

Daisy vs the Southern Railway, Represented by Its Manager

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Court : Kerala

Decided On : Feb-13-2025

Judge : Honourable Mr. Justice Amit Rawal, Honourable Mr. Justice K. V. Jayakumar

Appeal No. : OP (CAT)/171/2024

Appellant : DAISY

Respondent : The Southern Railway, Represented by Its Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR THURSDAY, THE 13TH DAY OF FEBRUARY 2025 / 24TH MAGHA, 1946 AGAINST THE ORDER DATED 09.08.2024 IN OA NO.467 OF 2023 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH
PETITIONER/APPLICANT: DAISY, AGED 53 YEARS, MANNARKUNNUMAL HOUSE, CHEVAYUR PO, KOZHIKODE, PIN - 673017 BY ADVS. K. RAJEEV V. VISAL AJAYAN NIVEDITHA R. MENON SREELAKSHMI SURESH RESPONDENTS/RESPONDENT: 1 THE SOUTHERN RAILWAY, REPRESENTED BY ITS MANAGER

PARK TOWN, CHENNAI, TAMIL NADU, PIN - 600003

2 THE SENIOR DIVISIONAL PERSONNEL OFFICER DIVISIONAL OFFICE, SOUTHERN RAILWAY, PALAKKAD, PIN - 678002 BY ADV K.S.PRENJITH KUMAR THIS OP (CAT) HAVING COME UP FOR HEARING ON 13.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: C.R

JUDGMENT

K. V. JAYAKUMAR,J.

This original petition is directed against the order of the Central Administrative Tribunal in O.A.No.467 of 2023 dated 09.08.2024, whereby the following claims of the petitioner/applicant has been rejected: 1. Call for the records leading to Annexure A5 and set aside the same;

2. Issue a Declaration that the applicant is entitled for the grant of Family pension;

3. Issue an order directing the respondent to pay family pension to the applicant;

4. Issue an order directing the respondents to disburse the family pension benefits to the applicant withheld by the respondent after the death of the applicants husband K. Sunny;

5. Issue an order directing the respondents to pay the arrears of the Family Pension with 12% interest to the applicant;

6. To grant such other reliefs as this Honble Court may deem just and fit in the circumstances of the case; and

7. To award cost to the applicant.

2. The brief facts necessary for the disposal of the original

petition are as follows: One K. Sunny was a Loco Pilot in the Indian Railways, who entered in service on 15.12.1948. The said Sunny took voluntary retirement on

02.11.1977, and was drawing a pension from the Railways with effect from 31.05.2005. While so, the said Sunny died on 25.06.2012.

3. During his lifetime, he married one Theresa, and three

children were born in that wedlock. The marriage between Sunny and Theresa was dissolved by an order dated 28.09.2011 in OP No.361 of 2011 of Family Court, Kozhikode. The petitioner/applicant, Smt. Daisy, approached the Railways claiming that Sunny had married her on 15.12.2000 and is entitled to family pension. The petitioner submitted a request claiming family pension in the Southern Railway and vide Annexure A5 order, it was rejected on the ground that Sunny had married the applicant prior to the dissolution of his first marriage with Theresa, and subsequent dissolution of marriage will not ratify the marriage allegedly solemnized between Sunny and the petitioner.

4. Aggrieved by Annexure A5 order of the Southern

Railway, the petitioner, Daisy, knocked the doors of the Central Administrative Tribunal and preferred OA No.613 of 2014 claiming family pension. The Railway Board rejected the claim contending that Annexure R-2(2), the family membership certificate of Sunny of 2012, showed Theresa as the first wife and the applicant as second wife. However, another certificate issued by the same Village Officer one year thereafter and relied on by the applicant showed that the applicant alone as the second wife. The Tribunal dismissed the original application holding that the family membership certificate produced by the petitioner was not reliable and directed the petitioner/applicant, Daisy, to establish her relationship with the deceased Railway employee with valid documents.

5. Accordingly, the applicant approached Family Court,

Kozhikode, and instituted OP No.274/2023 to declare that the applicants marriage allegedly solemnized on 15.12.2000 with Sunny was legal and valid. Vide Annexure A7 judgment and decree, Family Court declared that the applicant petitioner was the legally wedded wife of Sunny. The petitioner/applicant approached the Tribunal again and preferred the present O.A. claiming family

pension on the basis of Annexure A7 judgment of the Family Court.

