

Lalsa Vs. Ivth Additional District Judge, Basti and Others

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Court : Allahabad

Decided On : Apr-19-1999

Reported in : 1999(3)AWC1828

Judge : O.P. Garg, J.

Acts : [Indian Succession Act, 1925](#) - Sections 214 (2), 370, 371, 372 and 381; [Provident Funds Act, 1925](#) - Sections 5 (2); [Insurance Act, 1938](#) - Sections 39 (5); [Constitution of India](#) - Articles 226 and 227; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 60; Succession Certificate Act - Sections 4

Appeal No. : C.M.W.P. No. 10503 of 1999

Appellant : Lalsa

Respondent : ivth Additional District Judge, Basti and Others

Advocate for Def. : S.C. and;A.K. Gupta, Adv.

Advocate for Pet/Ap. : O.P. Pandey, Adv.

Judgement :

O.P. Garg, J.

1. By means of the present writ petition under Article 226 of the [Constitution of India](#), the petitioner has challenged the order dated 31.7.1997 passed by Civil

Judge (Junior Division), Basti on a petition (Misc. Case No. 34 of 1980) under Section 371 of the Indian Succession Act (hereinafter referred to as 'the Act') granting certificate of succession in favour of Smt. Tirtha alias Tirthi alleged to be widow of Swaminath as well as the order dated 4.2.1999 passed by IVth Additional District Judge, Basti dismissing the appeal No. 89 of 1995 filed by the present petitioner.

2. Heard Sri O. P. Pandey, learned counsel for the petitioner and Sri Anand Kumar Gupta, who appeared at the initial stage on behalf of the respondent No. 3. Both the parties agreed that since the petition raises pure questions of law, it was not necessary to call for the counter-affidavit and it may be decided finally on the basis of the material available on record. Accordingly, I proceed to decide the writ petition on merits at this stage.

3. One Swaminath son of Gokul was an employee in the Railway Department and at the relevant time, was posted at Gonda. He died on 25.12.1978. After his death, respondent No. 3 Smt. Tirtha filed an application for issue of succession certificate in order to get payment of various dues on account of Provident Fund, Compulsory Deposit, Life Insurance, arrears of pay, Death-cum-retirement Gratuity etc., totalling to Rs. 22,932.90 p. The petitioner admittedly is the grandson of the real brother of the father of Swaminath and thus is real cousin nephew of the deceased. He filed an objection challenging the status of respondent No. 3 on the ground that she was not the widow of the deceased Swaminath as she was married to one Shankar son of Kalpanath and after his death, she contracted a Sagai marriage with Chetu, brother of her earlier husband Shankar. After the death of Chetu, she is living with her parents. According to the petitioner, real wife of the deceased was Smt. Ramrani who left him during his life time and contracted Sagai marriage with one Asharfi Lal of another village. The petitioner claimed that he being the nearest legal heir of the deceased was entitled to get succession certificate. Both the parties led evidence before the trial court in support of their respective contentions. After sifting and weighing the evidence on record, the trial court recorded a finding of fact that Smt. Tirtha respondent No. 3 was the widow of Swaminath, deceased and that she was entitled to get the succession certificate. To challenge this finding the petitioner preferred an appeal No. 89 of 1995, which

was dismissed.

4. Sri O. P. Pandey, learned counsel for the petitioner raised following three legal issues ; firstly, that the dues on account of Provident Fund, Compulsory Deposit Scheme, Life Insurance, arrears of pay, Death-cum-retirement Gratuity etc., do not fall within the ambit of the expression 'debts and securities' occurring in Section 381 of the Act and consequently, no succession certificate could be issued in respect of the aforesaid items ; secondly, that the Civil Judge (Junior Division), Basti or for that matter, any other Court at Basti had no jurisdiction to entertain the application for issue of succession certificate in view of the provisions of Section 371 of the Act ; and, thirdly, the Courts below have committed a grave error in recording the finding that Smt. Tirtha respondent No. 3 was widow of deceased and since the said finding is vitiated on account of misreading of evidence, no succession certificate could be granted to her. All the above submissions have been repelled by learned counsel for the respondent No. 3.

5. I have given thoughtful consideration to the matter and find that none of the grounds taken by the petitioner to challenge the order of succession passed in favour of respondent No. 3, as confirmed in appeal, are tenable. It would be proper for the sake of clarity if each one of the points, referred to above, are taken up for decision *seriatim*.

