

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GESCOM, Kalaburagi.

3. The Executive Engineer,
GESCOM, Chittapur.
4. Saroja D/o A.K.Hajare,
Age:about 40 years, Occ: Pvt. Service,
R/o H.No.LIG 109, KHB Colony,
Gandhi Nagar, Bellary dist: Bellary.
5. Meghna D/o Saroja,
Age: about 20 years, Occ: student,
R/o H.No.LIG 109, KHB Colony,
Gandhi Nagar, Bellary dist: Bellary.
6. Shreyan S/o Saroja,
Age:about 15 years, Minor,
Occ: Student,
U/G of defendant No.4,
R/o H.No.LIG 109, KHB Colony,
Gandhi Nagar, Bellary dist: Bellary.

(D-1 to 3 By Sri. Z.H.T., Advocate)

(D-4 to 6 By Sri. C.S.P., Advocate)

PARTIES To I.A.No.I

Applicant/
Original
Plaintiff:

Shakuntala W/o Gunadhar,

//Vs//

Opponent/
Original
Defendants:

The Managing Director,
GESCOM, Kalaburagi and others

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**PARTIES TO I.A.No.II**

Applicants/

Defendants:

4. Saroja D/o A.K.Hajare,
5. Meghna D/o Saroja,
6. Shreyan S/o Saroja,

//Vs//

Opponent/

Original

plaintiff:

Shakuntala W/o Gunadhar.

* * * * *

ORDER UNDER ORDER 39 RULE 1 AND 2 OF CPC.

The plaintiff has filed under order 39 rule 1 and 2 of CPC praying this court to pass injunction order against the defendant no 4 restraining her from claiming any rights in the service benefits of deceased Vasant Patil till the disposal of the suit be granted in the interest of justice and in the affidavit. The suit lands item Nos, (B) and (c) are standing in the name of plaintiff. The plaintiff husband name is Gunadhar and he worked in the GESCOM Department. Vasant Patil is the son of deceased Gundhar and this Vasant Patil got the job on compassionate grounds after the death of Gunadhar.

2. Vasant Patil got the job in the office of defendant no 3 and plaintiff has 3 sons and 3 daughters and in the lifetime of

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Vasant Patil he got married to defendant no 4 and defendant no 5 and defendant no 6 born from the wed-lock Vasant Patil and defendant No 4. Things were not good between the couple which resulted in filing of Crl- Misc. at Bellary family court and accordingly got final settlement for sum of Rs 5 lakhs. And in this manner defendant no 4 to 6 does not have further claim in the property of deceased Vasant Patil.

3. After the death of Vasant Patil defendant no -4 filed an application to get the death benefits of deceased Vasant Patil and plaintiff filed the objections and this defendant no 1 to 3 are ready to give job defeating the interest of plaintiff since she has agreed for final settlement and she doesn't have any right in the claim of deceased Vasant Patil therefore prays to pass temporary injunction order against defendant

4. Objections filed for the same wherein the entire contents of plaint are denied as false and the defendant in the affidavit submits that to peruse the contents of written statement as part and parcel of the said objections. Perused the same the defendant admits the entire relationship shown in the plaint and further also admits that this defendants do not claim entire right in the property of Mr. Vasant Patil on the other side the main contention of the defendant is that defendant No.4 is still legally

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wedded wife of deceased Vasant Patil and also admits the factum there is order of court at Bellary to the effect that she and children entitled for maintenance as per the order of court but squarely denies the story that this defendant no -4 has settled her claim for Rs 5 lakhs as alleged in the petition. In this manner perhaps the plaintiff is having rights but not completely because she also entitle for benefits in the property of deceased Vasant Patil. And finally prays to dismiss the suit to the effect of defendant no 4 to 6.

5. The defendant no 4 has also filed application under order 39 rule 4 of CPC, and same is supported by the affidavit wherein it is submit to vacate the injunction order Objections filed for the same wherein the entire contents of plaint are denied as false and the defendant in the affidavit submits that to peruse the contents of written statement as part and parcel of the said objections. Perused the same the defendant admits the entire relationship shown in the plaint and further also admits that this defendants do not claim entire right in the property of Mr Vasant Patil on the other side the main contention of the defendant is that defendant no -4 is still legally wedded wife of deceased Vasant Patil and also admits the factum there is order of court at Bellary to the effect that she and children entitled for maintenance as per the order of court but squarely denies the

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story that this defendant no -4 has settled her claim for Rs 5 lakhs as alleged in the petition. In this manner perhaps the plaintiff is having rights but not completely because she also entitle for benefits in the property of deceased Vasant Patil. And finally prays to vacate the exparte order. Objections filed. The suit lands item Nos, (B) and (c) are standing in the name of plaintiff. The plaintiff husband name is Gunadhar and he worked in the GESCOM Department. Vasant Patil is the son of deceased Gundhar and this Vasant Patil got the job on compassionate grounds after the death of Gundhar.