6. The respondents/Railways resisted the claim of the

petitioner/applicant on the ground that her marriage with Sunny was not legal and no legal right had devolved on her. The Railway contended that, during the lifetime of Sunny, he had not nominated either his wife Theresa, or the applicant as his nominee. The marriage with the applicant was not intimated to the Railways.

7. Railways further contended that the relationship of

Sunny with the petitioner as per registered document No.430 of 2000 registered at SRO, Kozhikode, is only a contract to live together. It was not a marriage as solemnized under the personal law applicable to the parties and the said documents do not confer legal status of wife to the petitioner.

8. The Tribunal noticing the rival contention of the parties rejected the claim of the petitioner.

9. Aggrieved by the order of the Tribunal, the petitioner, Daisy, preferred this original petition.

10. Adv. Prenjith Kumar, the learned Central Government

Counsel, submitted that the impugned order of the Central Administrative Tribunal is legally sustainable and no interference is warranted in this matter under Article 227 of the Constitution.

11. Per contra, Adv. K. Rajeev, the learned counsel for the petitioner/applicant submitted that the impugned order of the Central Administrative Tribunal is patently illegal and unsustainable in the eyes of law.

12. We have heard the rival contentions of the counsel for the parties and appraised the paper books.

13. The first submission by Adv. K. Rajeev is that the

Tribunal is bound by Annexure A7 decree and judgment of the Family Court, Kozhikode, whereby it is declared that the petitioner, Daisy, is the legally wedded wife of late Sunny. The Central Administrative Tribunal cannot sit in appeal against the

judgment and decree of the Family Court.

14. It is further submitted that the Family Court has

exclusive jurisdiction to deal with matters connected with the matrimonial issues. The Tribunal has no jurisdiction or power to sit in appeal against the judgment and decree of the Family Court.

15. Adv. K. Rajeev, further submitted that the Tribunal

has gone to the extent of sitting in appeal against the decree of the Family Court and found that the decrees were obtained by collusion and without impleading the necessary parties. Since the Central Administrative Tribunal had made some observations as to the validity of the judgment and decree of the Family Court, and thereby, the valuable right of family pension of the petitioner/applicant is denied to her. The Tribunal not only found that the decree obtained from the Family Court is not valid, but also opined that the petitioner had a live in relationship with deceased Sunny.

16. Adv. Prenjith Kumar, the learned Central Government

Counsel, submitted that Annexure A7 decree and judgment of the Family Court is an ex parte decree, wherein the necessary parties were not impleaded. The first wife, Theresa, was not arrayed as a party. Adv. Prenjith Kumar, CGC, further submitted that a person professing Christian religion cannot solemnize another marriage during the subsistence of his first marriage. In the instant case, the petitioner admits that, she married late Sunny before he obtained the divorce from his first wife, Theresa. Therefore, the alleged second marriage of the petitioner to the said Sunny is void ab initio. Even the subsequent dissolution of marriage between Sunny and Theresa will not validate the second marriage. Therefore, Adv. Prenjith Kumar submitted that, the first wife, Theresa, alone is entitled to the

family pension.

17. Upon hearing the rival submissions, the following

issues arises for our consideration for the adjudication of the

controversy.

1. Whether the Central Administrative Tribunal is bound by a decree and judgment of a Family Court?

2. Whether the Central Administrative Tribunal can sit in appeal against the decree and judgment of Family Court?

3. What is the legal effect of an ex parte decree?

18. Before further discussion, it may be useful to extract the relevant provisions of the Family Courts Act.

7. Jurisdiction.-(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any

district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends. Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely: -

(a) a suit or proceeding between the parties to a marriage for a

decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

19. On a mere perusal of Section 7 of the Family Courts Act, it is clear that the Family Court has got exclusive jurisdiction with respect to matrimonial matters.

20. In *Balram Yadav v. Fulmaniya Yadav* (2016 KHC

6310), the Apex Court observed that Family Courts have the exclusive jurisdiction as to the validity of the marriage, paragraph 7 of *Balram Yadavs* case (supra) reads thus:

7. Under S.7(1) Explanation (b), a Suit or a proceeding for a

declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under S.8, all those jurisdictions covered under S.7 are excluded from the purview of the jurisdiction of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. S.20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.