6. It is an indubitable fact that a succession certificate can be prayed for and is granted only in respect of 'debts and securities'. In Section 372(1)(f). It is provided that the application is to be made in respect of the debts and securities. It is accepted at all hands that the various dues, in respect of which the application for issue of succession certificate was moved, do not fall within the ambit of the expression 'security'. The moot point for consideration is whether the items, mentioned above, fall within the purview of the expression 'debt'. Learned counsel for the petitioner placed reliance on the decision of the Calcutta High Court in *Assam Bengal Railway Co., Ltd., Chittagong v. AtulChandra Sen.* : AIR1937 Cal314 . In which it was held that the Provident Fund of an employee in deposit with the Railway company is not debt or security, as mentioned in Section 381 of the Act and, therefore, a succession certificate cannot be granted for the release

of Provident Fund. A Division Bench of the Calcutta High Court in the said case observed as follows :

'We are however clearly of opinion that Section 381 has no application to the present case because the subject-matter of the suit with which we are here concerned was not under the law a debt. Nor can it be said that the Railway Company made any payment in respect of a debt or security. The real position of the Railway Company, or more accurately of the Railway Company's Provident Fund Institution was that it was in a sense a trustee (in one sense) of this fund on behalf of the person or persons ultimately entitled to participate in it.'

A reference was also made to the decision in *Mst. Shyam Sundari Devi and others v. Sarti Devi and others* : AIR1962 Pat220 , in which it was held that the provisions of Sections 370 to 381 of the Act clearly show that a succession certificate can be asked for and granted only in respect of debts and securities and not for any other kind of property. It cannot be granted and asked for in respect of ornaments pledged by the deceased with a Bank by way of security for the debt which the Bank had advanced since it is not a debt due from the Bank. As a sequel to the aforesaid decision, learned counsel for the petitioner further placed heavy reliance on the decision in *Branch Manager. State Bank of India. Puri Branch v. Satyaban Pathal and others* : AIR1989 Ori236 . It was again a case in which gold ornaments were pledged with the Bank as security for the loan obtained. On the death of the pledger his successor sought the release of the ornaments on payment of all the dues. It was held that the Bank cannot insist on a succession certificate since the ornaments do not come within the term 'debt' or 'security' for which a certificate can be granted. Both the aforesaid decisions of Patna and Orissa High Courts related to pledged articles by way of security with the Bank with a view to obtain a loan. The pledging of the gold ornaments was not held to be a transaction covered by the expression 'debt' or 'security' and, therefore, it was ruled that the Bank cannot require the legal heir of the pledger to obtain and file a succession certificate for one simple reason that the golden ornaments pledged by way of security cannot be termed to be debt or security. The above decisions do not help the petitioner in any manner. It is not a case for issue of a succession certificate for the return of the golden ornaments or releasing other articles pledged by way of security. So far as

the case of Assam Bengal Railway Co. (supra), decided by Calcutta High Court is concerned, it cannot be said to be a good law in view of the decision of this Court reported in Smt. Rajjoo Devi v. Nageshwar and others : (1965)ILLJ20All , in which a reference was also made to the decision of Calcutta High Court in Assam Bengal Railway Co. case (supra). It was held that in order to establish the rights of persons claiming Provident Fund money of any subscriber after his death to receive the money, the Provident Funds Act itself envisages that a succession certificate may be issued by the Court in respect of Provident Fund money. Section 5(2) of the Provident Fund Act lays down that notwithstanding anything contained in the Indian Succession Act. 1925, any person, who becomes entitled to, as aforesaid, may be granted a succession certificate under that Act entitling him to receive payment of such sum or part and such certificate shall not be deemed to be invalidated or superseded by any grant to any other person of probate or letters of administration to the estate of the deceased. In view of this provision, it was held that under the Provident Funds Act, a succession certificate can be obtained in certain contingencies. As regards issue of succession certificate in respect of amount of insurance which became payable consequent upon the death of Swaminath, it was urged by learned counsel for the petitioner that there is a specific provision in sub-section (5) of Section 39 of the Insurance Act. 1938. It reads as follows ;

'(5) Where the policy matures for payment during the life time of the person whose life is insured or where the nominee or if there are more nominees then (i) all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy holder or his legal heirs or legal representatives or the holder of a succession certificate, as the case may be.'

It, therefore, follows that the Provident Fund Act as well as Insurance Act envisage that a succession certificate may be issued by the Court in respect of the amount due on account of the Provident Fund and the Insurance Policy of the deceased.

7. Section 381 of the Act deals with the item of debts and the meaning of the word 'debt' is to be determined in that context. 'Debt' has not been defined in Chapter X of the Act relating to the succession certificate although the same has been

