CGHC010355542023 2026:CGHC:44253-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on : 25.09.2026

Judgment Pronounced on : 13.10.2026

Judgment (Full) Uploaded on : 13.10.2026

[Arising out of common judgment & decree dated 12.09.2023, passed in Civil Suit No.28A/2016 (Smt. Ashok Lata Kurre and others v. State of Chhattisgarh and others) by the Additional District Judge, Rajnandgaon, Chhattisgarh]

FA No. 163 of 2023

1 - [redacted]
Yea
Ka
Raj

[redacted]

[redacted]

--- **Appellants/ Plaintiffs**

Versus

1 - State Of Chhattisgarh, Through Collector/Ex-Officio Secretary, District Office Rajnandgaon, Police Station Lalbag, Tehsil And District Rajnandgaon (C.G.)

2 – [redacted]

3 - Deputy Director, Veterinary Services, Rajnandgaon, Joint District Office, Behind Collector Building, Tehsil And District Rajnandgaon (C.G.)

4 - Estate Officer, Chhattisgarh Housing Board Society, Padmanabhpur, Durg, Police Station Durg, Tehsil And District Durg (C.G.)

5 - [redacted]

6 [redacted]

--- **Respondents/ Defendants**

WITH

FA No. 209 of 2023

1 [redacted]

2 [redacted]

3 [redacted]

[redacted]

--- **Appellants/ Plaintiffs**

Versus

1 - State Of Chhattisgarh, Through Collector/Ex-Officio Secretary, District Office Rajnandgaon, Police Station Lalbag, Tehsil And District Rajnandgaon (C.G.)

2 – Director, Veterinary Services, Indrawati Bhawan, Block No.3, Ground Floor, Nawa Raipur, District : Raipur, Chhattisgarh

3 - Deputy Director, Veterinary Services, Rajnandgaon, Joint District Office, Behind Collector Building, Tehsil And District Rajnandgaon (C.G.)

4- Estate Officer, Chhattisgarh Housing Board Society, Padmanabhpur, Durg, Police Station Durg, Tehsil And District Durg (C.G.)

[redacted]

[redacted]

--- **Respondent/ Defendants**

[Cause-title taken from Case Information System (CIS)]

For Appellants	:	Mr. Manoj Paranjpe, Senior Advocate assisted by Ms. Shivangi Agrawal, Adv.
For Respondents No.1 to 3	:	Mr. Sumit Singh, Dy. Advocate General
For Respondent No.4	:	None.
For Respondents No.5 & 6	:	Mr. Pranav Tiwari, Advocate

Division Bench

Hon'ble Mr. Justice Parth Prateem Sahu, and

Hon'ble Mrs. Justice Sushma Sawant

CAV Judgment

Sushma Sawant, J.

1. Regard being had to the similitude of the questions of facts and law involved and being arising out of a common impugned judgment, on the joint request of learned counsel for the parties, both these appeals are clubbed together, heard together and being disposed of by this common judgment. For brevity, facts are taken from FA-163-2023 as a leading case.

2. Invoking the appellate jurisdiction of this Court under Section 96 of the Code of Civil Procedure, 1908, the appellants herein/plaintiffs have preferred these two appeals challenging judgment & decree dated **12.09.2023**, passed in **Civil Suit No.28A/2016 (Smt. [redacted])**, passed by the Additional District Judge, Rajnandgaon (CG), by which the suit filed by the appellants herein/plaintiffs seeking title declaration and injunction over the suit properties has been partly decreed and the counter claim filed by the respondents

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No.05 & 06 herein/defendants No.05 & 06 has also been partly allowed.

3. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the trial Court.)

Factual Matrix

-:Admitted facts between the parties:-

4. The undisputed position emerging from the argument advanced before this Court, as well as pleadings made before the learned Trial Court, are that the appellant No.01/plaintiff No.01, namely, Smt. [redacted] is the second wife of [redacted] appellant No.02/plaintiff No.02, namely, [redacted] and appellant No.03/plaintiff no.03, namely, [redacted] were born within said wedlock. Whereas, respondent No.05/defendant No.05, namely, [redacted] was the first wife of [redacted], one child respondent No.06/defendant No.06, namely, [redacted] was born within said wedlock.