21. In *Rema T. v. A.K. Radhamani* (2024(1) KHC 406) this

Court observed that the Family Court has jurisdiction to entertain a suit or proceedings for a declaration as to the validity of a marriage or as to the matrimonial status of any person.

22. Section 19 of the Family Courts Act, 1984 further

provides that, an appeal lies to High Court from every judgment

or order passed by a Family Court. Section 19 reads thus: 19. Appeal.-

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on

facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974): Provided that

nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court. (6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

23. On bare perusal of Section 7 and Section 19, it is

crystal clear that, Family Court has exclusive jurisdiction and power to deal with issues connected with the matrimonial relations and an appeal lies to the High Court against the orders/judgments of the Family Court. The Central Administrative Tribunal has no power or jurisdiction to sit in appeal with respect to a decree/order passed by the Family Court. Such matters are beyond the scope of the authority conferred to the Central Administrative Tribunal under the Administrative Tribunals Act, 1985.

24. The next submission by the learned counsel for the

petitioner/applicant is that, eventhough, Annexure A7 decree is an ex parte decree, it is effective and valid, as if it were a bi-parte decree. The declaration from a Family Court with respect to the marital status of a party is a judgment in rem, and therefore, it is valid and binding, unless and until the judgment is set aside.

25. On the other hand, Adv. Prenjith Kumar submitted

that the decree and judgment of the Family Court were obtained without impleading the first wife, Theresa, her children alone were arrayed as parties in OP No. 274 of 2023.

26. The Tribunal, noticing the rival contentions of the

counsel for the parties, dismissed the original application, holding that Annexure A7 decree and judgment of the Family Court was a collusive one, apparently null and void as obtained without impleading the necessary parties. The relevant paragraphs of the

order of the Central Administrative Tribunal are extracted

hereunder:

12. It is evident that the applicant had sought for a declaration of her marriage with Sunny solemnized on 15.12.2000 as legal and valid. Admittedly, Theresa was the wife of Sunny during that period. Evidently in such a declaratory proceeding where applicant set up a rival claim as against Theresa, she ought to have been in the party array. Without arraying her in the party array, she arrayed the children born in her matrimonial relationship and a decree was obtained. It seems that the respondents therein appeared and submitted that they have no objection in declaring that the applicant was the legally wedded wife. The applicant has no case that Theresa was not alive during the relevant period. Under what circumstance, the necessary party to such a proceeding was excluded from an adjudication is not evident from the proceedings.

13. Relying on the decision of the Supreme Court in Sunder

Dass v. Ram Prakash [1977 (2) SCC 662] at paragraph 3, it was contended that a suit obtained in such a manner is null and void, and not sustainable. It was also contended that in a case where the decree was

obtained by not impleading the appropriate person in the party array, the matter is not legally sustainable. To supplement this contention the learned ACGSC relied on the decisions in Kiran Singh v. Chaman Paswan (AIR 1954 SC 340), Seth Hiralal Patni v. Sri Kali Nath (AIR 1962 SC

199) and Deena (dead) through LRs v. Bharath Singh (dead) through LR's [(2002) 6 SCC 336].

14. Evidently, applicant is relying on Annexure A7 decree and

judgment of the Family Court. The most essential party to

such a declaratory suit was not made a party. Hence, it seems that either the decree obtained was a collusive one or apparently null and void as one obtained without impleading the necessary party to the proceeding. Hence, I feel that it will not be legally justifiable to rely on such a document and to grant relief to the applicant. No relief can be granted to the applicant in the above circumstances.

27. On going through the order of the Central

Administrative Tribunal and upon hearing the submissions of the counsel across the Bar, we are unable to agree with the reasoning of the learned Central Administrative Tribunal. Annexure A7 decree and judgment obtained from a Family Court declared that the petitioner is the legally wedded wife of late Sunny, which is valid and effective.

28. The Family Court vide Annexure A7 judgment

categorically declared that the applicant is the legally wedded wife of deceased Railway employee, Sunny. It would be worthwhile to extract the relevant paragraphs of Annexure A7 judgment: 3. The respondents 1 to 3 entered appearance and filed counter admitting the petition averments. According to them they have no objection in declaring that the petitioner is the legally wedded wife of

their father late K. Sunny.

