



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

**CIVIL REVISION PETITION NO.138/2016 (RES)**  
**C/W.**

**CIVIL REVISION PETITION NO.146/2016 (RES)**

**IN CRP NO.138/2016:**

**BETWEEN:**

- 1 . SMT. SHAKUNTALA @ SHAKUNTALAMMA  
W/O LATE NARASIMHAMURTHY  
AGED ABOUT 44 YEARS
- 2 . KUM. RUKMINI  
D/O LATE NARASIMHAMURTHY  
AGED ABOUT 21 YEARS
- 3 . SATISH  
S/O LATE NARASIMHAMURTHY  
AGED ABOUT 16 YEARS

PETITIONER NO.3 IS MINOR  
REPRESENTED BY HIS NATURAL  
GUARDIAN/MOTHER  
SMT. SHAKUNTALA @ SHAKUNTALAMMA  
I.E., THE 1<sup>ST</sup> PETITIONER HEREIN.  
THAT ALL THE PETITIONERS ARE  
PRESENTLY RESIDING AT BYADGERE POST,  
KADABA HOBLI, GUBBI TALUK  
TUMKUR DISTRICT-572 101.

... PETITIONERS

(BY SRI B.C.AVINASH, ADVOCATE)

AND:

- 1 . N.NUTAN KUMAR  
S/O LATE SRI NARASIMHAMURTHY  
AGED 45 YEARS  
R/AT 5<sup>TH</sup> CROSS,  
ANNANAGAR, WARD NO.30  
SHIMOGA CITY-577201
- 2 . CHIEF EXECUTIVE OFFICER  
ZILLA PANCHAYAT  
SHIMOGA-577201
- 3 . THE KARNATAKA GOVERNMENT  
INSURANCE DEPARTMENT  
SHIMOGA DISTRICT  
SHIMOGA-577201. ... RESPONDENTS

(BY SRI SATEESH CHANDRA K.V., ADVOCATE FOR R1;  
SRI B.J.ESHWARAPPA, ADVOCATE FOR R2;  
R3 IS SERVED)

THIS CRP IS FILED UNDER SEC.115 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 05.02.2016 PASSED IN P & SC APPEAL 2/2012 ON THE FILE OF THE PRINCIPAL DISTRICT JUDGE, SHIVAMOGGA, ALLOWING THE APPEAL FILED UNDER SEC.384 OF INDIAN SUCCESSION ACT AND ALLOWING THE JUDGMENT DATED 20.12.2008 PASSED IN P & SC 21/2003 ON THE FILE OF THE PRL. CIVIL JUDGE (SR.DN) AND CJM., SHIVAMOGGA, ALLOWING THE PETITION FILED UNDER SEC.372 OF INDIAN SUCCESSION ACT.

**IN CRP NO.146/2016:**

BETWEEN:

- 1 . SMT. SHAKUNTALA @ SHAKUNTALAMMA  
W/O LATE NARASIMHAMURTHY  
AGED ABOUT 44 YEARS

- 2 . KUM. RUKMINI  
D/O LATE NARASIMHAMURTHY  
AGED ABOUT 21 YEARS
- 3 . SATISH  
S/O LATE NARASIMHAMURTHY  
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PETITIONER NO.3 IS MINOR  
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SMT. SHAKUNTALA @ SHAKUNTALAMMA  
I.E., THE 1<sup>ST</sup> PETITIONER HEREIN.  
THAT ALL THE PETITIONERS ARE  
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TUMKUR DISTRICT-572 101. ... PETITIONERS

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AND:

- 1 . N.NUTAN KUMAR  
S/O LATE SRI NARASIMHAMURTHY  
AGED 45 YEARS  
R/AT 5<sup>TH</sup> CROSS,  
ANNANAGAR, WARD NO.30  
SHIMOGA CITY-577201. ... RESPONDENT

(BY SRI SATEESH CHANDRA K.V., ADVOCATE)