5. [redacted] was Government Servant holding the post of Assistant Veterinary Services Area Officer, Veterinary Services, Rajnandgaon and **died subsequently on 12.08.2015.** The family tree of Late [redacted]

[redacted] **deceased)**

First wife: [redacted]

Second Wife: [redacted]

Son- [redacted]

Daughters- [redacted]

-:Case of the Appellants/Plaintiffs before the Trial Court:-

6. According to the appellants/plaintiffs, the first wife of Late [redacted] e i.e. **respondent No.05/defendant No.05-** [redacted] left the matrimonial house and executed consent deed dated 10.07.2000 **(Ex.P-04)** with regard to settlement of her dispute with Late [redacted]. Further, after customary separation, respondent No.05/defendant No.05 got re-married with [redacted] and, one son [redacted] was also born within this marriage. Meanwhile, Late [redacted] got a paper publication (Ex.P-15) to the effect that his marriage with respondent No.05/defendant No.05- [redacted] has been dissolved and he is evicting her from all his properties. Even, Late [redacted] had also furnished the aforesaid information to his department and made a request to record the name of his second wife- [redacted] in the service record vide Ex.P/8, P/9 & P/11.

7. It is also the case of the appellants/plaintiffs that after the marriage of **respondent No.05/defendant No.05-** [redacted] with Arun Sahu, she is residing with him at [redacted] and, after separation from respondent No.05/defendant No.05, [redacted] solemnized second

marriage with the **appellant No. 1/plaintiffs No.1** [redacted] on 07.07.2002 and within the said wedlock, appellants/plaintiffs No.02 & 03 were born and, thereafter, during the life of Late [redacted] the appellants/plaintiffs resided with him and, as such, they are fully dependent on Late Sukhidas Kurre.

8. On the basis of aforesaid plea, the appellants/plaintiffs filed suit before the trial Court seeking declaration of title and ownership over the suit properties being successors of Late [redacted] and for injunction that the defendants no.05 & 06 be restrained from interfering with the said suit properties. For instance, suit properties in the present case comprises as under:

I. House situated a [redacted], Housing [redacted]

II. Part of Land bearing [redacted]

III. Amount of Rs.17 lacs. held by the respondent No.03 herein as Pension, GPF, Gratuity and other government service relating benefits.

9. Hence, with aforesaid pleadings, grounds and prayer the appellants/plaintiffs filed the civil suit before the learned trial Court.

-:Written Statement of the Respondents No.01 to 04/Defendants No.01 to 04 before the Trial Court:-

10. The respondents No.01 to 03/defendants No.01 to 03 filed their written statement and categorically admitted the government documents and the pleading with regard to the service records of the defendant No.05 as well as deceased- [redacted] The defendant Nos.01 to 03 stated that there is no document in the service record of Late [redacted] which shows that the appellants/plaintiffs are the successors of [redacted]. It was further stated that Late [redacted] on 27.08.1990 entered the name of his sister [redacted] and his brother [redacted] as nominee for M.P. Employees Group Insurance Scheme, 1985 and GPF. Thereafter, on 19.09.1995, Late [redacted] entered the name of Respondent Nos. 05 and 06/defendants in his family details for Family pension. For death-cum retirement benefits, Late [redacted] nominated 50% shareholder to Respondent No.5/defendant, 25% to Respondent No.06/defendant and rest 25% to his sister [redacted] Further, Respondent No.5/defendant was made sole nominee for Public Provident Fund. Further, on 26.05.2001, Late [redacted] made an application to declare earlier nomination forms void and nominating appellants/Plaintiff No. 1 and 2, but since there was no verification from Office Head, the process could not be completed.

11. However, the respondent No.04/defendant No.04 denied the plaint averments and further stated in its written statement that the suit

house situated [redacted] was purchased by Late [redacted] in his own name under the Hire- Purchase Scheme and in the said Hire-Purchase Agreement, the respondent no.05 was made as a nominee. On 26.05.2001, Late [redacted] submitted an application for deleting the name of the respondent No.05, but since the said application was given without proposing the name of a new nominee, the name of respondent No.05/defendant could not be deleted and proceedings were incomplete before the Housing Board.