4. Heard.

5. Exts. A1 to A8 are marked.

6. The case of the petitioner is that she is the legally wedded

wife of Late K. Sunny whose marriage was solemnized on 15.12.2000. According to petitioner the marriage of Late K. Sunny with his former wife named Theresa stands dissolved by the Family Court, Kozhikode as per the judgment pronounced in OP 361/2011 dated 28.09.2011. According to petitioner she is entitled for the family pension of Late K. Sunny who was serving as Loco pilot in Indian Railway, Respondents 1 to 3 are the children of Late K. Sunny were born in the wedlock with Theresa and they admitted the claim of the petitioner. Ext.A1 is the copy of agreement bearing No.430/2000 registered before Sub Registrar Office, Kozhikode. Ext.A2 is the copy of judgment in OP 361/2011 dated 28.09.2011 of Family Court, Kozhikode. Ext.A3 is the copy of death certificate of Late K. Sunny, Ext.A4 is the legal heirship certificate of Late K. Sunny. Ext.A5 is the family membership certificate of Late K. Sunny. Ext.A6 is the pension payment order issued by Southern Railway to Late K. Sunny. Ext.A7 is the letter given by Railway to the petitioner and Ext.A8 is the copy of the order of Central Administrative Tribunal, Ernakulam dated 18.05.2015. On perusal of the document it is clear that petitioner is the legally wedded wife of Late K. Sunny. Hence she is also entitled for family pension and other benefits which are a legally wedded wife is entitled. Hence the petition is allowed. In the result, the petition is allowed. It is hereby declared that petitioner is the legally wedded wife of Late K.

Sunny whose marriage was solemnized on 15.12.2000. No order

as to costs. (Emphasis Supplied)

29. It is trite law that the ex-parte decree is valid and

effective, like the bi-parte/contested decree. The judgment and decree of a Family Court with respect to the marital status of parties is a judgment in rem. The Tribunal is bound by the decree, and it cannot sit in appeal and express an opinion as to the validity or otherwise of the decree.

30. The Honourable Apex Court in *Vijay Singh v. Shanti*

Devi & Another [(2017)8 SCC 837] observed that an ex parte decree is also a valid decree and it has the same force as a decree passed on contest, as long as it is not recalled or set aside, it is legal and binding upon the parties concerned.

31. The Honourable Apex Court in *State of Bihar and*

Others v. Sri Radha Krishna Singh and Others (1983 KHC 448) observed that: a judgment in rem like judgments, passed in probate, insolvency, matrimonial or guardianship or other similar, proceedings, is admissible in all cases whether such judgments are inter partes or not.

32. In *Deccan Paper Mills Co. Ltd. v. Regency Mahavir*

Properties and Others (2020 KHC 6494), the Honourable Apex Court had occasion to discuss about the right in rem and right in personam. Paragraph 20 of *Deccan Paper Mills Co. Ltd.s* case (supra) is extracted hereunder:

20. In *R. Viswanathan v. Rukn - ul - Mulk Syed Abdul Wajid*, 1963 KHC 444 : 1963 (3) SCR 22 : AIR 1963 SC 1, this Court set out the Roman law concept of jus in rem as follows: "Roman lawyers recognised a right either as a jus in rem or a jus in personam. According to its literal meaning "jus in rem" is a right in respect of a thing, a "jus in personam" is a right against or in respect of a person. In modern legal terminology a right in rem, postulates a duty to recognise the right imposed upon all persons generally, a right in personam postulates a duty imposed upon a determinate person or class of persons. A right in rem is therefore protected against the world at large; a right in personam against

determinate individuals or persons. An action to enforce a jus in personam was originally regarded as an action in personam and an action to enforce a jus in rem was regarded as an action in rem. But in course of time, actions in rem and actions in personam acquired different content. When in an action the rights and interest of the parties themselves in the subject - matter are sought to be determined, the action is in personam. The effect of such an action is therefore merely to bind the parties thereto. Where the intervention of the Court is sought for the adjudication of a right or title to property, not merely as between the parties but against all persons generally, the action is in rem. Such an action is one brought in the Admiralty Division of the High Court possessing Admiralty jurisdiction by service of process against a ship or cargo within jurisdiction. There is another sense in which an action in rem is understood. A proceeding in relation to personal status is also treated as a proceeding in rem, for the judgment of the proper court within the jurisdiction of which the parties are domiciled is by comity of nations admitted to recognition by other courts. As observed by Cheshire in his "Private International Law", Sixth Edition at page 109, "In Roman law an action in rem was one

