

**Most. Nirmala Devi and ors. Vs. Virendra Kumar Tripathi and ors.**

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**Court :** Patna

**Decided On :** Jan-21-2002

**Judge :** S.N. Pathak, J.

**Appeal No. :** Misc. Appeal Nos. 462 and 463 of 1997

**Appellant :** Most. Nirmala Devi and ors.

**Respondent :** Virendra Kumar Tripathi and ors.

**Disposition :** Appeals Allowed

**Judgement :**

**S.N. Pathak, J.**

1. These two Miscellaneous appeals are directed against the orders dated 18th September, 1997 passed by the Additional District Judge, XI, Patna, in Succession Certificate Case Nos. 66 of 1993 & 138 of 1995. The opposite party of that case, namely, Bimla Devi is the appellant before this Court.

2. The relevant facts of the case are that there was one Mahendra Narayan Sharma @ Mahendra Narayan Tripathi who died issueless leaving behind his wife Brij Kishori Devi who was living in Flat No. B-29, People's Co-operative Colony, Kankarbagh, Patna 20. On her death, one Birendra Kumar Tripathi filed the aforesaid succession case claiming herself to be the sole heir of Brij Kishori Devi,

as her Dewar, (the full brother of her husband). This succession case was contested by the appellant and she also claimed to be the sole heir of Brij Kishori Devi, as the full sister of the deceased husband Mahendra Narayan Tripathi. Besides filing objection in the succession case filed by Virendra Kumar Tripathi, Nirmala Devi filed a separate succession case of her own (Succession Case No. 138/95). Both the cases were heard analogous and a common judgment was passed and a succession certificate was granted to Virendra Kumar Tripathi and claim of Nirmala Devi was rejected.

3. Before I proceed to examine the judgments of the lower Court, I shall refer to the admitted facts of the case of both the parties. There was one Ram Briksha Sharma who admittedly had his son's Mahendra Narayan Tripathi, Birendra Kumar Tripathy and his daughters, namely, Shyam Sundari Devi, Kusum Devi and Kishori Devi. To this extent, both the parties were in agreement. However, it was the case of Nirmala Devi that Ram Briksha Sharma had firstly married one Ramdaso Devi, daughter of Deolal Pandey of village Agrer. Subsequently, Ram Briksha Sharma married Buchchu @ Buchchi Kumari. Mahendra Narayan Tripathi and Nirmala Devi were born from the womb of Ramdaso Devi and Virendra Kumar Tripathi and his three sisters were born from the womb of Buchchi Kumari. So the case of Nirmala Devi was that she is the full sister of Mahendra Narayan Tripathi and, hence, she is entitled to receive succession certificate for the estate of Brij Kishori Devi, her brother's wife, whereas the case of Virendra Kumar Tripathi is that his father had only one wife and Mahendra Narayan Tripathi was his full brother. Nirmala Devi is not of their fami/y she is rather sister of Sarhu of Mahendra Narayan Tripathi. The lower Court placed the onus of proving that Nirmala Devi is the full sister of Mahendra Narayan Tripathi on herself and taking into consideration the oral and documentary evidence, adduced by both the parties held that Nirmala Devi was not the sister of Mahendra Narayan Tripathi.

4. The appellant's lawyer relied on certain letters written by Virendra Kumar Tripathi to the son of Nirmala Devi, where he addressed himself as maternal uncle (Mama) of the addressee, and also on certain admissions and denials in the statement of Virendra Kumar Tripathi, as A.W. 1 and submitted that circumstances afforded by these letters and admission of Virendra Kumar Tripathi gave a clear