6. Vasant Patil got the job in the office of defendant no 3 and plaintiff has 3 sons and 3 daughters and in the lifetime of Vasant Patil he got married to defendant no 4 and defendant no 5 and defendant no 6 born from the wed-lock Vasant Patil and defendant no 4. Things were not good between the couple which resulted in filing of Crl- Misc at Bellary family court and accordingly got final settlement for sum of Rs 5 lakhs. And in this manner defendant no 4 to 6 does not have further claim in the property of deceased Vasant Patil.

7. After the death of Vasant Patil defendant No.4 filed an application to get the death benefits of deceased Vasant Patil and plaintiff filed the objections and this defendant No.1 to 3 are

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ready to give job defeating the interest of plaintiff since she has agreed for final settlement and she doesn't have any right in the claim of deceased Vasant Patil in Bellary and plaintiff son had obtained loan to construct the house and now this defendant No.4 is not letting plaintiff to reside in the said house situated at Bellary and finally prays to reject the application.

8. Heard both sides and perused the materials placed on record.
9. On the basis of averments pleaded by the parties to the suit and on the strength of documents produced, the following points that arises for my consideration are as follows:

P O I N T S

“A”

1. Whether the plaintiff has made out a prima-facie case ?
2. Whether the balance lies in favour of the plaintiff ?
3. Whether the irreparable loss or injury will be caused to the plaintiffs, if IA-1 is not allowed ?

“B”

- 1) Whether defendants have made out grounds to vacate the ex-parte order ?
- 2) What order ?

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10. My finding to the above points are as under:

“A” Point No.1:- In the Negative.

“A” Point No.2:- In the Negative.

“A” Point No.3:- In the Negative.

“B” Point No.1:- In the Affirmative.

“B” Point No.2:- As per final order, for the following:

REASONS

11. **“A” Point No.1 to 3** :- These points are inter-related to each other, hence, in order to avoid repetition of fact, I have taken together these points for common discussion.

Before getting into the merits of the case this court likes to reliance upon **Durgabala Mandan V/S. State of West Bengal 2022 SCC online Calcutta 169**, wherein in this case an 80 years old widow approaches the court to seek direction to towards her daughter-in-law to provide for her maintenance as she had taken compassionate appointment on the death of her son. Wherein after examining the facts fo the case it is held that, if a daughter-in-law is appointed for job on compassionate grounds then she is bound by the undertaking that, she should maintain the dependents. Further at this stage this court likes to place reliance upon **State of West Bengal V/s. Deba Brata Tiwari and others 2023 live law Supreme Court 175**, wherein it is

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held that as follow: **Compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.**

Delay on the part of the authorities of the State to decide claims for compassionate appointment would no doubt frustrate the very object of a scheme of compassionate appointment. Government officials are to act with a sense of utmost proactiveness and immediacy while deciding claims of compassionate appointment so as to ensure that the whole some object of such a scheme is fulfilled.

12. Therefore, now coming to the facts of the case in the light of above judgments quoted. Perused the contents of plaint wherein the suit is filed for the relief of declaration and relief of perpetual injunction restraining the defendant No.1 to 3 or any officers on behalf of them to give service benefits to deceased Vasant Patil in favour of defendant No.4 to 6. Further a decree of perpetual injunction against the defendant No.4 or any other

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person restraining them from claiming any rights in the service benefits of deceased Vasant Patil and also in the suit schedule property mentioned in para No.2 be passed, after perusing the records of the case there is no dispute regarding the relationship of deceased Vasant Patil and defendant No.4. The only point of the plaintiff is that, the defendant No.4 has settled her claim for sum of Rs.6,00,000/- and in regard to same she stayed happily with the children in Bellary. So in this manner she is not entitle for appointment on compassionate grounds. It is crystal clear that,the plaintiff as well as the defendant No.4 or class-I heirs and further the relief which is sought by the plaintiff that,the defendant No.1 to 3 be permanently restraining from claiming in his benefits of deceased Vasant Patil in favour of defendant No.4 to 6 is absolutely not maintainable since still the defendant No.4 is the wife of deceased Vasant Patil. At this stage, this court is of the opinion that, if the ex-parte order passed by this court is continued neither the plaintiff nor the defendant No.4 to 6 can enjoy benefits of deceased Vasant Patil and both parties would suffers in harness. So therefore, to avoid the deprivation of economic facilities to the plaintiff as well as to the defendant No.4 to 6 this court is of the opinion that, comparatively the age of plaintiff 65 years and on the contrary the age of defendant No.4 is 40 years. So looking to their age and circumstances of the case this court is of the opinion that, the defendant No.1 to 3

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need to be allowed to give job on compensative grounds in accordance with the law. Because it is settled position of law that, a person cannot seek job as a matter of right on compensatory grounds, if a person seeks job on compensatory grounds he or she should undertake to maintain the dependents. It can be seen that, the plaintiff is mother of deceased Vasant Patil and defendant No.4 is wife of deceased Vasant Patil, no doubt there might be domestic issues between them, but still as on this day the plaintiff has not submitted any material to show that, the defendant No.4 has settled for amount of Rs.6,00,000/- with deceased Vasant Patil. So therefore, the defendant No.1 to 3 will have to be allowed to appoint the defendant No.4 or anybody claiming through them to give job on compensatory grounds. Further it is left defendant No.1 to 3 to give job either to defendant No.4 or anybody claiming through them or plaintiff. Further, except lifting the ban this court makes it very clear to defendant No.1 to 3 that, there is no any compulsive direction by virtue of the order of this court to give the job on compensatory grounds either to the plaintiff or to the defendant No.4 to 6 or anybody claiming through them. All is left to the discretion of defendant No.1 to 3.