brought in order to vindicate a jus in rem, i.e., a right such as ownership available against all persons, but the only action in rem known to English law is that which lies in an Admiralty court against a particular res, namely, a ship or some other res, such as cargo, associated with the ship." Dealing with judgments in rem and judgments in personam. Cheshire observed at page 653, "It (judgment in rem) has been defined as a judgment of a court of competent jurisdiction determining the status of a person or thing (as distinct from the particular interest in it of a party to the litigation); and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided..... A judgment in rem settles the destiny of the res itself 'and binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their

absence'; a judgment in personam, although it may concern a res, merely determines the rights of the litigants inter se to the res." (at pp. 43-44) Also, a judgment in rem has been described in *Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju*, 2006 KHC 23 : (2006) 1 SCC 212 : AIR 2006 SC 543 as follows: "10. ... A judgment in rem is defined in English law as "an adjudication pronounced (as its name indeed denotes) by the status, some particular subject - matter by a tribunal having competent authority for that purpose". Spencer Bower on Res Judicata defines the term as one which "declares, defines or otherwise determines the status of a person or of a thing, that is to say, the jural relation of the person or thing to the world generally"..." Judged by these authorities, it is clear that the proceeding under S.31 is with reference to specific persons and not with reference to all who may be concerned with the property underlying the instrument, or "all the world". Clearly, the cancellation of the instrument under S.31 is as between the parties to the action and their privies and not against all persons generally, as the instrument that is cancelled is to be delivered to the plaintiff in the cancellation suit. A judgment delivered under S.31 does not bind all persons claiming an interest in the property inconsistent with the judgment, even though pronounced in their absence.

33. In *Ramachandran Panakam and Others v. Union of*

India and Others (2021 KHC 739), this Court held that a judgment

in rem means an adjudication pronounced upon the status of a person by a competent court to the world generally. Paragraph 7 of Ramachandrans case (supra) is extracted hereunder: At this juncture, we deem it fit to consider a few decisions on judgment in rem as hereunder:

(1) In *Ganesh Singh v. Hari Singh and Others* (2003 (1) WLC

379), the High Court of Rajasthan held as under: 22. A judgment in rem means an adjudication pronounced upon the status of a person or thing, by a competent Court to the world generally. But it is not conclusive proof of the

facts constituting the reasons for the decision. In such

circumstances, the order is conclusive only as regards the status but not as regards the grounds on which it is based.

(ii) In *Satrucharla Vijaya Rama Raju v. Nimmaka Jaya Raju* (2006 KHC 23 : 2006 (1) SCC 212 : AIR 2006 SC 543) , a

judgment in rem has been described by the Hon'ble Apex

Court as under: 10. ... A judgment in rem is defined in English law as an adjudication pronounced (as its name indeed denotes) by the status, some particular subject - matter by a tribunal having competent authority for that purpose. Spencer Bower on Res Judicata defines the term as one which declares, defines or otherwise determines the status of a person or of a thing, that is to say, the jural relation of the person or thing to the world generally

(iii) In *C. L. Pasupathy v. Engineer in Chief (WRO)* (2009 (2)

MLJ 491), the Madras High Court has considered the expressions, judgment 'in rem' or a judgment 'in personam', as under: 27. Historically the term judgment in rem was used in Roman law in connection with actio but not in connection with jus actio in personam. The effect of actio in rem was to conclude against all mankind, but the effect of actio

in personam was to conclude with regard to the individual only. After the Roman forms of procedure had passed away, the term in rem survived to express the effect of an action in rem and gradually, it came to import generally. Xxxx xxxx
xxxx

