

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

SECOND APPEAL No.384 of 2005

JUDGMENT:

This Second Appeal is filed, under Section 100 of C.P.C. read with 48 of the A.P. Agency Rules, 1924, against the judgment and decree of the Agent to Government at Khammam District, dated 28.01.2005, passed in A.S.No.3 of 2000, whereunder the learned Agent to Government dismissed the said appeal by confirming the judgment and decree, dated 04.05.1999, passed in O.S.No.145 of 1998 on the file of the Special Assistant Agent, Mobile Court, Bhadrachalam.

2. Appellant is the 1st defendant, respondent Nos. 4 and 5 herein are defendants 2 and 3 and respondent Nos.1 to 3 herein are plaintiffs in the suit. For the sake of convenience, the parties would be referred to as they were arrayed in the suit.

3. Necessary facts for disposal of this second appeal are as follows:

O.S.No.145 of 1998 was filed to declare that the plaintiffs 1 to 3 and defendants 2 and 3 are the surviving legal representatives of late Mohammed Jaleel Ahmed. It is stated that the plaintiffs as well as defendants 2 and 3 are the dependents and legal heirs/legal representatives of the deceased Mohammed Jaleel Ahmed, who died on 23.04.1998 while working as Hindi Pandit in Z.P.High School, Nellipaka village. Plaintiff No.1 is the wife of the deceased and plaintiff Nos.2 and 3 are children of the deceased through plaintiff No.1. Defendant No.1 is the divorced first wife of the deceased and defendants 2 and 3 are children of the deceased through defendant No.1. It is further stated that the marriage between the deceased Md.Jaleel Ahmed and defendant No.1 (Md.Khateeja Begum @ Shaik Khateeja

Begum) was dissolved, as defendant No.1 has given 'Khula' (divorce) to the deceased and that she has executed a 'Khulanama' (deed of divorce) dated 18.11.1980 and since then she has been residing separately. Thereafter, the deceased married plaintiff No.1 as his second wife in the year 1981 and out of their wedlock, she gave birth to plaintiffs 2 and 3. Subsequently, defendant No.1 filed M.C.No.30 of 1992 against the deceased Md.Jaleel Ahmed for maintenance and the same was dismissed by the Judicial Magistrate of First Class, Khammam, by order dated 28.09.1993, upholding the 'Khulanama' executed by defendant No.1. After the death of the deceased, when the plaintiffs and defendants 2 and 3 filed an application for death benefits of the deceased before the Educational Authorities, defendant No.1 filed an objection petition claiming death benefits of the deceased, as a divorcee. Hence, the plaintiffs filed the suit.

4. When summons were sent to the defendants to appear before the trial Court on 22.01.1999, defendants 2 and 3 refused to receive the same. Summons sent to defendant No.1 returned unserved. Defendants 2 and 3 remained *ex parte*. Thereafter, when summons were sent to defendant No.1 through special process server at the costs of the plaintiffs, defendant No.1 refused to receive the same and as such, he was also set *ex parte*.
5. After considering the entire material available on record including the documents filed by the plaintiffs, the trial Court decreed the suit declaring that plaintiffs 1 to 3 and defendants 2 and 3 are Class-I legal heirs/representatives of the deceased Md. Jaleel Ahmed and that they alone are entitled for death benefits or emoluments of the deceased.

6. Aggrieved by the aforesaid judgment of the trial Court, defendant No.1 preferred an appeal being A.S.No.3 of 2000 and the same was dismissed by the Agent to Government, Khammam, holding that since defendant No.1 voluntarily gave 'Khulanama' to the deceased, she is not entitled to claim any of the death emoluments and that the deceased

Md. Jaleel Ahmed need not obtain permission from the Government for performing second marriage though he was in Government service. Aggrieved by the said judgment, defendant No.1 preferred this second appeal with the following substantial questions of law:

- (a) Whether the Courts below are justified in holding that the appellant is a divorcee, on the basis of findings made in proceedings before the criminal court without their being any independent enquiry with regard to dispute, whether there is divorce or not and that whether such finding by the criminal court binds the civil proceedings.