-:Written statement and counter-claim of the respondents No.05 & 06/defendants No.05 & 06 before the trial Court:-

12. The respondents No.05 & 06/defendant No.5 & 6 filed their separate written statement and denied all the averments made in the plaint and even respondent No.5/defendant further filed a counter claim for declaration to the effect that she is entitled to get the possession of the properties of Late [redacted] and all the service benefits along with the damages arising out of death o[redacted]

13. It was vehemently averred by the defendant No.05 that she is the first legally wedded wife of Late [redacted] and, out of the wedlock, one son [redacted] (defendant No.06) was also born. Therefore, they are entitled to get possession of the suit properties of [redacted] as also other services benefits arising out of death of [redacted] It was further pleaded that the appellants/plaintiffs are not entitled for any share either in the property or in the service benefits of Late [redacted] because

the marriage of Late [redacted] and appellant No.01/plaintiff No.1- [redacted] was void for the reason that during subsistence of appellant No.01/plaintiff No.01's marriage with [redacted] she got married with [redacted]. It was also pleaded that respondent No.05/defendant No.05 is still the legally wedded wife of Late [redacted] and respondent No.06/defendant No.06 is their son and, therefore, they denied the allegation of the appellants/plaintiffs that Late [redacted] and respondent No.05/defendant No.05 were divorced through consent deed dated 10.07.2000. Further, the respondent No.05/defendant No.05 also denied that she has entered into second marriage with one [redacted] and has son [redacted] from the said marriage. Hence, with aforesaid pleadings, it was prayed that the suit filed by the plaintiffs is liable to be dismissed and the counter-claim filed by the defendants No.05 & 06 deserves to be allowed.

-:Reply of the appellants/plaintiffs to the counter-claim before the trial Court:-

14. In reply to the counter-claim, the appellants/plaintiffs categorically pleaded before the learned trial Court that when the first wife-respondent No.05/defendant No.05- [redacted]u had left the husband [redacted] and got married with one [redacted], appellant/plaintiff No.01- [redacted] married with [redacted] and during his lifetime she was residing with him and she and her children were fully dependent on [redacted] The first wife is not entitled to get any benefit after the death o[redacted] because the marriage was not in existence on the

date when [redacted] got married with the appellant No.1/plaintiff No.01. Hence, the counter-claim filed by the defendants No.05 & 06 is liable to be dismissed.

-:Findings of the learned trial Court:-

15. The learned Trial Court on the basis of the pleadings and the written statement as well as the material evidence available on record, has framed 9 issues and after due consideration of the facts and circumstances of the case partly decreed the suit filed by the appellants/plaintiffs and partly allowed the counter-claim filed by the defendants No.05 & 06 by recording thus:

A. Although it is not established that the appellant No.01/plaintiff No.01 [redacted] is the legally wedded wife of Late [redacted] but it is established that the appellants/plaintiff No.2 & 3 are his children, therefore, only the appellants/plaintiff No.2 & 3 would be entitled to get the share in the service benefit and they have been given the succession right over the property.

B. Since the respondent No.05/defendant No.5 is not of Satnami Community, therefore, rites and customs of Satnami Community would not apply on her and, as such, she has been held to be the first legally wadded wife of [redacted] Her marriage with [redacted] cannot be said to be dissolved on the basis of consent deed dated 10.07.2000 and, therefore, she has also been held entitled to get the share in the service benefits as legal heir and entitled to get the possession of the house in which the

plaintiffs are residing, as the same was the property of Late Sukhidas Kurre.

C. It has been further held by the learned trial Court that since the appellant No.01/plaintiff No.01 failed to led any specific evidence showing dissolution of her marriage with his first husband- [redacted] and their marriage was not dissolved by any competent Court, therefore, she was held to be the legally wedded wife of [redacted] and her second marriage with Late [redacted] is treated to be void.

16. Being aggrieved by the aforesaid findings of the trial Court, these two appeals have been filed on the following grounds:-

(i) That, the impugned judgment and decree passed by the learned trial Court is illegal, erroneous and contrary to law.

