

**Usha Vs. Harshal and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/120368](http://sooperkanoon.com/120368)

**Court :** Patna

**Decided On :** May-14-2002

**Judge :** Deepak Verma and A.K. Gohil, JJ.

**Appeal No. :** Misc. Appeal No. 71 of 1998

**Appellant :** Usha

**Respondent :** Harshal and ors.

**Advocate for Def. :** Mr. M.I. Khan, Mr. Khan

**Advocate for Pet/Ap. :** Mr. A.K. Sethi, Mr. Sethi

**Disposition :** Appeal Dismissed

**Prior history :** 1. The appellant has filed this Misc. Appeal under Section 384 of the Indian Succession Act being aggrieved by the order dated 13.11.1997 passed in Succession Case No. 7 of 1993 by the IIInd Additional District Judge, Indore granting succession certificate to Respondent No. 1/original applicant Harshal s/o late Ratnakar Vipat. 2. Brief facts of the case, for disposal of this appeal, are that one deceased Ratnakar Vipat was married to Snehlata on 24.1.1977. Out of the wedlock Respondent No. 1 Ha

**Judgement :**

1. The appellant has filed this Misc. Appeal under Section 384 of the Indian Succession Act being aggrieved by the order dated 13.11.1997 passed in Succession Case No. 7 of 1993 by the IInd Additional District Judge, Indore granting succession certificate to Respondent No. 1/original applicant Harshal s/o late Ratnakar Vipat.

2. Brief facts of the case, for disposal of this appeal, are that one deceased Ratnakar Vipat was married to Snehlata on 24.1.1977. Out of the wedlock Respondent No. 1 Harshal was born on 22.9.1978. Due to personal disputes and differences Smt. Snehlata deserted and the husband late Shri Ratnakar Vipat took divorce. Unfortunately Ratnakar died on 2.4.1993 at Indore. After the desertion, Respondent No. 1/applicant was residing with his mother. Deceased Ratnakar Vipat was working in the Agricultural Department, Government of Madhya Pradesh, at Indore. Respondent No. 1 filed an application for issuance of Succession Certificate in respect of a sum of Rs. 30,000.00 being the amount of Family Benefit Fund; Rs. 60,000.00 on account of G.P.F.; and Rs. 40,000.00 on account of L.I.C. proceeds. It appears that during the period of disputes and distances, the deceased nominated her sister Ku. Usha Vipat d/o Bhalchandra in the service record. In the application, it was submitted on behalf of Respondent No. 1 that he is the only son of deceased Ratnakar Vipat, during the life-time Ratnakar Vipat was maintaining his son and looking after his welfare. It was further submitted in the application that the name of the appellant/sister was only nominated as a trustee. Thus, Respondent No. 1 is entitled to get Succession Certificate in his favour and the appellant is not entitled to get the same as she is neither legal heir nor gets any right under the law. The Deputy Director, Agriculture also submitted the written-statement and stated therein that on the basis of nomination, the Department has already paid a sum of Rs. 30,000.00 of Family Benefit Scheme on 7.7.1993 to appellant and the amount of pension, gratuity and provident fund was still payable. The appellant also filed written-statement and submitted that Respondent No. 1 Harshal is not the son of deceased Ratnakar Vipat as he is not born out of the aforesaid wedlock. A decree for divorce was granted by the Court of Vth Additional District Judge, Indore in Case No. 20/1978 on 31.1.1979.

3. The trial Court after framing of issues, recording evidence and also hearing the arguments, passed the judgment and recorded a finding that Respondent No. 1 Harshal is the son of late Ratnakar Vipat and being his son he is entitled for the amount claimed in the application. It was further held that wife Smt. Snehlata had taken divorce from the deceased and thereafter he had nominated her sister/appellant in the official record but the trial Court found that the aforesaid nomination was as a trustee because she is not the legal heir of the deceased Ratnakar Vipat. The trial Court after placing reliance on two decisions in the case of Asha Moyal v. Smt. Trivenibai reported in 1995 (1) MPWN 22, and in the case of Kiran Chhabra v. Divisional Manager Life Insurance Corporation reported in 1991 (II) MPWN 76, held that Respondent No. 1 Harshal being the son of the deceased is the legal heir and is entitled for Succession Certificate and the status of the appellant was as of trustee and ordered for grant of Succession Certificate for the amounts mentioned in the application. Being aggrieved the appellant has filed this appeal.

