



2026:AHC:211989

Reserved on 7.7.2026

Delivered on 9.10.2026

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 3522 of 2011

Smt. Shashi

.....Appellant(s)

Versus

Smt. Sona Devi And Another

.....Respondent(s)

Counsel for Appellant(s)

: Dinesh Singh

Counsel for Respondent(s)

: Chetan Chatterjee

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. This appeal has been filed by the appellant with a prayer to set aside the order dated 24.9.2011 passed by the learned Additional District Judge, Court No.10, Saharanpur in Misc. Suit/Case No.90 of 2009, insofar as it affects the appellant.

Brief History of Case

2. The present appeal arises out of an application filed by Smt. Shashi for issuance of a succession certificate in respect of her alleged 1/2 share in the amount of Rs. 2,64,521/- lying with the department of late Sushil Kumar towards pension, gratuity, group insurance and other service benefits. She claimed that she was married to late Sushil Kumar on 16.06.1994 and no child was born from their marriage. According to her, late Sushil Kumar, who was serving as a Constable in the U.P. Police, left behind herself as his wife and Smt. Sona Devi as his mother as the only legal heirs. The application was opposed by Smt. Sona Devi, Smt.

Kusumlata, Smt. Babli alias Pravesh and minor Dev Sehgal, who claimed that Dev Sehgal was the son of late Sushil Kumar, born from his relationship with Mannu Devi, and was dependent upon the deceased.

Findings of Trial Court

3. The learned court, on consideration of the evidence, including the proceedings between Smt. Shashi and late Sushil Kumar in O.S. No. 346 of 2004 under Section 9 of the Hindu Marriage Act and Case No.42 of 2002 under Section 125(3) Cr.P.C., held that Smt. Shashi was the legally wedded wife of late Sushil Kumar and that there was no evidence showing dissolution of their marriage. It was, therefore, held that her status as wife did not cease merely because she was living separately and the alleged marriage of Mannu Devi with the deceased was not a valid marriage. However, on the basis of the family register and other documents, the learned Court found that minor Dev Sehgal was born out of the relationship between late Sushil Kumar and Mannu Devi. Applying Section 16 of the Hindu Marriage Act, the Court held him entitled to the service benefits of his father. Family pension was directed to be paid to minor Dev Sehgal through his guardian, Smt. Sona Devi, while the remaining benefits, namely gratuity, GPF and group insurance, were held payable to Smt. Shashi, Smt. Sona Devi and minor Dev Sehgal.

Submissions by learned counsels

4. Shri Dinesh Singh, learned counsel for the appellant has submitted that respondent No. 2, minor Dev Sehgal, is not a legal heir of late Sushil Kumar and, therefore, is not entitled to claim any service benefits of the deceased. It is submitted that under the provisions of the U.P. Police (Extra Ordinary Pension) Rules, 1961, family pension is payable to the widow of the deceased employee and the minor respondent has no

independent right to claim family pension. It is, therefore, submitted that the learned Court erred in directing payment of family pension to minor Dev Sehgal and in granting him a share in the service benefits of the deceased.

5. Shri Chetan Chatterjee, learned counsel for the respondents has supported the order passed by the learned Court below and submitted that minor Dev Sehgal was found to be the son of late Sushil Kumar on the basis of the family register and other documents on record. It is submitted that, even if the marriage of Mannu Devi with late Sushil Kumar is treated as void, the minor born from such relationship is treated as legitimate in view of Section 16 of the Hindu Marriage Act and cannot be deprived of the rights in the property and service benefits of his father.

6. It was further submitted that the learned Court below rightly distinguished between the status of Smt. Shashi as the legally wedded wife and the status of minor Dev Sehgal as the son of the deceased. The direction regarding family pension was made for the benefit of the minor and was to be operated through his guardian, Smt. Sona Devi. Therefore, no interference is required with the impugned order.

Conclusion

7. I have considered the submissions advanced by learned counsel for the parties and perused the record.

8. The question in the present appeal is whether the learned Court below, while exercising jurisdiction under Section 372 of the Indian Succession Act, could determine the entitlement of the parties to family pension and other retiral/service benefits of late Sushil Kumar.

9. The devolution of rights in property may take place in different ways.

Ordinarily, on the death of a person, his property devolves upon his legal heirs in accordance with the personal law applicable to him or, where applicable, under the provisions of the Indian Succession Act. Rights may also pass during the lifetime of a person by acts of transfer, such as sale or gift, or after his death in accordance with a valid testamentary disposition, subject to the restrictions imposed by law. These are essentially modes by which a right or interest belonging to a person passes to another.

10. There is, however, a distinct class of rights which arise independently by operation of law and do not form part of the estate of the deceased in the ordinary sense. Such rights are created and regulated by a statute or statutory rules, and their creation, extent and entitlement are governed by the very provisions under which the right comes into existence. The entitlement to such benefits, therefore, cannot be determined merely by applying the general law of succession. The person entitled to receive such benefit is the person whom the governing statute or rules recognise as eligible.