THIS CRP IS FILED UNDER SEC.115 OF CPC., AGAINST  
THE JUDGMENT AND DECREE DATED 05.02.2016 PASSED IN P  
AND SC.NO.1/2012 ON THE FILE OF THE PRL. DISTRICT JUDGE  
SHIVAMOGGA. DISMISSING THE COUNTER APPEAL AND  
SETTING ASIDE THE JUDGMENT AND DECREE DATED  
20.12.2008 PASSED IN P AND SC NO.27/2003 ON THE FILE OF  
THE FILE OF THE PRL. CIVIL JUDGE (SR.DN.) AND CJM,

SHIVAMOGGA, REJECTING THE PETITION FILED UNDER SEC.372 OF INDIAN SUCCESSION ACT.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.07.2023 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

These two revision petitions are filed by the petitioners in P&SC No.21/2003 challenging the common judgment passed by the Principal Civil Judge (Sr.Dn.) and CJM at Shivamogga, dated 20.12.2008, insofar as it relates to allotting only equal share in the death benefits of deceased Narasimhamurthy and also being aggrieved by the judgment passed by the Principal District Judge, Shivamogga in P&SC Appeal No.2/2012, wherein the First Appellate Court by setting aside the judgment passed by the Principal Civil Judge (Sr.Dn.) and CJM at Shivamogga in P&SC No.21/2003 and allowing the appeal filed by the respondent in P&SC Appeal No.1/2012 dated 5.2.2016, preferred these two revision petitions.

2. The factual matrix of case of the petitioners in P&SC No.21/2003 that the first petitioner is the wife of Narasimhamurthy and petitioner Nos.2 and 3 are the children of

Narasimhamurthy and petitioners in P&SC No.27/2003 first petitioner claims that she is the wife of Narasimhamurthy and second petitioner is the son of Narasimhamurthy and having perused the pleadings of both the P&SC Nos.21 and 27 of 2003 claims that they are the wife and children of Narasimhamurthy. The petitioners in P&SC No.21/2003 examined the first petitioner as PW1 before the trial Court and got marked the documents Exs.P1 to P34 and petitioners in P&SC No.27/2003 examined the first petitioner as RW1 and also examined one witness as RW2 and got marked document Exs.R1 to R18. The trial Court having appreciated both oral and documentary evidence allowed P&SC No.21/2003 and petition filed by the petitioners in P&SC No.27/2003 is rejected. However, held that petitioner Nos.1 to 3 in P&SC No.21/2003 and petitioner No.2 in P&SC No.27/2003 are entitled to equal share in the service benefits of deceased Narasimhamurthy and they are entitled to succession certificate and also ordered that petitioner No.1 i.e. Smt.Shakuntala is entitled to claim the appointment on compassionate ground on behalf of the death of Narasimhamurthy, as she is his nearest legal heir. Being aggrieved by the judgment of the trial Court,

the petitioner in P&SC No.27/2003 filed two appeals. The same is numbered as P&SC Appeal No.1 and 2 of 2012 i.e. second petitioner in P&SC No.27/2003, since the first petitioner was no more and in both the appeals, the petitioners in P&SC No.21/2003 are the respondents and Zilla Panchayath also made as respondent No.4 in P&SC Appeal No.2/2012 and KGID as respondent No.5. The first appellate Court on re-appreciation of both oral and documentary evidence comes to the conclusion that the first petitioner in P&SC No.27/2003 is the wife and second petitioner is the son and hence the appeal filed by said Nutan Kumar is allowed and counter appeal filed by the contesting respondent Nos.1 to 3 is rejected. Consequently, P&SC No.27/2003 is partly allowed and P&SC No.21/2003 is rejected and hence, these two revision petitions are filed by the petitioners challenging the orders.

3. The main contention in Civil Revision Petition No.138/2016 is that the trial Court as well as the first appellate Court had committed an error in passing an order and particularly trial Court committed an error in coming to the

conclusion that said Nutan Kumar is also entitled for a share in the service benefits of Narasimhamurthy and first appellate Court committed an error in reversing the finding of the trial Court and rejecting the claim made by the revision petitioners herein.

