

CNR No.MHLA No.05-000060-2019

**ORDER BELOW EXH.NO.5**

(Date 21/12/2019)

The present application has been filed by the plaintiff under Order - 39 Rule - 1 and 2 read with Section 151 of the Code of Civil Procedure for restraining defendant nos.2 to 4 from giving the family pension to defendant no.5 and also directed them to deposit the pension in the Court till the disposal of this suit.

2) I heard Adv.Shri.S.B.Mandade for the plaintiff, Shri.M.K.Patil, A.G.P. for defendant no.4 and Adv.Shri.D.L.Ghogre for defendant no.5.

3) In view of the material on the record, the following points arise for my determination and I record my findings against each one of them for the reasons as stated herein below :-

**POINTS**

**FINDINGS**

- |  |                              |
|--|------------------------------|
| 1. Does the plaintiff prove that, she has prima facie case in her favour ?   | ....In the negative.         |
| 2. Does the plaintiff prove that, the balance of convenience lies in her favour ?  | ....In the negative.         |
| 3. Does the plaintiff prove that, an irreparable loss would be caused to her, if, the temporary injunction sought is not granted in her favour ? | ....In the negative.         |
| 4. What order ?  | ....Application is rejected. |

### **REASONS**

#### **As to point nos.1, 2 and 3.**

4) In support of the application Adv.Shri.S.B.Mandade has argued that, the plaintiff is the legally first wedded wife of deceased Mohanrao Jaywantrao Jagtap who was died on 22/04/2018. The deceased Mohanrao Jaywantrao Jagtap was in service with defendant no.2 and he was retired on 31/07/2004. After retirement the deceased Mohanrao Jagtap was getting pension till his death. The deceased Mohanrao Jaywantrao Jagtap married with the plaintiff in the year of 1963, due to their wedlock Mangesh and Manoj Mohanrao Jagtap were born on 18/02/1973 and 15/06/1978 respectively. He has further argued that, defendant no.5 claims to have entered into wedlock with deceased Mohanrao Jaywantrao Jagtap in the year 1973 when his marriage with the plaintiff in subsistence. Defendant no.5's second marriage with deceased Mohanrao Jaywantrao Jagtap is illegal and void in eye of law. As per the Hindu Succession Act and as well as, as per the M.C.S. Rules defendant no.5 does not fall within the ambit of term "Heir".

5) He has further argued that, after the death of deceased Mohanrao the plaintiff is temporarily residing at Aurangabad with his elder son Mangesh Mohanrao Jagtap. Defendant no.5 without the knowledge and consent of the plaintiff with ill-intention has applied to defendant no.2 on 04/06/2018 for the family pension by concealing the fact that, she is illegal second wife of the deceased Mohanrao. On 11/06/2018 the plaintiff has approached to defendant no.2 and enquired about the pension and accordingly

came to know that in pension form name of someone else was wrongly or with ill-intention recorded as a nominee. Thereafter, the plaintiff has applied to defendant no.2 and contended that, she is the first legally wedded wife of deceased Mohanrao Jaywantrao Jagtap though the name of the nominee of any person mentioned in the pension form, she is entitle for the family pension.

6) He has further argued that, the plaintiff has also filed an application with defendant no.4 on 12/06/2018 and given the reminder to defendant no.2 on 31/08/2018 for grant of the family pension in her favour. She had taken objection for grant of family pension in favour of defendant no.5 before defendant nos.3 and 4. In view of the communications made by the plaintiff, defendant no.4 by its letter bearing no.PR-5/R-3.OC-203/2004-2005/260-A dated 10/07/2018 directed defendant nos.2 and 3 to investigate the matter and submit the report as regards who is the first and legally wedded wife of deceased Mohanrao Jagtap. Defendant no.4 has issued letter dated 17/09/2018 and 24/09/2018 and thereby directed defendant no.2 to make enquiry and submit report in respect of entitlement of the family pension. After the enquiry defendant no.2 has come to know that, the plaintiff is first legally wedded wife of deceased Mohanrao Jagtap and accordingly, she is entitle for the pensionary benefit.