(ii) That, the learned trial court while passing the impugned judgment and decree has failed to appreciate the admission on the part of the defendant No.5 and the documents from Exhibit P/22 to P/68 and Exhibit P/20 & P/21 and Exhibit P/4.

(iii) That, the learned trial court has failed to appreciate that the marriage between [redacted] with the defendant No. 5 was not in existence and was not in subsistence on the date of the marriage between plaintiff No.1 and [redacted]

(iv) That, the learned trial court has failed to appreciate that the marriage between defendant No. 5 and [redacted] has come

to an end and she is residing with [redacted] and has left the matrimonial house.

(v) That, the learned trial Court while passing the impugned judgment has failed to appreciate the pleadings and evidence brought on record by the parties in its correct prospective which has resulted passing of erroneous findings and consequent judgment.

(vi) That, the marriage between the plaintiff No.1 and [redacted] is the admitted position and the learned trial court has also recorded the said findings.

(vii) That, the learned trial court has failed to appreciate Exhibit P/4 i.e. consent deed. The learned trial court has recorded its finding in para No. 78 that, the deed was executed. The said fact is undisputed.

(viii) That, the findings recorded by the learned trial court that, the marriage between plaintiff No.1 and [redacted] is void, in view of Section 5 of the Hindu Marriage Act, 1955 are erroneous and are liable to be quashed.

(ix) That, the defendant No.5 & 6 have not properly valued the counter claim and consequently have not paid the requisite court fees as required under the Act. The ad-valorem court fees ought to be paid by the defendant No. 5 & 6 for claiming the relief for possession. That, the objection raised by the plaintiffs for paying of ad-valorem court fees has not been considered and while

recording the findings with regard to issue No.8 is perverse and erroneous.

(x) That, the judgment passed by the learned trial Court is illegal, erroneous and contrary to law and is liable to be set aside.

-:Proceedings before Appellate Court :-

17. Heard on the Appeal. In the context of the appeal and arguments, evidence and documents, available on record of the trial Court were examined.

-:Points for determination :-

18. In order to dispose of this First Appeal, the following questions are to be considered:-

(i) Whether the trial Court is justified in partly decreeing the suit filed by the appellants/plaintiffs and holding only the plaintiff No.2 & 3 to be entitled to get the share in the service benefits of [redacted] as they are born within the wedlock of [redacted] and plaintiff No.01- [redacted]?

(ii) Whether the trial Court is justified in holding the respondent No.05/defendant No.5 to be the first legally wedded wife of [redacted] as her marriage with Late [redacted] cannot be said to be dissolved on the basis of consent deed dated 10.07.2000 and, on the basis of which, holding her entitled to get the share in the service benefits and also to get the possession of

the house, in which the plaintiffs are residing, as legal heirs of Late [redacted]

(iii) Whether the trial Court is justified in further holding the marriage of the appellant No.01/plaintiff No.01 with [redacted] **to be void in absence of any evidence to that effect ?**

-:Arguments of the Appellants/Plaintiffs:-

19. Learned counsel for the appellants/plaintiffs, referring to the grounds taken in the memorandum of appeal, submits that the learned Trial Court has erred in treating respondent no.5/defendant no.5 [redacted] as the legally wedded wife of deceased [redacted] It is contended that the relationship between [redacted] and deceased [redacted] had already come to an end by way of customary separation, in respect of which a document **Eshibit P.-4** was executed in accordance with the prevailing social practice. It is further submitted that [redacted] had thereafter contracted a second marriage, and the documents produced in support of the said fact were not properly considered by the learned Trial Court. It is further contended that the **appellant no.1/plaintiff no.1** [redacted] was the legally wedded wife of deceased [redacted], and that the learned Trial Court erred in not granting the relief claimed by her by overlooking the evidence available on record in support of her marital status.

20. Apart from the oral submissions, learned counsel for the appellant has also submitted written arguments, wherein, upon an analysis of

the oral as well as documentary evidence available on record, it has been submitted as to why the case of the appellant deserves to be accepted. In support of the submissions, learned counsel has placed reliance upon a judgment of this Court dated **29-06-2022** passed in **FAM No. 143 of 2017** [redacted] **a and Anothers**, and judgement dated **19-02-2020** in **S.A.No.255 of 2010** ***Maniyar Sai and Others v. Jangi Bai and Others*****,** as well as the decisions of the Hon'ble Supreme Court in ***Shakuntala Bai and Another v. L.V. Kulkarni and Another*****, (1989) 2 SCC 526,** ***Shiramabai v. Captain, Record Officer for OIC Records and Another*****, 2023 SCC OnLine SC 1026**.