4. The main contention of the counsel that Smt.Lakshmi who claims that her marriage was solemnized in the year 1979 and Nutan Kumar was born on 4.9.1981, no documents have been produced before the trial Court and first appellate Court also failed to take note of Ex.R10, which is the self attested document of Smt.Lakshmi and by careful perusal of the said document, it seems that the said document is issued by the food and civil supplies authorities during the year 1998 and the name of the first respondent has been included on 13.7.2000 for the purpose of obtaining Driving Licence and the same is also admitted and in spite of the same, the trial Court considered Ex.R10. Even for the sake of argument, if Ex.R10 is admitted, as per the said document Jagadish is born during 1976, Manjunath is born during 1978 and Rajeshwari is born during 1981. It is the

case of the deceased Smt.Lakshmi that she married to Narasimhamurthy on 23.4.1979. When such being the case, the contents of Ex.R10 and the averments of Smt.Lakshmi do not tally, per contra contradict with each other, which clearly establishes the fact that deceased Smt.Lakshmi was never married to Narasimhamurthy and has admitted by Smt.Lakshmi in her cross-examination that name of the children mentioned in Ex.R10 are all foster children and as such the first respondent is admittedly not a son of the deceased Narasimhamurthy and the first appellate Court failed to consider this aspect at the time of passing of the judgment. The counsel also vehemently contend that both trial Court and first appellate Court failed to consider the document Ex.P4, Ex.P10, Exs.P14 to P22, P24 to P26, P31 and P32. The documents Exs.P19 to 26 are very clear that after the death of Narasimhamurthy, the second respondent has issued notices to the first petitioner herein to quit, vacate and hand over the Zilla Panchayath quarters and hence it is clear that the petitioners in P&SC No.21/2003 were residing along with said Narasimhamurthy when he passed away and the same also has not been considered and also contend that in document



Ex.P31 the deceased Narasimhamurthy after canceling the name of his mother Smt. Adiyamma, has included the name of his wife Smt.Shakuntala as nominee and these materials were not considered by the first appellate Court and hence the order impugned is liable to be set aside.

5. The counsel also in his argument vehemently contend that the petitioner No.1 in P&SC No.27/2003, she is not the legally wedded wife and counsel also contend that the first petitioner in P&SC No.27/2003 admitted the marriage of the revision petitioners herein, photograph and invitation only produced, no other documents are produced and hence requires interference.

6. Per contra, the counsel for the respondents in these revision petitions would vehemently contend that the petitioners in P&SC No.27/2003, first petitioner has examined herself as RW1 and also examined one witness as RW2 who witnessed the fact that petitioner No.1 and the deceased Narasimhamurthy lived together at Shivamogga and documents Exs.R5, R6 and R10 also evidence the fact of marriage and they lived together

and they are the legally wedded wife and son of Narasimhamurthy. It is also contended that RW2 clearly speaks with regard to, that they were lived together and Nutan Kumar born in the year 1981 and he was admitted to school and the document Ex.R13 series also contents the signature of Narasimhamurthy i.e.. progress card of said Nutan Kumar. The very reasoning given by the trial Court that Priest has not been examined to prove the marriage and committed an error and first appellate Court has rightly appreciated both oral and documentary evidence and it does not require any interference.

7. Having heard the respective counsel, the points that would arise for consideration by this Court are:

- i) *Whether the revision petitions filed by the revision petitioners requires to be allowed and to set aside the order passed in P&SC No.27/2003 recognizing the Nutan Kumar also entitled for a share in the service benefits of deceased Narasimhamurthy?*
- ii) *Whether the order impugned passed in P&SC Appeal No.1/2012 and 2/2012 requires to be set aside and committed an error in recognizing*