7) He has further argued that, after enquiry defendant no.2 by its letter bearing SMU/2018-19/3751 dated 03/09/2018 requested to defendant no.4 that, the plaintiff as per her letter dated 12/06/2018 communicated that, one M.C.A.no.192/2018 is pending before the Court at Ahmedpur for grant of heirship

certificate and accordingly, requested till the decision of the said application, the family pension be granted to defendant no.5 may be withheld. She has received the letter dated 16/11/2018 from defendant no.4, from it reveals that, the family pension granted to defendant no.5 not yet withheld. The plaintiff has requested to defendant nos.2 to 4 till 04/02/2019 to stop the family pension granted to defendant no.5 and withheld the same but in vain. The plaintiff has also requested to defendant no.5 not to receive and surrender the family pension of his deceased husband but defendant no.5 has denied the same.

8) He has further argued that, if, the family pension granted to defendant no.5 is not withheld or stopped till the decision of the suit, then the plaintiff will suffer irreparable loss. On the contrary, no prejudice will be caused to the defendants, if, the family pension is directed to deposit in this Court or withheld till the decision of this suit. He has further prayed that, the application be allowed.

9) On behalf of defendant no.4 Adv.Shri.M.K.Patil has argued that, the Comptroller and Auditor General of India discharging their duties through their Field Officers i.e. Account General Officers in accordance with the provisions of Article 149 of the Constitution of India read with the Comptroller and Auditor General (Duties, Powers and Conditions of the Services) Act, 1971. He has further argued that, defendant no.4 is having limited role only up to the scrutiny of proposals received from the Head of the Offices of the Government of Maharashtra. The Pension Sanctioning Authority vide their dated 19/10/2018 intimated this office that,

Smt.Sulekha had submitted the application for authorizing the family pension in her favour as she is the first wife and also to stop the family pension authorized to Smt.Janabai. He has further argued that, defendant nos.2 and 3 have to verify the said fact and accordingly to take the action to investigate this case. Defendant no.4 had issued a letter dated 16/11/2018 to verify the date of marriage of Smt.Sulekha and Smt.Janabai as per the M.C.S. (Pension) Rules, 1982 but he has not received any reply from that office. He has further argued that, as per the completion of inquiry report they are ready to add, amend, delete or alter, if, they felt necessary in the said record.

10) On behalf of defendant no.5 Adv.Shri D.L.Ghogre has argued that, defendant no.5 is legally first wedded wife of deceased Mohanrao Jaywantrao Jagtap. The age of defendant no.5 is 72 years old and she married with deceased Mohanrao Jaywantrao Jagtap in the year 1965. The marriage of defendant no.5 has performed with the deceased Mohanrao Jaywantrao Jagtap in the month of May 1965 as per their Hindu rights and customs at village Morewadi, Tq. Ahmedpur. Thus, defendant no.5 is only legally first wedded wife of deceased Mohanrao Jaywantrao Jagtap.

11) He has further argued that, after the marriage defendant no.5 has not conceived or begotten any issue from her deceased husband Mohanrao Jaywantrao Jagtap till 1972. Defendant no.5 will not conceived or begotten any issue from the deceased Mohanrao Jaywantrao Jagtap, so, the deceased Mohanrao Jaywantrao Jagtap has performed second marriage with the plaintiff in the year 1972 behind the back and without the consent

of defendant no.5. The marriage of the plaintiff with deceased Mohanrao is illegal and void as per law, therefore, she cannot get status of wife of deceased Mohanrao Jaywantrao Jagtap. Defendant no.5 is only a legally wedded wife of deceased Mohanrao Jaywantrao Jagtap and she is only entitled to get the family pension as being a legally wedded wife of deceased Mohanrao Jaywantrao Jagtap. In the lifetime of deceased Mohanrao Jaywantrao Jagtap he has made nominee to defendant no.5 for the family pension. Defendant nos.1 to 4 have rightly granted the family pension to defendant no.5 and the plaintiff have no any right to challenge the same.

12) He has further argued that, defendant no.5 has begotten first issue Manisha on 22/07/1974 from the wedlock of deceased Mohanrao Jaywantrao Jagtap and after that, she has begotten other three issues namely Bajirao, Maya and Madan from the wedlock of deceased Mohanrao Jaywantrao Jagtap. The sons Bajirao and Madan and daughters Manisha and Maya are the legitimate issues of defendant no.5 and deceased Mohanrao Jaywantrao Jagtap. Mangesh and Manoj are illegitimate children of the plaintiff and deceased Mohanrao Jaywantrao Jagtap.