-:Arguments of the Respondents/Defendants:-

21. Learned counsel for the respondents, in reply to the submissions advanced on behalf of the appellants, supports the findings recorded by the learned Trial Court. It is submitted that [redacted] was the legally wedded wife of deceased [redacted] and that the appellant has failed to establish that the matrimonial relationship between them had legally come to an end.

22. It is further submitted that the alleged document said to have been executed pursuant to a customary social process does not establish a valid dissolution of the marriage. The alleged subsequent marriage of [redacted] and the documents relied upon by the appellants in that regard also do not, by themselves, establish that her marriage with deceased [redacted] had been validly dissolved. It is therefore

contended that the learned Trial Court rightly treated [redacted] as the widow of deceased [redacted]

23. It is also submitted that the appellant has failed to establish any ground warranting interference with the findings of the learned Trial Court and, therefore, the appeal deserves to be dismissed.

24. Learned counsel for the respondent has also submitted written arguments, placing reliance upon the oral and documentary evidence available on record in support of the respondent's case. Learned counsel has further relied upon the decisions of the Hon'ble Supreme Court in ***Sarla Mudgal v. Union of India*, (1995) 3 SCC 635, and *Vimala v. Veeraswamy*, (1991) 2 SCC 375,** as well as the judgments passed by this Court in ***S.A. No. 115 of 2010 Shanker Prasad Vs Radheshyam and S.A. No. 373 of 2018 Smt. Nanbai Rathore v. Smt. Meena Bai***. Reliance has also been placed upon the judgment of the Delhi High Court passed in ***M.A. (FC) No. 22 of 2018, dated 12-10-2023***.

-: Details of evidence and documents available before the trial Court:-

25. Before the trial Court, in support of its case, the appellants/plaintiffs examined Smt. [redacted] **(PW-01)** [redacted]e **(PW-02)** and [redacted]i **(PW-03)** and exhibited as may as 68 documents. Whereas, in defence, defendant No.05- Smt. [redacted]e **(DW-01)** was only examined and she exhibited 22 documents.

-:Analysis of the Appellate Court:-

Points for determination No. (i) to (iii)-

26. All three issues are interdependent on each other and, therefore, they are being decided together.

27. It emerges from the record that certain service-related dues/benefits amounting to approximately Rs.17,00,000/- were payable in respect of the deceased [redacted] When the parties approached the concerned department in respect of the said dues, they were advised to obtain a **Succession Certificate**, as two persons claiming to be the wives of the deceased were before the department. The reply filed by respondent Nos.1 to 3 also indicates the same position. However, instead of taking steps for obtaining a **Succession Certificate**, the appellants/plaintiffs instituted the present suit for Declaration and Permanent Injunction , including the immovable property of the deceased [redacted], and for this reason, the Department of deceased and the Housing Board have also been impleaded as parties to the suit.

28. The appellant /plaintiff no.1[redacted] , who is the second wife of the decease[redacted] , instituted the suit along with her children seeking declaration and permanent injunction, claiming that the aforesaid properties and service-related dues of the deceased [redacted]exclusively belonged to her and her children and that the

first wife respondent/defendant no.5 [redacted] and her son respondent/defendant no.6 [redacted] had no right therein, on the ground that the first wife had contracted a second marriage and her son had been adopted by her second husband. Appellant *plaintiff no.1* [redacted] *also sought a permanent* injunction restraining respondents/defendant no.5 and 6 from interfering with the said properties and dues.

29. The first wife respondent/defendant no.5 [redacted] and her son respondent/defendant no.6 [redacted], being the principal contesting parties, also claimed, by way of **Counter-claim**, declaration of their rights and permanent injunction against the Appellant/plaintiff no.1 [redacted] and her children, asserting their entitlement to the aforesaid properties and service-related dues.