inkling to the effect that Nirmala Devi was the step-sister of Virendra Kumar Tripathi and full sister of Mahendra Narayan Tripathi. I would state in precise terms the relevant admissions and statements of A. W. 1 Virendra Kumar Tripathi and then I shall refer to the contents of letter written by A.W. 1 addressed to the son of Nirmala Devi and there after I shall give my findings whether the aforesaid letter and statements of A.W. 1 established the case of Nirmala Devi that she is the daughter of Ram Briksha Sharma and step sister of Virendra Kumar Tripathi. A.W. 1 admitted at Paragraph 47 of his evidence that Awadhesh and Suresh are the two sons of Nirmala Devi. He further admitted that he was living at Delhi along with his family members. This admission came at Para-22 of his evidence. At this very paragraph, he said that he used to live at Delhi with his entire family and used to visit Patna occasionally. At Paragraph 10 he said that he completed his study outside Bihar State and he was also in service outside this State. From the aforesaid admissions of this witness who is the party himself, it is apparent that he was not expected to be familiar of intimate with people of Patna or persons out of his family. In such a circumstance, he would not be expected to be having any intimacy with the sons of Nirmala Devi, if according to his case, Nirmala Devi happened to be the sister of the Sarhu of Mahendra Narayan Tripathi. In such a circumstance, letters written by this witness to the sons of Nirmala Devi and addressing himself as the maternal uncle of her son will gain significance and it will give an inference that, of course, he had close kinship with Nirmala Devi. The first letter in this connection is Ext-A. This letter has been written by Virendra Narayan Tripathi to his Phupha (husband of one's father's sister) and the contents of this letter are significant in more than one respect. In this letter, Virendra Kumar Tripathi has stated that the husband of Nirmala Devi was living in House No. 104-A in the People's Co-operative Colony where he died and when he went to the house of Nirmala Devi, he found her wailing and stating that she had received poetic justice in the death of her husband on account of the sin which she had committed against her Bhaiya (brother). The subsequent contents of this letter indicate that the son of Nirmala Devi came to him along with a Police Officer who handed over to him a paper in which there was allegation that this witness (V.K. Tripathi) was intimidating and threatening Nirmala Devi. The letter is dated 13th May, 1995 and this case was filed in June 1993 itself. So it appears that this letter

was written after filing of this case. So it further appears that Virendra Kumar Tripathi threatened and intimidated Nirmala Devi because she had filed an objection to this case and perhaps, reference to the admission of Nirmala Devi regarding her sin to have been committed by her against her brother was a reference to her objection in the case concerned. The reference to Bhaiya by Nirmala Devi, as stated in this petition, would, therefore, indicate that she was referring to Virendra Kumar Tripathi as her brother, even though step-brother. There can be no escape from these inferences from the evidence of aforesaid letter because A.W, 1 in his evidence in Court had earlier at Paragraph 11 denied that he knew Nirmala Devi from before. He rather said that he came to know that Nirmala Devi is the sister of one Gupteshwar Tripathi, after she filed objection in the succession case filed by him. So, if he did not know Nirmala Devi from before, it was not expected from him that he will visit her house when her husband died that he will write a letter to his Phupha regarding his dispute with Nirmala. This is more so because if Nirmala was not his kith and kin and she had filed an objection in his case, there being a position of enmity, he was all the more expected to remain indifferent in stead of visiting her. His kinship with Nirmala will further be explained by other letters. Ext-A/1 is a letter written by Virendra Kumar Tripathi to one of the sons of Nirmala Devi. This letters (Post Card) is dated 8th September, 1993 and in this letter Virendra Kumar Tripathi has enquired about the welfare of the addressee and regarding his progress in studies, etc. and lastly it has been stated that he will pay for the telephone bills of the addressee. The author of the letter described himself as Mama of the addressee. So if Virendra Kumar Tripathi was not the Mama of Awadhesh, son of Nirmala, he was not expected to pay for the telephone bill of son of Nirmala Devi and he was also not expected of enquiring about the welfare and progress of his studies. Then there is another letter (Ext-A/2) again addressed from Delhi residence of Virendra Kumar Tripathi and in this letter also, he has described himself as Mama of the son of Nirmala Devi. The contents of this letter show that Virendra Kumar Tripathi was enquiring and seeking information from the addressee regarding family affairs and management of property. He had rather specifically directed the addressee to look after the case pending before the Circle Officer. Lastly he said that the Mami of the addressee was anxiously waiting to meet her Bhagina who once visited Delhi and went away without meeting her. This