*only N.Nutan Kumar is entitled for service benefits?*

8. Having heard the respective counsel and also on perusal of the material available on record, particularly perusing the pleadings in P&SC No.21/2003, she claims that she is the legally wedded wife and petitioners Nos.2 and 3 are born to their marriage and also the pleadings in P&SC No.27/2003, first petitioner claims that she is the wife of Narasimhamurthy and second petitioner son born to their marriage took place in the year 1979. It is the claim of the petitioners in P&SC No.21/2003 that first petitioner marriage was solemnized with Narasimhamurthy in the year 1990 and on the other hand it is the claim of the first petitioner in P&SC No.27/2003 that her marriage was solemnized in the year 1979. There is no dispute with regard to the fact that said Narasimhamurthy was employed in Zilla Panchayath and only after his death, dispute arisen between the parties that too for the service benefits. It is also important to note that in any of the service records, said Narasimhamurthy not mentioned either the first petitioner in

both the petitions as respective wives and no such service records are available before the Court. It is also emerged in the evidence that though the first petitioner in P&SC No.21/2003 claims that her marriage was solemnized with Narasimhamurthy and she categorically admits that no invitation card was printed and also she was not examined any other witnesses in support of her marriage except relying upon the school records.

9. The first petitioner Smt.Lakshmi in P&SC No.27/2003, herself examined as RW1 and examined one witness RW3 and he speaks that Narasimhamurthy and Smt.Lakshmi were living at Annanagar, Shivamogga and he was having acquaintance with the family of Narasimhamurthy after 1982. The said son of Smt.Lakshmi, N. Nutan Kumar is also examined before the trial Court as RW2.

10. On perusal of the entire evidence and also through out there was a denial by both sides that they are not the wives of Narasimhamurthy, but nothing is elicited in the cross examination of any of the witnesses and oral evidence is not helpful to either of the parties. But documentary evidence of

petitioner in P&SC No.21/2003, no doubt relies upon Exs.P1 to P38 and those documents are with regard to death certificate and order issued by Zilla Panchayath, endorsement issued by the Tahsildar and voters list, genealogical tree and order issued by Zilla Panchayath, notice issued by Zilla Panchayath, letter to KGID, application to Zilla Panchayath, Shivamogga and main documents are Exs.P10 and P11 birth certificate of second and third petitioners in P&SC No.21/2003 and Exs.P12 and P13 are school certificates and other documents are correspondence between the department and main documents are Exs.P12 and P13, school certificates and no doubt the father name is mentioned as Narasimhamurthy and also the document produced by the respondent also, letter from Zilla Panchayath, Shivamogga and endorsement issued in terms of Ex.R2 and Ex.R3 photographs and Ex.R4 marriage invitation card, Exs.R5 and R6 are Transfer Certificates, Exs.R7 and R8 are identity cards and Ex.R9 is the positive photograph and Ex.R10 is the ration card. The main documents are Exs.R5 and R6 Transfer Certificates, wherein the father name is mentioned as Narasimhamurthy and it is also important to note that Exs.R13

to R17 progress reports of the school are also produced and having perused the document Ex.R13 to R17 they are the prior documents of alleged marriage between Smt.Shakuntala and Narasimhamurthy i.e. in the year 1990, but those documents are prior to the said marriage and signatures of the said Narasimhamurthy also got marked as Exs.R13A to R17A and these documents are before the dispute arises between the parties and also produced Ex.R18 Cumulative Record of Narasimhamurthy and when these documents came into existence prior to the dispute between the respective petitioner No.1 in both the case, Court has to give credence to those documents and accordingly the first appellate Court also having considered the material available on record, rightly comes to the conclusion that documents produced by petitioner No.1 in P&SC No.21/2003 that her marriage was solemnized in the year 1979, invitation card discloses the same and hence it is clear that marriage of Smt.Lakshmi was solemnized in the year 1979 with Narasimhamurthy and her evidence is also supported by RW2 and RW3 and RW3 is the neighbourer and who is competent to speak with regard to the relationship between Narasimhamurthy

and petitioner and the same is also considered in paragraph No.28 by the first appellate Court and also taken note of the fact that with regard to the scope of succession certificate and succession certificate only with regard to the movables and also for recovery of debt and I do not find any error committed by the first appellate Court in re-appreciation of both oral and documentary evidence available on record and question of compassionate appointment does not arise in a succession certificate as held by the first appellate Court. The first appellate Court also considering the material on record rightly comes to the conclusion that the Court has to decide amongst the contesting parties who is having a better material for issuance of succession certificate and also rightly comes to the conclusion that, after eleven years of her marriage, Smt.Shakuntala was married as claimed by her, question before the Court is, who is entitled for succession certificate. Admittedly, the first petitioner Smt.Lakshmi in P&SC No.27/2003 is no more, then question arises before the Court who is entitled for succession certificate. When the documentary evidence supports the case of the second petitioner Nutan Kumar and also the evidence of RW3 supports