29. Courts have held that, Judgment in rem, operates on a

thing or status rather than against the person and binds all persons to the extent of their interest in the thing, whether or not they were parties to the proceedings. The judgment in rem, as distinguished from judgment in personam is an adjudication of some particular thing or subject matter, which is the subject of controversy, by a competent Tribunal, and having the binding effect of all persons having interests, whether or not joined as parties to the proceedings, insofar as their interests in the res are concerned. In determining whether a judgment is in rem, the effect of the judgment is to be considered and it is tested by matters of substance, rather than by measure of any particular draft or form. A final judgment on the merits in a particular proceeding, in rem is an absolute bar to subsequent proceedings founded on the same facts and a judgment in rem may be pleaded as a bar to another action of the same subject matter, if its effect is to merge a distinct cause of action, but not otherwise. The judgment in rem operates as a bar or estoppel only to the res or matter within the jurisdiction of the Court and does not prevent a subsequent action for personal relief, which could not be obtained in the first action. Thus with respect to the res or status, a judgment in rem has to be conclusive and binding upon all the world that is, on all the persons, who may have or claim any right or interest in the subject matter of litigation, whether or not, they were parties to or participants in the action, atleast to the extent, that it adjudicates or establishes a status, title or res, constituting the subject matter of the action, a judgment in rem will operate as a estoppel, in a subsequent action in respect of the points or questions adjudicated.

(iv) In State of Uttar Pradesh and Others v. Arvind Kumar

Srivastava and Others (2014 KHC 4682 : 2015 (1) SCC 347) , the Hon'ble Apex Court dealt with the issue as to the entitlement of benefit of 'judgment in rem', with an intention to benefit all similarly situated persons irrespective of

whether they had approached the Court or not. It is held

therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Art.14 of the Constitution of India.

34. In *Narayanan Nambiar M.P. v. Ebin Viswanath V.*

(2024 KHC 228), this Court opined that judgment in rem would operate as res judicata against the world and judgment in personam would operate as res judicata only against the parties in dispute. It was further observed that judgment in rem is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Paragraphs 17, 18 and 19 in *Narayanan Nambiar M.P.s* case (supra) reads as follows: 17. A judgment is a formal expression of conclusive

adjudication of the rights and liabilities of the parties. The judgment

may operate in two ways, in rem or in personam. S.41 of the Evidence Act, 1872 which deals with relevancy of judgments in the context of conclusiveness of a judgment, order or decree reads thus; "41. Relevancy of certain judgments in probate, etc. jurisdiction.--A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as

against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. Such judgment, order or decree is conclusive proof-- that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation; that any legal

character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment,

order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property."

18. In *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*, 2011

(5) SCC 532 the Apex Court held that a right in rem is a right

exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject - matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time

claiming an interest in that property. Correspondingly, a judgment

in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide Black's Law Dictionary)

19. In *Vidya Drolia v. Durga Trading Corporation*, 2021 (2) SCC 1 a Three - Judge Bench of the Apex Court reiterated that a judgment in rem determines the status of

a person or thing as distinct from the

particular interest in it of a party to the litigation; and such a judgment

is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Such a judgment settles the destiny of the res itself and binds all persons claiming an interest in the

property inconsistent with the judgment even though pronounced in their absence. By contrast, a judgment in personam, 'although it may concern a res, merely determines the rights of the litigants inter se to the res'. Distinction between judgments in rem and judgments in personam turns on their power as res judicata, i.e., judgment in rem would operate as res judicata against the world, and judgment in personam would operate as res judicata only against the parties in dispute.

35. It is pertinent to note that, in the first round of

litigation, the Tribunal observed that a declaration to the effect that the petitioner is the legally wedded wife from a competent court is necessary for the claim of family pension of the petitioner. When the petitioner came up with such a declaration, the Tribunal took the view that Annexure A7 decree and judgment of the Family Court are not valid and legal.

36. In the light of the above discussion, we are of the

considered opinion that, the Tribunal is not justified in rejecting the claim of the petitioner/applicant. The Central Administrative Tribunal has no power or jurisdiction to sit in appeal against a

judgment pronounced by a Family Court. The Tribunal could

exercise jurisdiction within the limits of the power vested on it under Section 19 of the Administrative Tribunals Act, 1985.

37. The remedy available to a party aggrieved of a

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of Family Court is to prefer an appeal under Section 19 of the Family Courts Act, 1984.