letter dated 16th March, 1981 was written much before filing of the case. If, however, Nirmala Devi was not known to Virendra Tripathi, it was not expected of him to write letters to her son, in such an intimate manner and exchanging intimate information about the family affairs and enquiring about the welfare and about the studies of her sons. The contents of these letters will, therefore, explicitly indicate that Virendra Kumar Tripathi was having kinship with Nirmala Devi and her sons. Admittedly, Virendra Kumar Tripathi had only three full sisters, as per his case. In such a circumstance, Nirmala Devi would be nothing but his step-sister. The aforesaid letters have been owned by Virendra Kumar Tripathi, when he was examined in Court as A.W. 1. This witness has also admitted that he had attended the funeral ceremony of the husband of Nirmala Devi and he admitted his photograph along with other relations of Nirmala Devi which was exhibited as material Exhibit-I. This would confirm and consolidate the evidence regarding his close kinship with Nirmala Devi. The lower Court opined that since Nirmala Devi was the sister of Sarhu of Mahendra Narayan Tripathi, it was quite natural to address her sons as Bhagina by Virendra Kumar Tripathi. But, I am of the opinion that in such a circumstance, there cannot be exchange of letters with such warm and intimate statements and discussion of family matters with persons of just a formal relationship.

5. Now the question is whether Mahendra Narayan Tripathi is the step-brother of Virendra Kumar Tripathi and whether he was the full brother of Nirmala. The case of Virendra Kumar Tripathi was that Mahendra Narayan Tripathi was his full brother and the case of Nirmala was that he was the step-brother of Virendra Kumar Tripathi and full brother of herself. In this connection, both the parties have their own onus to prove their own assertion, but the lower Court fixed the onus to prove the fact of step-brotherhood of Mahendra Narayan Tripathi with Virendra Kumar Tripathi and his full brotherhood with Nirmala Devi and in this connection, I am of the opinion that the onus was wrongly fastened on Nirmala Devi. The trial Court has examined the evidence on behalf of V.K. Tripathi and it has held that none of the witnesses examined on his behalf was fully competent to prove that M.N. Tripathi was his full brother and not the full brother of Nirmala Devi. The lower Court fixed the onus upon Nirmala Devi, examined the evidence of Nirmala Devi in detail and disbelieved all of her witnesses. Since the lower Court itself did

not find the evidence on behalf of V.K. Tripathi to be sufficiently reliable in proof of the fact that M.N. Tripathi was his full brother, it would have to be seen whether evidence on behalf of Nirmala Devi was to be relied upon. In this connection, I find that admittedly, no paper was filed, except a particular certificate granted by the Mukhiya of a Gram Panchayat. The trial Court disbelieved the evidence of this witness and his certificate on the ground that he was related to Nirmala Devi. Before, I proceed to examine the evidence of on behalf of Nirmala Devi, I would like to refer to the petition filed by V.K. Tripathi in some eviction suit, the certified copy of which has been filed in this appeal and it was prayed that this document may be exhibited as additional evidence. The case of Nirmala Dew was that her father was firstly married to Ramdaso Devi, daughter of Deolal Pandey of village Agrer Khurd. In paragraph 36, A.W. 1 said that he had gone to village Agrer Khurd and he denied that Ramdaso Devi is the daughter of Deolal. He rather said that Deolal had only sons and no daughter. But, in the petition filed by the plaintiff (Birendra Kumar Tripathi) in Eviction Suit No. 23 of 1996, there is admission at Paragraph 14 of the same that defendant No. 2 (Nimala Devi) is the daughter of Ramdaso Devi who was the daughter of Deolal Pandey of village Agrer P.S. Surajpura in the district of Rohtas. This petition was a document of V.K. Tripathi, opponent of Nirmala Devi and so the contents of this document can be taken into consideration by the Court and can be used by Nirmala Devi for her case even without admission of this document as additional evidence. Once this admission is considered, it would transpire that Nirmala Devi, according to her own case, is the daughter of Ramdaso Devi who was the daughter of Deolal Pandey of village Agrer Khurd. It has been seen above that her sons have been held to be the Bhagina of V.K. Tripathi and since V.K. Tripathi had admittedly only three full sisters, Nirmala Devi in such a circumstance, would be only his stepsister born from Ramdaso Devi. Once this position is accepted, it would further follow that Ramdaso Devi was the wife of Ram Briksha Sharma, the father of V.K. Tripathi. However, this fact will not independently prove that Mahendra Narayan Tripathi is the full brother of Nirmala Devi and step-brother of V.K. Tripathi.