11. Pension, family pension and other service or retiral benefits payable upon the death of an employee fall, to the extent governed by the applicable statutory service rules, within this distinct category. The rules may prescribe the class of persons constituting the “family”, the order of preference amongst them and the circumstances in which a particular benefit becomes payable. Consequently, the question as to who is a legal heir of the deceased and the question as to who is entitled to receive a particular service benefit are two distinct questions. The former may be governed by the law of succession, whereas the latter has to be determined in accordance with the statutory rules governing that particular benefit.

12. Thus, the mere fact that a person is found to be a legal heir of the deceased does not, by itself, confer upon such person a right to receive every pensionary or service benefit payable upon the death of the employee. Where the legislature or rule-making authority has prescribed a specific class of persons entitled to a particular benefit, the entitlement has necessarily to be examined with reference to such statutory prescription and not merely with reference to the general law of succession.

13. This distinction is particularly important in the case of family pension. Family pension is not an asset which belonged to the deceased during his lifetime and which, upon his death, devolves upon his heirs. In **Jodh Singh v. Union of India, AIR 1980 SC 2081**, the Supreme Court held that family pension is admissible on account of the status of the person who becomes entitled to it on the happening of the prescribed event and does not form part of the estate of the deceased. The same principle was reiterated in **Smt. Violet Issac v. Union of India, (1991) 1 SCC 725**, wherein the Supreme Court held that family pension is governed by the relevant Rules, the employee himself has no title to it and, therefore, it does not form part of his estate or become subject to testamentary disposition.

14. Thus, entitlement to family pension has to be determined strictly in accordance with the applicable service rules. The fact that a person is a legal heir of the deceased does not, by itself, make such person entitled to family pension.

15. Section 6(g) of the Transfer of Property Act, 1882, which excludes specified pensions and stipends from transfer, also reflects the special character of such rights. The provision is, however, not by itself

determinative of succession to every retiral benefit; the entitlement to family pension must primarily be decided with reference to the applicable service rules.

16. The same principle is also reflected in the scheme of the Payment of Gratuity Act, 1972. Gratuity is not left entirely to the general law of succession. The Act itself provides for nomination, identifies the persons in whose favour nomination may be made, and prescribes a specific procedure for determination of the amount and for deciding disputes regarding the person entitled to receive gratuity. Section 7(4) of Payment of Gratuity Act specifically contemplates a dispute as to the person entitled to receive gratuity and confers jurisdiction upon the Controlling Authority to determine such dispute. The statutory scheme also recognises payment to a nominee or, in the absence of a nominee in the circumstances contemplated by the Act, to the heir of the employee. Thus, even in the case of gratuity, the entitlement cannot be determined merely by applying the general law of succession without examining the statutory scheme governing the benefit. The appropriate authority has to determine the claim in accordance with the applicable service rules and the provisions governing gratuity.

17. The rules governing pension, gratuity and other death-cum-retiral benefits also prescribe the persons falling within the expression “family” and the persons entitled to particular benefits. Once the rule-making authority has specifically identified the eligible persons, the general law of succession cannot be used to enlarge that class. A person may, therefore, be a legal heir of the deceased and yet not be entitled to a particular service benefit.

18. The jurisdiction under Section 372 of the Indian Succession Act must

also be kept within its statutory limits. A succession certificate under Part X of the Act principally concerns debts and securities. In **Dina Nath v. Balkrishna**, AIR 1963 ALL 46, this Court explained “debt” as a liability owing from one person to another, whether in cash or kind, secured or unsecured, ascertained or ascertainable, arising from an obligation, express or implied. The mere fact that an amount becomes payable after the death of an employee does not mean that its entitlement is to be determined only by the general law of succession. Where the amount is payable under a statutory service scheme and the scheme itself determines the person entitled to receive it, the governing rules have to be applied by the competent authority.

19. The decision in **Smt. Violet Issac** (supra) clearly illustrates this distinction. Family pension was held not to form part of the estate of the deceased and to be payable only to the person designated under the relevant Rules.

20. In the present case, the learned Court below, in proceedings under Section 372 of the Indian Succession Act, was not justified in finally determining entitlement to family pension and other service benefits merely on the basis of the parties’ status as legal heirs. The finding that minor Dev Sehgal was the son of late Sushil Kumar may be relevant for determining his status, but it does not, by itself, confer an independent right to family pension contrary to the applicable service rules.

21. The competent department is required to examine the rival claims and determine entitlement to family pension, gratuity, GPF, group insurance and other retiral/service benefits in accordance with the rules applicable to the deceased employee. If any claimant is aggrieved by such determination, he or she shall be at liberty to avail the remedy available in

law. Under such circumstances, the impugned order cannot be sustained.

22. In view of the aforesaid, this appeal succeeds and is, accordingly, **allowed**. The impugned order dated 24.9.2011 passed by the learned Additional District Judge, Court No.10, Saharanpur in Misc. Suit/Case No.90 of 2009, to the extent it finally determines entitlement to family pension and other service benefits, is hereby set aside. The matter shall be considered afresh by the competent authority in accordance with the applicable rules, independently and uninfluenced by the findings recorded by the learned Court below regarding ultimate entitlement.

(Anil Kumar-X,J.)

October 9, 2026
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