

Sanju Devi and ors. Vs. State and anr.

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Court : Delhi

Decided On : Jan-06-2014

Judge : Valmiki J. Mehta

Appellant : Sanju Devi and ors.

Respondent : State and anr.

Advocate for Def. : Ms. Ritgaya Rai

Advocate for Pet/Ap. : Mr. Ghanshyam

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO No.477/2013 6th January , 2014 % SANJU DEVI AND ORS. Through:Appellants Mr. Ghanshyam, Advocate. VERSUS STATE AND ANR. Through: Respondents Ms. Ritgaya Rai, Advocate for respondent No.1. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. By this first appeal under Section 348 of the Indian Succession Act, 1925 (hereinafter referred to as the Act) the appellants/petitioners impugn the order of the Court below dated 18.9.2013 which has dismissed the petition filed for a succession certificate on the ground that there is no admitted factum of the death of Sh. Brij Kishore and the petitioners are only relying upon presumption of civil death on account of Brij Kishore not available for the last seven years, and thus the aspect of civil death will have to be decided in a civil

court in summary proceedings seeking a succession certificate.

2. Trial Court has not decided the case on merits but observed that proceedings under the Act for obtaining succession certificate are summary proceedings and the petitioner has to really file a civil suit to establish the factum of death and then claim a decree accordingly from the civil court.

3. I do not find any illegality whatsoever in the impugned order dated 18.9.2013 because proceedings under the Act whether for a probate or letters of administration or succession certificate commence on the factum of death of the concerned person with respect to whose estate a succession certificate or probate or letters of administration is sought. Where death itself is not a fact, and the death itself is in question, it is necessary that the civil court passes a decree with respect to declaration of death of the concerned person, namely Sh. Brij Kishore in this case, and only thereafter would the benefits of the estate of the deceased fall to the appellants/petitioners. This is all the more so in the present case because one of the legal heirs of the deceased Sh. Brij Kishore, namely the mother Smt. Dulari Devi is sued as a respondent in the proceedings and thus the appellants/petitioners are not the old successors-in-interest of late Sh. Brij Kishore.

4. Counsel for the appellant raised two arguments before this Court. One is on the basis of Section 373(3) of the Act and other is on the basis of the judgment of the Supreme Court in the case of The State of Punjab and Anr. Vs. Shamlal Murari and Anr. (1976) 1 SCC 719. The first argument which is raised as per Section 373(3) of the Act is misconceived for the reason that no doubt the provision allows examination of questions of facts as per the appropriate circumstances in the case, however, the issue and question of fact which pertains to the factum of civil death, has necessarily to be established in the civil court inasmuch as the proceedings under the Indian Succession Act proceeds on the actual factum of death and not because of a deemed civil death on account of nonavailability of the concerned person for a particular period of time. Section 373 (3) cannot be held to be dealing with question of fact of the death of the person whose death is in issue. In any case, I fail to understand how the petitioners/appellants are prejudiced because the relief which they will get in the succession certificate case, they will

get the same relief in the civil suit, and the appellants/petitioners are today not at loss because no Court fees have been paid and which would have to be paid only when succession certificate would have been granted.

6. So far as the second argument made on the basis of the judgment of the Supreme Court in the case of Shamlal Murari (supra) is concerned, the argument is misconceived because all that the judgment of the Supreme Court states in the case relied upon is that procedural law is not tyrant but servant. In the present case, we are not dealing with the procedural law but the substantial law i.e the Indian Succession Act, 1925. Therefore, in my opinion, the judgment relied upon by the appellants has no application.

7. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. JANUARY06 2014 Ne FAO No.477/2013

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