30. Thus, an undisputed position emerging from the record is that neither of the parties has initiated any proceedings for obtaining a Succession Certificate in respect of the service-related dues of the deceased.

31. On examination of the matter in the light of the submissions advanced by both sides and the judgments relied upon by them, it is particularly noteworthy that **both the wives** of the deceased [redacted] have raised serious and extensive rival claims as to whether the other was the legally wedded wife of the deceased as on the date of his death. In support of their respective claims, both sides have led extensive oral and documentary evidence and have also subjected each other to detailed cross-examination.

32. Although detailed submissions have been advanced with reference to documents such as the office records and electoral roll concerning the first wife, and judgments have also been relied upon in support thereof, on an overall consideration of the oral evidence, it emerges that both the wives lived with the deceased [redacted] in a relationship in the **nature of marriage**. The question, however, is whether either of them was the legally wedded wife of the deceased [redacted] as on the date of his death ?.

33. At this stage, both sides appear to have weaknesses in support of their respective claims. Since the suit was instituted by the second wife **appellant/plaintiff no.1** [redacted] , the status of the first wife **respondent** [redacted] **fendant 5** [redacted] is required to be examined first. In this regard, reliance has been placed upon the judgments in ***Smt. Nirmala Bai (supra)***, contending that the marriage between [redacted] had come to an end by virtue of **Ex.P-4**, as such customary form of divorce is recognized in their community. The aforesaid judgments, in substance, recognize that, according to the prevailing customs of the Satnami/Tribal community, a marriage may be dissolved through such a document. However, [redacted] has not categorically denied the execution of **Ex.P-4;** rather, she has questioned the legal validity of dissolution of the marriage on the basis of the said document.

34. In these circumstances, at this stage, it would be appropriate to examine the other evidence on record before recording a final

finding as to whether **Ex.P-4** had the legal effect of dissolving the marriage between [redacted]

35. From the evidence, it appears that she had been living separately for a considerable long period. Her case, essentially, is that her marriage with the deceased was never formally dissolved. However, in paragraph **46** of her cross-examination, she admits that she was appointed to the post of **Ayurvedic Health Worker** on 13-08-2013 and, during her service, submitted nomination forms, **Ex.P.-68.**

36. When specifically confronted with the fact that the name of her husband was recorded as "[redacted] in those documents, She, however, gave the explanation that she did not know and that any name could have been written therein. Such an explanation cannot be accepted, particularly when the documents in question were submitted by her in the course of her own service and the nomination forms were admittedly filled in by or on her behalf. It is difficult to accept that she would not know the particulars furnished in her own nomination forms, including the name of the person mentioned as her husband. Such an evasive explanation, therefore, warrants an adverse inference against her.

37. **Respondent/defendant no.5** [redacted] **(D.W.No.1)**, however, admits in paragraph **47** of her cross-examination that her photograph with [redacted]s affixed in her service book. She further admits that, in the event of her death, [redacted] would be the nominee in respect of 100% of her service-related dues. Although there are

several documents on record indicating that [redacted] present husband is [redacted] the aforesaid admission made by the **respondent/defendant no.5 [redacted] (D.W.No.1)** herself is sufficient to establish that she is having relationship with "[redacted]" as wife and husband.

38. Despite the aforesaid position, her case, with reference to the alleged deed of divorce, **Ex.P.-4**, is that her marriage with the deceased [redacted] was not dissolved by the said document. Such a stand is difficult to accept. If she herself relies upon the said document as the basis on which she subsequently contracted her second marriage with [redacted], she cannot, while claiming a share in the estate of [redacted] now contend that the very same document did not dissolve her marriage wit [redacted]

39. A party cannot be permitted to approbate and reprobate according to the advantage sought to be derived from the same document. Having acted upon the document as effecting dissolution of her marriage with the deceased [redacted] for the purpose of entering into the subsequent marriage, she cannot, for the purpose of claiming rights in the estate of the deceased [redacted], be permitted to contend to the contrary. The principle against approbation and reprobation is founded on the basic rule that a party cannot accept and reject the same transaction according to convenience.

40. Her aforesaid admission, therefore, lends support to the conclusion that she had contracted the subsequent marriage with [redacted] after treating her marriage with the deceased as dissolved and,

consequently, she was not the legally wedded wife of the deceased [redacted] on the date of his death.

