

Champa Devi and ors Vs. Gulabi Devi

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Court : Madhya Pradesh

Decided On : Jul-03-2013

Appellant : Champa Devi and ors

Respondent : Gulabi Devi

Advocate for Def. : Shri. A. K. Singh

Advocate for Pet/Ap. : Shri. B. K. Bais

Judgement :

HIGH COURT OF MADHYA PRADESH AT JABALPUR SINGLE BENCH
PRESENT : HON'BLE SHRI JUSTICE N. K. GUPTA CIVIL REVISION
NO.351/2004 Champa Devi and 4 others -VERSUS- Gulabi Devi
..... Shri B. K. Bais,
counsel for the applicants. Shri A. K. Singh, counsel for the respondent.
.....

ORDER

(Delivered on the 3rd day of July, 2013) The applicants have preferred an application under Section 372 of Indian Succession Act, 1925 (hereinafter it would be referred to as the 'Act') before the Civil Judge, Class I, Baidhan for grant of a succession certificate due to death of Kailash Singh who, was working as a driver-cum-mechanic in Jhingurda Pariyojna and his various claims like provident fund, gratuity etc. were assessed to be of Rs.5,00,000/- That application was registered

as Case No.5 of 2002 and dismissed vide order dated 27.6.2003. Miscellaneous Appeal No.20 of 2003 was also dismissed vide order dated 16.4.2004 passed by the learned First Additional Judge to the Court of First Additional District Judge, Sidhi. Being aggrieved with the aforesaid orders the applicants have preferred the present revision. 2 Civil Revision No.351/2004 2. The applicants have moved an application for grant of succession certificate before the trial Court with the averments that the applicant no.1 Champa Devi was wife of the deceased Kailash Singh, who was working as a driver- cum-mechanic, in Jhingurda Pariyojna of NCL, Singrouli and he expired on 21.12.2001. It was also pleaded that the remaining applicants were the children of the deceased. When a notice was published in newspapers, Gulabi Devi came forward to raise the objection that she was the wife of the deceased Kailash Singh and there was no concern of the applicants with the deceased. The learned Civil Judge, Class I, after considering the evidence adduced by the parties found that Gulabi Devi was the first wife of the deceased and the deceased made a nomination performa in favour of Gulabi Devi in his employment and therefore, Champa Devi was not entitled to get anything. Consequently, the succession application filed by the applicants was dismissed. The appeal filed by the appellants was also dismissed.

3. I have heard the learned counsel for the parties.

4. The learned counsel for the applicants has tried to establish that Champa Devi was residing with the deceased for a pretty long time and therefore, her marriage with Lt. Kailash Singh should be presumed. He has also placed his reliance upon the judgment passed by Hon'ble the Apex Court in the case of Shipra Sengupta Vs. Mridul Sengupta and others . [2010 (III) MPJ.(SC) 208]. in which it is laid that 3 Civil Revision No.351/2004 the nominee of the deceased is entitled to get the amount but, the amount received by the nominee is to be distributed amongst all the successors of the deceased. By some nomination, no any beneficial interest is accrued on the nominee. However, looking to the evidence adduced by the parties it can be presumed that the applicant Champa Bai was residing with the deceased since he was working in that employment. Initially the deceased Kailash Singh was working in Army but after his retirement from the job of Army he was employed again in NCL, Singrouli. If the marriage of Champa Devi is presumed with the

deceased Kailash Singh due to their long period of cohabitation then since first wife of the deceased Kailash Singh was alive therefore, the second marriage done by the deceased Kailash Singh with Champa Devi was null and void because he did not receive a divorce from Gulabi Devi and therefore, the applicant Champa Devi did not get any right of wife in respect of the deceased Kailash Singh.

5. The learned counsel for the applicants has also contended that though marriage was null and void but the applicants no 2 to 5 were the children of the deceased and according to the law laid down by Hon'ble the Apex Court in the case of Rameshwari Devi V. State of Bihar and others. (2000 LAB. I.C.

976) they could get share in the property of the deceased. It is true that the applicants No.2 to 5, born through a woman who was not a valid wife of the 4 Civil Revision No.351/2004 deceased Kailash Singh but still they were children of the deceased and therefore, as per law laid down by Hon'ble the Apex Court in the case of Rameshwari Devi (supra) they could get a share in the family pension and gratuity along with the other successors of the deceased Kailash Singh if they could have proved that they were the children of the deceased.