4. We have heard Mr. A.K. Sethi, learned Counsel for appellant; Mr. M.I. Khan, learned Counsel for Respondent No. 1; and Mr. S.S. Kemkar, learned Government Advocate for Respondent Nos. 2 and 3 and perused the record.

5. The submission of Mr. Sethi, learned Counsel for appellant was that the trial Court has not properly considered the facts of the case when a decree of divorce was granted, there was no question to believe that Respondent No. 1 was born out of the said wedlock and thus he was not entitled to file application for grant of Succession Certificate as he is not the legally born son of deceased Ratnakar Vipat.

6. In reply Mr. Khan, learned Counsel for Respondent No. 1 supported the impugned judgment under challenge.

7. Having heard learned Counsels appearing for the parties, we are of the opinion that this appeal has no merit and is liable to be dismissed. After appreciating the evidence of P. W. 1 Harshal, P.W-2 Snehlata and the other documentary evidence on record, the trial Court came to the conclusion that Respondent No. 1 Harshal is the legally born son of deceased Ratnakar Vipat. It was also found proved that

there was a divorce between deceased Ratnakar Vipatand his wife Smt. Snehlata and there is also no dispute that the name of the appellant was nominated in the official record for getting the retiral benefits but the trial Court found that in the presence of the legitimate son of deceased, the nomination can only be treated as trustee.

8. In the case of Smt. Sarbati Devi and Anr. v. Smt. Usha Devi reported in : [1984]1SCR992 , it has been held by the Supreme Court that -- 'A mere nomination made under Section 39 of the Insurance Act, 1938 does not have the effect of conferring on the nominee any beneficial interest in the amount payable on the death of the assured. The nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them'. In fact in the case before Supreme Court there was a nomination under Section 39 of the Insurance Act in favour of the nominee and in that context the section was interpreted by the Supreme Court. Here in this case, the facts are quite different and the case of the appellant is rather more weak. Under nomination the appellant is not enjoying any statutory protection. The appellant could not show us that on the strength of which law the nominee is entitled to retain the money. Thus, we find that under Section 8 of the Hindu Succession Act, male Hindu is the class I heir. Therefore, under the provisions of the Hindu Succession Act, the son would be entitled to get the amount from the property of the father. In view of this settled position, the nominee has no interest in the amount due under the beneficial scheme of the Government. Thus, we find that the trial Court was justified in holding that the status of the appellant is as of trustee but she would not have any interest in the amount due under the schemes and payable to the legal heirs of the deceased. In this case, Respondent No. 1 is only dependent son of deceased, therefore, under the law he is entitled to succeed the property of his father. Learned Counsel for appellant also could not shows us that what else would be the status of a nominee under the general law, other than a trustee when the legal heirs of heirs of the deceased are available to claim the interest in the dues.

9. Under the facts and circumstances of the case, such a nomination shall be ineffective if the deceased is survived by his legal heirs. A nomination does not confer any rights but it only indicates the person who is entitled to collect the amount due. In the absence of any other provisions, the provisions of Hindu Succession Act shall prevail and all other modes of succession shall be treated as superseded under the law as against the provisions of Hindu Succession Act. Similar view was taken by the learned Single Judge of this Court in the above two cases cited (supra).

10. Thus, it is clear that a nominee cannot claim any better right in presence of legal heir of Class I. The sister being heir of Class II may claim any right when heirs of Class are not available.

11. In view of the foregoing discussions, we do not find any life in this appeal. Accordingly it fails and is hereby dismissed with no order as to costs. Record be returned.

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