41. As regards the second wife i.e. [redacted] her evidence also does not establish her status as the legally wedded wife of deceased [redacted] She did not initially disclose her first marriage. When questioned in paragraph **50** of her cross-examination regarding the same, she stated that she did not know with whom she had married. However, in paragraph **59** of her cross-examination, she ultimately admitted that her former husband was [redacted] and that she had not obtained a divorce from him. Thus, her own admission establishes that her earlier marriage with [redacted] had not been dissolved. Consequently, her status as the legally wedded wife of deceased [redacted] on the date of his death cannot be accepted. In this regard the judgments of ***Sarla Mudgal, Vimala and Nanbai Rathore (supra)*** have also been relied upon by the respondents to support their case, as all these decisions lay down the proposition that a subsequent marriage contracted during the subsistence of an earlier marriage is not valid.

42. Since the facts of the judgments relied upon by both sides in support of their respective claims regarding the status of a legally wedded wife are not identical to the facts of the present case, neither party can derive any benefit from the said judgments.

43. So far as the children, namely [redacted] and [redacted] appellants/plaintiffs no.2 and 3) born to the second wife **appellant/plaintiff no.1** [redacted]**a** and

[redacted] (respondent/defendant no.6) born to the first wife **respondent/defendant no.5** [redacted], are concerned, neither party has disputed that the deceased [redacted] was their biological father. It is also undisputed that, as evidenced by Ex.P-24 and written statement of respondent/defendant no.4, the immovable property belongs to deceased [redacted] Accordingly, in law, all three children are entitled to an equal share therein.

44. It is pertinent to mention here ,that the claim of the parties, though joined together in the present suit, essentially relates to two distinct classes of subject matter, namely, the **immovable property** and the service-related monetary dues of the deceased.

45. It is also particularly noteworthy that both the appellants/plaintiffs and the contesting respondents/defendants have sought declaration of their respective rights without seeking the consequential relief arising therefrom. In this regard, the proviso to Section 34 of the Specific Relief Act, 1963 is relevant, which makes it clear that where a plaintiff is in a position to seek further relief than a mere declaration but omits to do so, the Court cannot grant the declaratory relief.

46. The learned Trial Court, however, has not recorded any finding on this aspect. In the present case, the relief of **permanent injunction** cannot, in the circumstances, be treated as the consequential relief contemplated under the proviso to Section 34. Therefore, the question whether the suits, as framed, were maintainable in the absence of the appropriate consequential relief was required to be examined by the learned Trial Court.

47. The powers of an appellate Court **is embodied** in Section 107 of the Code of Civil Procedure, 1908. Under Section 107(1)(a), the appellate Court has the power to determine a case finally, and Section 107(2) provides that, subject to the provisions of the Code, the appellate Court shall have the same powers and shall perform, as nearly as may be, the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein.

48. Thus, where a statutory requirement affecting the grant of declaratory relief arises for consideration, the appellate Court is competent to examine the same, notwithstanding that the learned Trial Court has not recorded any finding thereon. Such examination is necessary to ensure that the relief granted by the Court is in conformity with the statutory provisions and that an express statutory requirement is not overlooked.

49. Accordingly, this Court considers it appropriate to examine the question of maintainability of the declaratory relief in the light of the proviso to Section 34 of the Specific Relief Act, 1963. So far as the **immovable property** is concerned, this Court finds that the appellants as well as contesting **respondent no. 6** [redacted] has established the right/share claimed therein. In respect of such immovable property, the declaration of the share does not, by itself, require that the parties should necessarily seek immediate partition or any other consequential relief. The parties may, in accordance with law, work out their respective shares by partition or may otherwise

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deal with the property jointly. The declaration of the established share, therefore, does not suffer from the same infirmity insofar as the immovable property is concerned.

50. The position, however, is different with regard to the service-related monetary dues of **Rs 17 lacs** of the deceased [redacted] The said amount is required to be realized from the concerned department, and the rival claims of the parties to such amount cannot appropriately be worked out merely by declaring that one or the other party has a particular share therein.