6. The learned Civil Judge and Additional District Judge had discussed the various issues in detail on the basis of the facts and circumstances and evidence adduced by the parties but, the learned Civil Judge did not give his clear opinion as to why the applicants no.2 to 5 were not entitled to get the succession certificate in their favour. If the entire evidence adduced by the parties is considered then the evidence adduced by the witnesses of Objector clearly indicates that the deceased was visiting to the place of the Objector i.e. Village Chandpur from time to time and the sons of Gulabi Devi were involved in the cultivation on the fields available at Village Chandpur. Santosh Singh (NAW2) had visited the house of his father at Singrouli from time to time and he claimed that he did the cremation ceremony of his father. However, by such ignorance the evidence adduced by the applicants cannot be rebutted. The applicants have submitted Ex.P/1 a pass book of the State Bank and a copy of order relating to a compromise took place between the deceased and Champa Bai in Miscellenous Criminal Case 5 Civil Revision No.351/2004 No.44 of 1990 relating to maintenance under Section 125 of Cr.P.C.

By such document, it is apparent that in the year 1990 the applicants Sonu and Jitu were aged 3 and 2 years respectively and Champa Bai claimed maintenance for them also and a compromise took place between the deceased Kailash Singh and Champa Devi about maintenance etc. Looking to such documents and documents Ex.P/7 to P/11, it is apparent that Champa Devi was continuously residing with the deceased and the deceased got the medical cards prepared of all the applicants as his wife and children. By the admission of the deceased in compromise order Exs.P/3 and P/4, it is apparent that the deceased Kailash Singh accepted that the applicant Champa Devi was residing with him along with two sons and he accepted to pay the maintenance to the sons and therefore, it shall be presumed that the applicants Sonu and Jitu were born due to cohabitation of the applicant and deceased Champa Bai.

7. Looking to the documents and statement of Champa Devi, it is proved that the deceased Kailash Singh had a second family at his working place. He had admitted in the maintenance proceedings that Jitu and Sonu were his sons. After conclusion of the maintenance proceedings, Champa Devi continued to reside with the deceased Kailash Singh and therefore, remaining applicants were born. The Objector and her sons could not rebut the evidence given by Champa Devi and various medical documents etc. filed by her in the matter. 6 Civil Revision No.351/2004 Under such circumstances, the applicants have proved that the deceased Kailash Singh kept the applicant Champa Devi as second wife and the respondents no.2 to 5 were born to her through the deceased Kailash Singh. In the light of the judgment passed in the case of 'Rameshwari Devi' (supra) the children born due to an invalid marriage are also entitled to get share in family pension and gratuity. Under such circumstances, the applicants no.2 to 5 were entitled to get share in the family pension and gratuity. Under such circumstances, the applicants no.2 to 5 were entitled to get a share in the pensionary benefits related to the deceased Kailash Singh.

8. On the basis of the aforesaid discussion, it is apparent that both the Courts below have denied the rights of the applicants no.2 to 5 in the orders passed by them and therefore, the orders passed by both the Courts below are required to be set aside up to that extent. The deceased Kailash Singh left his first wife and four

sons and four children from the second wife and therefore, there are nine successors of the deceased Kailash Singh. Each of them is entitled to get a share of 1/9th portion in its favour from the movable property (pensionary benefits) of the deceased Kailash Singh. On the basis of the aforesaid discussion the revision filed by the applicants can be allowed and hence is hereby partly allowed. The impugned orders passed by the trial Court and appellate Court are set aside and it is directed that the trial 7 Civil Revision No.351/2004 Court shall issue a succession certificate in favour of the applicants no.2 to 5 that each of them were entitled to 1/9th share in the provident fund, gratuity etc. However, since only wife is entitled to get the family pension and therefore, the applicants shall not get anything towards the family pension etc. The trial Court is directed to issue the succession certificate in favour of the applicants accordingly with the direction that the total liquidated sum payable to the applicants shall be calculated before issuance of the succession certificate.

9. A copy of the order be sent to both the Courts below along with their records for information and compliance. (N.K.Gupta) Judge 03.07.2013 bina

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