that Lakshmi and Narasimhamurthy were living together at Shivamogga and subsistence of first marriage with Lakshmi, the question of second marriage with Smt.Shakuntala will not create any right and marriage *void-ab-initio* and hence the second wife wont get any right to share the benefits of the said deceased Narasimhamurthy and First Appellate Court not committed any error.

11. Now the question before the Court is with regard to the children who are born out of the second marriage whether they are entitled or not. The records discloses that there was a marriage between Smt.Lakshmi and Narasimhamurthy in the year 1979 and thereafter, Nutan Kumar was born in the year 1981 and I have pointed out that Exs.R5 and R6 are the Transfer Certificates and Ex.R13 progress certificates which contains the signature of Narasimhamurthy and those documents are prior to the alleged marriage between Smt.Shakuntala and Narasimhamurthy in the year 1990 and hence the Court has to give importance to those documentary evidence apart from



evidence of RW2 and hence he is a legally born son to Smt.Lakshmi.

12. The main contention of the counsel for the revision petitioner that Ex.R10 discloses the age and also mention the names of foster son, but she admits that all are foster sons and the said contention cannot be accepted when the documentary evidence available on record. Hence, I do not find any error committed by first appellate Court in coming to the conclusion that he is the son of Smt.Lakshmi and Narasimhamurthy.

13. Now the question is with regard to whether the children born to second wife i.e. petitioner Nos.2 and 3 in P&SC No.21/2023 are also entitled for the relief of service benefits of deceased Narasimhamurthy.

14. It is the contention of petitioner Nos.1 to 3 that the first petitioner is the legally wedded wife, second and third petitioners were born to the said valid marriage. But having considered the material on record, this Court comes to the conclusion that already there was a marriage between Lakshmi

and Narasimhamurthy in the year 1979 and the same is also considered by the trial Court as well as the revisional Court and also taken note of both oral and documentary evidence and according to the claim of Smt.Shakuntala, i.e. first petitioner that she is the legally wedded wife and not Smt.Lakshmi. The said contention is not accepted by considering the material on record, but no dispute with regard to the fact that petitioner Nos.2 and 3 are born to Smt.Shakuntala and Sri. Narasimhamurthy and whether they are entitled for service benefits is the question before this Court.

15. This Court would like to refer the judgment of this Court in the case of **SMT.NAGARATHNAMMA Vs. SMT.VENKATALAKSHMAMMA AND OTHERS** reported in **AIR 2000 KAR. 181**, a single bench of this Court in MSA No.372/1998 vide order dated 3.1.2000 held that, under Section 16 of Hindu Succession Act, children born from both of his wives would be entitled to succeed to retiral benefits in equal shares. It is observed that, his second wife however performed during life time of his spouse cannot be deemed to be validly performed

marriage. But, consequently, his second wife would not be entitled to succeed to his pensional benefits. But held that the children born to even second wife also entitled for retiral benefits of the deceased and the said principle is also applicable to the facts of the case on hand.

16. It is also important to note that the Division Bench in the case of **K.SANTHOSHA Vs. THE KARNATAKA POWER TRANSMISSION CORPORATION LIMITED, BANGALORE AND OTHERS** reported in **2022 (1) Kar.L.J. 154**, while dealing with the matter on appointment of compassionate ground considering Section 16 of the Hindu Marriage Act, 1955 comes to the conclusion that prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth and equality of opportunity in matters of public employment, right of a child born out of a void marriage held that, when the Parliament under Section 16 of the Act, has treated legitimate and illegitimate children on par and given them equal status, Regulation 2(1)(b) cannot restrict the expression family in relation to deceased employee to mean only his or her legally

wedded spouse and children jointly living with him. It is further held that no child is born in this world without a father and a mother and child has no role to play in his or her birth. Hence, there can be illegitimate parents, but no illegitimate children and the children born to even void marriage also cannot choose the parents. The law is evolved having considered that the children born to a second wife have not committed any sin for the act of their parents.