51. The plaintiffs, if seeking enforcement of his/her share in the said monetary dues, was required to seek the consequential relief of recovery. The proviso to Section 34 of the Specific Relief Act, 1963 precludes the grant of a mere declaration where the plaintiff, being in a position to seek further relief, omits to do so.

52. The same principle would equally apply to the contesting respondents/defendants who, by way of counter-claim, have also sought a declaration of their respective rights without seeking the consequential relief, if any, arising therefrom. A counter-claim, being in the nature of a cross-suit, is required to satisfy the statutory requirements applicable to the relief claimed therein. Therefore, the maintainability of the declaratory relief sought by the contesting respondents/defendants is also required to be examined in the light of the proviso to Section 34 of the Specific Relief Act, 1963.

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53. At the same time, having regard to the nature of the amount involved, the fact that the parties are asserting rival claims as heirs of the deceased, and the requirement of the concerned department to have appropriate authority for release of the service-related dues, this Court is of the view that the service-related monetary dues are more appropriately dealt with under Part X of the Indian Succession Act, 1925, insofar as they fall within the scope of a succession certificate. Such certificate facilitates realization of the dues by the person entitled to receive them and protects the concerned department against competing claims.

54. In these circumstances, while the finding of the learned Trial Court regarding the plaintiff's established share in the immovable property is liable to be maintained, the declaration in respect of the service-related monetary dues cannot be treated as sufficient for directing payment thereof by the concerned department.

55. Since, for obtaining such relief in respect of the service-related dues, it was necessary for the parties to seek the consequential relief of recovery, each party would also have been required to pay the requisite ad valorem court fee on the amount claimed. Admittedly, no such consequential relief was sought and no ad valorem court fee was paid. Therefore, the declaratory relief in respect of the service-related dues cannot be sustained.

56. The parties claiming entitlement to such dues shall be at liberty to approach the competent Court under Part X of the Indian Succession Act, 1925 for obtaining an appropriate succession certificate in

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respect of the debts/securities or other amounts legally falling within its scope. The competent Court shall consider the rival claims in accordance with law. The concerned department shall thereafter deal with the service-related dues in accordance with the succession certificate and applicable service rules.

-:Final Conclusion:-

57. In view of the foregoing discussion, this Court finds that neither the first wife nor the second wife was the legally wedded wife of deceased Sukhidas on the date of his death. However, the three children, namely [redacted] and [redacted] (appellants/plaintiffs no.2 and 3) born to the second wife **appellant/plaintiff no.1** [redacted] and [redacted] (respondent/defendant no.6) born to the first wife [redacted]**spondent/defendant no.5** [redacted] being the biological children of deceased Sukhidas, are entitled to equal shares in the immovable property belonging to him.

58. Accordingly, the appeal **F.A.No. 163/2023** preferred by the second wife appellant/plaintiff no.1 [redacted] for exclusive relief in her favour is not sustainable. The relief granted by the learned Trial Court in favour of the first wife respondent/defendant no,5 [redacted] and her son, insofar as it concerns the immovable property, is liable to be modified to the extent indicated hereinabove, and the said relief shall be confined to the extent of the rights legally available to the concerned son respondent/defendant no.6 [redacted]

59. So far as the service-related monetary dues are concerned, the declaratory relief granted by the learned Trial Court cannot be sustained for want of the requisite consequential relief and ad valorem court fee. The parties shall be at liberty to avail the remedy available under Part X of the Indian Succession Act, 1925, for obtaining an appropriate succession certificate in respect of the dues falling within its scope.

60. The decree of the learned Trial Court is modified to the extent that the three children of deceased Sukhidas shall have equal shares in the immovable property belonging to him.

61. So far as the service-related monetary dues are concerned, the decree passed by the learned Trial Court granting declaratory relief in respect thereof is set aside. The parties shall be at liberty to avail the appropriate remedy under Part X of the Indian Succession Act, 1925, in respect of the said dues.

62. In view of the above, both the appeals being **FA-163-2023 & FA-209-2023** stand finally **disposed of** accordingly. The parties shall bear their own costs.

A decree be drawn accordingly.

sd/-
(Parth Prateem Sahu)
JUDGE

sd/-
(Sushma Sawant)
JUDGE

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