- (b) Whether the courts below are justified in holding against the appellant on merits without providing any opportunity to put forth her pleadings, evidence either oral or documentary.
 - (c) Whether the courts below are justified in holding that the appellant is not entitle to get the benefits in the event of death of her husband, on the sole ground that the appellant is a divorcee, ignoring the settled principle that the even divorcee is also entitle to get share in the estate of deceased towards her maintenance and for her survival.
7. Heard learned Counsel appearing on either side and perused the entire material available on record.
8. The point that arises for consideration is whether the Courts below appreciated the evidence on record properly or not?
9. There is no dispute regarding the fact that the deceased Md. Jaleel Ahmed died on 23.04.1998 while he was in Government service. Initially, the deceased Md. Jaleel Ahmed married defendant No.1 and out of the wedlock, they were

blessed with defendants 2 and 3. But, defendant No.1 voluntarily gave 'Khulanama' to the deceased Md.

Jaleel Ahmed and thereafter the deceased married plaintiff No.1 as his second wife in the year 1981 and out of the wedlock, they were blessed with plaintiffs 2 and 3. After the death of the deceased, when plaintiffs 1 to 3 and defendants 2 and 3 filed an application for death benefits of the deceased, defendant No.1 filed an objection petition stating that though she is a divorcee, she is also entitled for death benefits of the deceased along with them. Both the Courts below concurrently held that defendant No.1 is not entitled for the death emoluments or benefits of her deceased husband as she has voluntarily obtained 'Khulanama' from her deceased husband. Plaintiff No.1 ought to have called for the Service Register of the deceased Md.Jaleel Ahmed to know whose name was mentioned as a nominee in his Service Register. If at all defendant No.1 divorced the deceased, the deceased

ought to have altered and mentioned the name of the 1st plaintiff in his Service Register as his nominee for his benefits, if any. However, both the parties have not called for the Service Register of the deceased for the reasons best known to them. Therefore, it is for the Court to dispose of the matter basing on the evidence available on record.

10. Both the Courts below held that as defendant No.1 voluntarily obtained 'Khulanama' from the deceased, she being a divorcee is not entitled for the death emoluments or benefits of her deceased husband. Learned Counsel for the appellant/defendant No.1 argued that the deceased, who was a Government employee, had to obtain permission from the Government to go for second marriage and as he failed to do so, plaintiff No.1 is not entitled for any death benefits. As per Revised Pension Rules, 1980, family

pension is not admissible to the second wife as marrying another wife,
(when one wife is living) without obtaining the approval of Government, is contrary to Rule 25 of A.P. Civil Services (Conduct) Rules, 1964 vide Circular Memo No.11027B/26/Pen.I/87, Fin.&Plg.(FW:Pen.I) Department, dated 20.08.1991. There is no document on record to show whether the deceased obtained any permission from the Government before performing second marriage. No doubt, a Muslim man can marry four wives at a time. But, as per the service rules, as the deceased was a Government employee, he has to obtain permission from the Government before performing second marriage. Plaintiff No.1 has not filed any document to show that the deceased obtained permission from the Government before performing marriage with her and as such she cannot be identified as a legally wedded wife of the deceased and she is not entitled for the death benefits,

if any. As already pointed out that defendant No.1 voluntarily gave 'Khulanama' to the deceased, she is also not entitled for the death emoluments or benefits. However, children of plaintiff No.1 and defendant No.1 are entitled for the death benefits of the deceased.

11. Accordingly, the Second Appeal is disposed of. The judgment of the appellate Court dated 28.01.2005 confirming the judgment of the trial Court dated 04.05.1999 is modified holding that both plaintiff No.1 and defendant No.1 are not entitled for death benefits or emoluments of the deceased

Mohammed Jaleel Ahmed. But, the children of the deceased Md. Jaleel Ahmed i.e., plaintiffs 2 and 3 and defendants 2 and 3 are equally entitled for the death benefits of their deceased father. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE P.SREE SUDHA

06.10.2023

Gsn