13) He has further argued that, the age of the plaintiff is only 62 years old. However, she has falsely shown her age in title column of plaint as 72 years. The allegations made by the plaintiff as she married with Mohanrao Jaywantrao Jagtap in the year 1963 are also false. The said illegal marriage took place in the subsistence of first marriage of defendant no.5 and deceased Mohanrao. Therefore, question does not arise that, the plaintiff is legally first

wife of deceased Mohanrao Jagtap. Defendant no.5 has taken the care of Mohanrao from their marriage till his death. Mohanrao was ill and suffering from the deceases of Paralysis, B.P., Sugar, Spine etc. and he was admitted at various Hospitals and she had made expenditure of said Medial treatment near about seven lac. He has further argued that, if, the temporary injunction is granted in favour of the plaintiff then irreparable loss would be caused to defendant no.5. If, the pension is stopped then defendant no.5 is unable to survive. He has further prayed that, the application is liable to be dismissed with cost.

14) As per the contention of the plaintiff that, she is the legally wedded wife of the deceased Mohanrao Jaywantrao Jagtap and their marriage was took place in the year 1963. Due to their wedlock she has given birth to Mangesh and Manoj. Mohanrao has died on 22/04/2018. Defendant no.5 is claiming to be a wife of deceased Mohanrao and she has intentionally applied to defendant no.2 on 04/06/2018 for the family pension of deceased Mohanrao. On 11/06/2018 the plaintiff has approached to defendant no.2 and applied for the pension as a first wife of the deceased Mohanrao. Thereafter, the plaintiff has moved an application before defendant no.4 on 12/06/2018 and also given the reminder to defendant no.2 on 31/08/2018. Defendant no.4 vide its letter dated 10/07/2018 directed defendant nos.2 and 3 to investigate the matter as regard who is the first wife and legally wedded wife of the deceased Mohanrao Jagtap. Defendant no.4 has issued the letter dated 17/09/2018 and 24/09/2018 to defendant nos.3 and 2 respectively and asked them to enquire about the said matter. Defendant no.2 has enquired the matter and he known the fact that, the plaintiff is

the first legally wedded wife of the Mohanrao Jagtap and she is entitled for the pensionary benefit. The family pension started in favour of defendant no.5 by depriving legitimate right of the plaintiff to receive full family pension. On the other hand, defendant no.5 has contended that, she is the first legally wedded wife of the deceased Mohanrao Jagtap. After the death of Mohanrao Jagtap the pension was granted in her favour as she is the first wife of the deceased Mohanrao Jagtap.

15) The plaintiff has admitted that, the pension was granted in favour of defendant no.5 after the death of Mohanrao Jagtap. The plaintiff has filed the applications which were moved before defendant nos.2 to 4 and asked them to incorporate her name as a first wife of the deceased Mohanrao Jagtap in the family pension record and she has also asked them to stop the pension granted in favour of defendant no.5. She has also asked defendant nos.2 to 4 to deposit the pension of the deceased Mohanrao Jagtap in the Court. The Pension Authority has granted the pension in favour of defendant no.5 after the death of the deceased Mohanrao Jagtap. The plaintiff has raised the objection that, she is the first legally wedded wife of the deceased Mohanrao Jagtap and defendant no.5 has illegally shown herself as a legally first wedded wife of the deceased Mohanrao Jagtap to deprive her rights. The plaintiff has filed the suit for the declaration that, she be declared as a first legally wedded wife of deceased Mohanrao Jayawantrao Jagtap and grant the family pension in her favour being a first wife of deceased Mohanrao Jayawantrao Jagtap. The plaintiff is the first legally wedded wife of the deceased Mohanrao Jayawantrao Jagtap this issue cannot be decided without leading the evidence of both

the parties. The plaintiff has also failed to prove that, if, the pension which was granted in favour of defendant no.5 is not stopped and the defendants are not directed to deposit the pension in the Court, then she will cause irreparable loss.

16) In view of the above discussions, it is held that, the plaintiff has failed to prove that, she has a prima facie case in her favour, balance of convenience lies in her favour and she will cause irreparable loss, if, the temporary injunction is not granted in her favour. Therefore, I answer point nos.1, 2 and 3 in the negative.

**As to the point no. 4**

17) In view of my findings as to the point nos.1, 2 and 3, I pass the following order :-

**ORDER**

- 1) The application is rejected.
- 2) The cost follows the events.

Ahmedpur.  
Date :- 21/12/2019

(A. R. Surve)  
Civil Judge Sr.Division,  
Ahmedpur.

Certified that PDF copy of Order supra is word-to-word identical to the original Order.

Name of Stenographer : A.S.Kodgire  
Dictated on : 21.12.2019  
Checked on : 21.12.2019  
Signed on : 21.12.2019  
Uploaded on : 23.12.2019