17. This Court also would like to rely upon the judgment of the Apex Court in the case of **RAMESHWARI DEVI Vs. STATE OF BIHAR AND OTHERS** reported in **(2000)2 SCC 431**, wherein also discussed with regard to the pension and family pension, children of second marriage and observed that the deceased employee, a Hindu, contracting second marriage during subsistence of his first marriage, children born out of the second marriage, according to the Hindu Marriage Act, 1956, were legitimate though the marriage itself was void. It is also observed that High Court therefore holding that the minor children of second marriage were entitled to the family pension,

but not the second widow and even observed with regard to the fact that it was amply established on the basis of oral and documentary evidence that the deceased employee and the second spouse were living as husband and wife, cohabitation for a long period gives rise to a strong presumption of wedlock and further held that presumption of marriage from long period of cohabitation, and when the Supreme Court also confirmed the same and held that the children born to the second marriage were entitled to family pension.

18. This Court also would like to refer the recent judgment of the Apex Court in the case of **UNION OF INDIA AND ANOTHER Vs. V.R.TRIPATHI** reported in **(2019) 14 SCC 646**, wherein discussed with regard to the compassionate appointment. But even considered the children born to the second wife also entitled for compassionate appointment and held that under Section 16 does not in any manner affect the principles declared in Section 16(1) in regard to the legitimacy of the child. The children born from void or voidable marriage and their status is legitimate children and also considered the earlier

judgment of *Tripathi case* and law is evolved even with regard to the compassionate appointment also that children born to second wife entitled for compassionate appointment. It is also important to note that the Apex Court held that children do not choose their parents, even children born to a void marriage also legitimate and legitimacy of such child is a matter of public policy to protect him or her from consequences of illegitimacy.

19. Having perused the principles laid down by the judgments of the Apex Court and also the judgment of this Court and also in *Tripathi Case*, the Apex Court held that under Section 16, child has legitimate, it would not be open to state to exclude such children from the benefit, such condition of exclusion is arbitrary and *ultra-vires* and again the Supreme Court states that children do not choose their parents and having considered the said judgment and also the material on record it is born out from the records, that the marriage of Lakshmi and Narasimhamurthy was held in 1979 and this Court also considered the school records and also the documents at Ex.R1 i.e. progress records of Sri.Nutan Kumar and also taken note of

the child born to second wife i.e. Smt.Shakuntala, trial Court rightly considered that the children of Narasimhamurthy through first wife and second wife are also entitled for the service benefits, but the revisional Court reverse the same only held that Nutan Kumar is entitled and ignored the legitimacy of other two children i.e. petitioners 2 and 3 in P&SC No.21/2003 and comes to the conclusion that they are not entitled and in view of the law involved from 2000 onwards, since this Court held in the judgment referred supra that they are entitled for retiral benefits and also subsequent judgment of the Apex Court and also the judgment of Division Bench of this Court, it is very clear that children will not choose their parents and also such people have not committed any sin of become the children of second marriage of a person who contracted the second marriage during the subsistence of first marriage and both the Courts have given the finding that the subsequent marriage is a second marriage, but only revisional Court comes to the conclusion that the other children born to the second wife are not entitled and the same requires to be set aside and hence, I pass the following

**ORDER**

i) The revision petitions filed by the petitioners are hereby allowed.

ii) The judgment of the trial Court passed in P&SC No.21/2003 and also the order passed in P&SC No.27/2003 are modified and the order passed in the revision petitions in respective revisions are also modified and held that Nutan Kumar who is the second petitioner in P&SC No.27/2003 and petitioner Nos.2 and 3 in P&SC No.21/2003 are equally entitled for retirement benefits of deceased Narasimhamurthy.

**Sd/-  
JUDGE**

ap\*