13. Now on perusal of the prayer it can be seen that, the plaintiff has sought decree for perpetual injunction against the

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defendant No.1 to 3 or any officers on their behalf giving service benefits to deceased Vasant Patil, in favour of defendant No.4 to 6 and they have also sought relief for perpetual injunction to permanently restrained the defendant No.4 from claiming service benefits of deceased Vasant Patil. Here two things need to be seen that, first and foremost there is no record to show that, the defendant No.4 has settled the score for sum of Rs.6,00,000/- as alleged in the plaint with deceased Vasant Patil during his life time. Further as on the date of the filing suit defendant No.4 is still the wife of deceased Vasant Patil in that circumstances, the plaintiff cannot permanently restrain defendant No.1 to 3 from giving service benefits to the defendant No.4. Now whether the defendant No.4 has settled the score for sum of Rs.6,00,000/- during the life time of deceased Vasant Patil and whether the plaintiff is completely ousted from residing in the house situated at Bellary is a matter of trial, which cannot be decided at this stage. So therefore, though at the first instance this court had deem fit to issue ex-parte order in favour of the plaintiff but after appearance of defendant there is chance in circumstance in detailed mentioned above and for this reasons, I answer "A" Point No.1 to 3 in the Negative. Hence, I answer "B" Point No.1 in the Affirmative.

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14. **“B” Point No.1:-** The defendant has filed written statement wherein he has denied that, the defendant No.4 has settled the score for sum of Rs.6,00,000/- during the life time of Vasant Patil. At this juncture also just for the reference the reasoning arrive by the competent court of law in criminal M.C.No.187/2013 need to be perused where in on page No.6 it is held by the court of law that, petitioner No.1 i.e.,defendant No.4 in this case admitted to be working as a teacher from 2006 to 2008 at Bellary National College,and even the salary particulars of the petitioner No.1 now defendant No.4 were called upon and found that, she has working in their company till January 2013 and she has resigned the job in the month of February 2013 and at the time of resignation she drew the salary of RS.8000/- per month,and as on the date of filing present petition in the year 2011 she was working lady and getting a handsome salary and the petitioner No.1 tried to justify that, her sister is mentally resorted person and as such she was providing certain amount by her parents as well as the two wheeler to look after to her ailing sister, but except self-interest testimony she did not examined any witness and the petitioner No.1 was working as on the date of filing petition. And finally held that,she was a working lady. On the other hand,the plaintiff is the mother who is also the class-I heir, now the situation at this stage is plaintiff as well as defendant No.4 are class-I heirs and till disposal of suit if the ban

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is not lifted then neither the plaintiff nor the defendant No.4 to 6 would enjoy the service benefits of deceased Vasanth Patil. So therefore, the need of an hour is to lift the ban and allow the defendant No.1 to 3 exercise their discretion in giving service benefits to the competent person. But this would not be absolute and conditions would be imposed in the interest of justice to avoid deprivation of standard of life to the legal heirs of deceased Vasanth Patil. Further the plaintiff has furnished memo with photographs to show the luxurious life lead by the wife of deceased Vasanth Patil, but it is matter of trial which cannot be decided at this stage. Therefore in view of above discussion, I answer “B” Point No.1 in the Affirmative.

15. **“B” Point No.2**:-In view of above discussion I proceed to pass the following:

ORDER

Application filed U/O 39 Rule 1 and 2 of CPC, is hereby dismissed and application filed U/O 39 Rule 4 of CPC, is hereby allowed subject to the conditions mentioned below:

The defendant No.1 to 3 is hereby allowed to give service benefits in regard to job either to the plaintiff or to the defendant No.4 to 6.

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If in case the defendant No.1 to 3 opines that, defendant No.4 or anybody claiming through them is entitle for job on compensate grounds the defendants No.1 to 3 shall take undertaking that, the service benefits of deceased Vasant Patil to the extent of half share shall be given to the plaintiff apart from pensionary benefits availed by the plaintiff if any, and also to the dependents.

In case there is violation of undertaking by defendant No.4 or anybody claiming through them after getting job on compassionate ground the defendant No.1 to 3 or the plaintiff is at liberty to revoke this order by filing application in accordance with law.

This order will be an effect until disposal of this case or until any subsequent changes till disposal of the suit.

(Directly dictated to the Stenographer on Computer and typed by him, corrected and then pronounced by me in open court on this the 24th day of April, 2024)

(SANTOSH SRIVASTAVA)

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C/C. CJ & JMFC, Shahabad.

Dictated on : 24-04-2024
Transcribed on : 24-04-2024
checked on : 24-04-2024
Signed on : 24-04-2024

(SANTOSH SRIVASTAVA)
C/C. CJ & JMFC, Shahabad.

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