38. A final judgment/order of a Family Court, declaring

the marital status of parties to a marriage is a conclusive proof of their status. Such a judgment is judgment in rem. In other words, it upholds the right of a person, against the whole world under Section 41 of the erstwhile Indian Evidence Act.

39. The upshot of the above discussion is that the

Tribunal has exceeded its jurisdiction vested in law, when the Tribunal sat in appeal against a judgment of Family Court declaring the marital status of the parties. The impugned order of the Central Administrative Tribunal is legally unsustainable and liable to be set aside. We, therefore, set aside the order of the Central Administrative Tribunal in O.A.No.467/2023. The original petition is allowed. Consequently, the original application is allowed. The respondents are directed to disburse the family pension to the petitioner/applicant along with interest at the rate of 6% per annum for the arrears. The respondents shall complete the said exercise within a period of two months from the date of receipt of this judgment. Sd/- AMIT RAWAL JUDGE Sd/- K. V. JAYAKUMAR JUDGE msp APPENDIX OF OP (CAT) 171/2024 PETITIONER ANNEXURES Annexure A1 EXHIBIT P1 - O.A. NO. 180/467/2023 BEFORE THE

CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE A1 - TRUE COPY OF THE PENSION PAYMENT ORDER ISSUED TO LATE K.SUNNY, HUSBAND OF THE PETITIONER DATED 02.08.2005 Annexure A2 EXHIBIT P1 - O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE A2- TRUE COPY OF THE DEATH CERTIFICATE ISSUED BY KOZHIKODE CORPORATION DATED 28.06.2012 Annexure A3 EXHIBIT P1 - O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL -

ANNEXURE A3 - TRUE COPY OF THE SURVIVING FAMILY MEMBER CERTIFICATE DATED 30.08.2013 ISSUED BY CHEVAYUR VILLAGE OFFICE
Annexure A4 EXHIBIT P1 - O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE A4 - TRUE COPY OF THE ORDER DATED 28.09.2011 IN O.P. NO. 361/2011 ON THE FILE OF THE FAMILY COURT, KOZHIKODE.

Annexure A5 EXHIBIT P1 - O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE A5- TRUE COPY OF THE ORDER DATED 10.12.2013 OF THE SECOND RESPONDENT Annexure A6 EXHIBIT P1 - O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE A6- TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM DATED 18.05.2015 Annexure A7 EXHIBIT P1 - O.A. NO. 180/467/2023 BEFORE THE

CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE A7- TRUE COPY OF THE DECREE AND JUDGMENT OF THE HON'BLE FAMILY COURT, KOZHIKODE DATED 01.07.2023 IN 274/2023 Annexure R(2)-1 EXHIBIT P2 - REPLY STATEMENT FILED BY THE RESPONDENTS IN O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE R2(1) - TRUE COPY OF PENSION PAPER FURNISHED BY LATE K.SUNNY REGARDING DETAILS OF DEPENDENTS TO THE RAILWAY DEPARTMENT Annexure R(2) - 2 EXHIBIT P2 - REPLY STATEMENT FILED BY THE RESPONDENTS IN O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE R(2)-2 - TRUE COPY OF THE SURVIVING FAMILY MEMBERSHIP CERTIFICATE DATED 14.08.2012 ISSUED BY VILLAGE OFFICER, CHEVAYUR Annexure R(2)-3 EXHIBIT P2 - REPLY STATEMENT FILED BY THE RESPONDENTS IN O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL - ANNEXURE R(2)-3- - TRUE COPY OF STATEMENT OF PARTICULARS OF FAMILY MEMBERS FOR FAMILY PENSION IN THE PRESCRIBED FORM SUBMITTED BY LATE K.SUNNY TO THE RAILWAY DEPARTMENT

Exhibit P1 ORIGINAL APPLICATION, O.A. NO. 180/467/2023 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL DATED 02.10.2023 Exhibit P2 REPLY STATEMENT FILED BY THE RESPONDENTS IN O.A. NO. 180/467/2023 DATED 25.03.2024 Exhibit P3 REJOINDER STATEMENT FILED BY PETITIONER IN O.A. NO. 180/467/2023 DATED 16.06.2024 Exhibit P4 ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL IN O.A. NO. 180/467/2023 DATED 09.08.2024

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