6. I have already stated above that the lower Court dealt with the evidence led on behalf of V.K. Tripathi and stated that his witnesses were not wholly reliable to prove that Mahendra Narayan Tripathi was his full brother. Admittedly, Mahendra

Narayan Tripathi was the son of Rambriksha Sharma and so if V.K. Tripathi fails to prove that he was his full brother, that will afford a circumstance that M.N. Tripathi was his step brother, as it has already been seen above that Ramdaso Devi was one of the wives of Rambriksha Sharma. However, Nirmala Devi will not succeed in proving that M.N. Tripathi was her full brother born from the womb of her mother Ramdaso Devi only on this circumstance. So her evidence has to be examined in this connection. She examined several witnesses and the trial Court disbelieved almost all the witnesses from one reason or the other. O.P.W. 1 was disbelieved because he failed to name the son of Ramdaso Devi, although he claimed to be one of the grandsons of Deolal Pandey. O.P.W. 2 was also disbelieved because he learnt about the relationship of Nirmala Devi and M.N. Tripathi with Rambriksha Sharma from his parents. He also failed to state as to what was the cause for Rambriksha Sharma to enter into second marriage. He was further disbelieved because he failed to give the marriage place of the sisters of V.K. Tripathi. However, this witness was related to the family of Rambriksha Sharma and claimed to be the grandson of Ram Narayan Tiwary, brother of Rambriksha Sharma. So, he was the competent witness regarding relationship of Nirmala Devi and M.N. Tripathi with V.K. Tripathi, even though he learnt about this relationship from his parents. Since V.K. Tripathi was living at Delhi, he must have married his daughter from there and, therefore, this witness might not have come to know where the daughters or sisters of V.K. Tripathi were married. This was, therefore, not sufficient cause for disbelieving this witness. O.P.W. 4 was Nirmala Devi herself. O.P.W. 6 was Kesho Tiwary, Ex-Mukhiya of Gidhagopalpur. This witness had granted a certificate regarding the parentage of M.N. Trivedi and Nirmala Devi. He has further stated that he had seen Rambriksha Sharma. The nephew of Rambriksha Sharma was his class fellow and he was his Sarhu also. The trial Court disbelieved the evidence of this witness because he was related to Rambriksha Sharma in this way or that way. However, it is to be seen that the competency of a witness to state about the relationship of some person depends upon his proximity and relationship. A related witness is more competent to speak of the relationship. The trial Court, therefore, should not have brushed aside the evidence of this witness also because he was related to the family of Rambriksha Sharma. Since he was related to the family of Rambriksha Sharma,

he was related to V.K. Tripathi also. So unless it was shown that he was having any enmity with V.K. Tripathi, his evidence regarding relationship of Nirmala and M.N. Tripathi could not be discredited. V.K. Tripathi as A.W. 1 has stated at paragraph 53 of his deposition that he had also applied for certificate from the Mukhiya, but the same was not granted to him, although it was granted to Nirmala Devi. This circumstance will also go in favour of the case of Nirmala Devi and against the case of V.K. Tripathi.

7. The above discussion on the evidence of the parties and the circumstances released therefrom clearly indicated that Rambriksha Sharma had two marriages and Nirmala Devi is the step-sister of V.K. Tripathi and M.N. Sharma was her full brother and step-brother of V.K. Tripathi. In the aforesaid circumstances, the question simply is as to who is entitled to receive succession certificate for the estate of Brik Kishori Devi, wife of M.N. Tripathi. Since Nirmala Devi has a closer kinship with her than V.K. Tripathi, I am of the opinion, she is entitled to receive the certificate and not V.K. Tripathi.

8. In the result, these two appeals are allowed and the judgment and orders of the Courts below are set aside. It is directed that succession certificate shall be granted to Nirmala Devi for the estate of Brij Kishoie Devi.