defined in Section 214(2) to mean any debt except rent, revenue, or profits payable in respect of the land used for agricultural purposes. This limited definition of the expression 'debt' is to be confined to the statutory provisions of Section 214(2) of the Act only. The meaning of the word 'debt' is wide enough. The dictionary meaning is quite general. In Strouds Judicial Dictionary, the meaning of the word 'debt' is given as a sum of money payable in respect of the liquidated money demand recoverable by action. A debt is a sum of money now payable or a sum of money which will become payable, in future by reason of a present obligation. In the Law Lexicon by P. Ramanatha Aiyar, (1997 Ed.), the expression 'debt' has been defined to mean a sum of money due under an express or implied agreement (as) a bond or bill or note ; amount due or payable from one person to another in return for money, service, goods, or other obligation. A debt is a sum payable in respect of a money demand recoverable by action. In common parlance it is a sum of money due from one person to another. The word 'debt' is of large import, including not only debts of record or judgment, and debts by speciality but also obligations arising under simple contract, to a very wide extent, and in its popular sense includes all that is due to a man under any form of obligation or promise. For example, a dividend declared by a company is after its due date a debt from the company to the share-holder, A dividend is not a debt until it is declared. The word 'debt' as used in Section 60. C.P.C. must be confined to a debt in ordinary sense of the word, that is to say, an existing debt. It involves (a) an obligation incurred by the debtor, (b) a liability on the part of the debtor to pay for that obligation at a certain date. Until that obligation has been fully incurred, there is no debt. Moneys due from an Insurance Company under a policy of insurance are 'debts' within the meaning of Section 4 of the Succession Certificate Act and a succession certificate may be granted in respect of such moneys. 'Debt' includes any liability for a cash payment on account of net cash and compensation for equalization of shares under partition decree.

8. The meaning of the word 'debt' came to be considered by the Apex Court, though in a different context. In the case of *Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth Tax (Central)*. Calcutta : [1966]59ITR767(SC) , the position has been summarized as below :

'We have briefly noticed the judgments cited at the Bar. There is no conflict on the definition of the word 'debt'. All the decisions agree that the meaning of the expression 'debt' may take colour from the provisions of the concerned Act, it may have different shades of meaning. But the following definition is unanimously accepted : 'a debt is a sum of money which is now payable or will become payable in future by reason of a present obligation debitum in praesenti, solvendum in futuro'. The said decisions also accept the legal position that a liability depending upon a contingency is not a debt in praesenti or in futuro till the contingency happened. But if there is a debt the fact that the amount is to be ascertained does not make it any the less a debt if the liability is certain and what remains is only the quantification of the amount.....'

9. In a decision of this Court in *Dina Nath v. Balkrishna*, : AIR1963 All46 , the expression 'debt' was defined to mean as follows :

'What is ordinarily understood by the word 'debt is a liability owing from one person to another whether in cash or kind, secured or unsecured, whether ascertained or ascertainable, arising out of any obligation, express or implied,'

10. In the light of the various decisions referred to above, one cannot escape from the finding that an applicant would not be entitled to a succession certificate in respect of the gold ornaments pledged to a Bank by way of security to obtain loan or for any collateral purposes but the legal position is crystal clear that the amount of Provident Fund as well as insurance money are to be paid to the legal heir of the deceased employee on the production of a succession certificate as has been contemplated in the statutory provisions, referred to above,

11. The matter may be further elaborated. On the death of an employee, the various dues become payable. The employer under the law as well as under the contract of employment, is duty bound to make payment of the amounts under the various heads to the legal heir of the deceased employee. On the death of the employee, the employer becomes Indebted to the legal heirs to the extent of the amounts, which become payable under the various heads consequent upon death of the employee. Therefore, the amounts of the Provident Fund, Compulsory Deposit Scheme, Life Insurance, arrears of pay, Death-cum-retirement Gratuity

etc.. which are held by the employer and become payable as a result of the death of the employee, will undoubtedly fall within the meaning of the expression 'debt'. These amounts are payable on account of the services rendered by the deceased employee, contributions and deductions made from his salary and the wages which were actually earned by him. The amounts under the aforesaid categories are obviously in the form of debts in the hands of the employer and, therefore, they are covered by the provisions for issue of succession certificate contained in Chapter X of the Act. It would not be out of context to point out that the succession certificate merely authorizes the party in whose favour grant has been made to give full discharge of liability to the employer debtor. It, however, does not confer any title to the person in whose favour the grant has been made. Such a right can always be, established in proper proceeding in a Court of law. The submission of the learned counsel for the petitioner that the various items in respect of which application for issue of succession certificate was moved, was not maintainable for the reasons stated above, is not acceptable.

12. The second submission of the learned counsel for the petitioner is equally vague and unsustainable. It was urged that the Civil Judge (Junior Division], Basti had no jurisdiction to entertain the application for issue of succession certificate as the deceased Swaminath had died at Gonda where he was employed. It was urged that in view of the provisions of Section 371 of the Act, Court within whose jurisdiction the deceased ordinarily resided at the time of his death only had the jurisdiction to entertain the application to issue succession certificate. The provisions of Section 371 runs as follows :

'The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or. If at that time he had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part.'

According to the learned counsel, the deceased was ordinarily residing at the time of his death at Gonda and, therefore, application for issue of succession - certificate could be entertained and decided by the civil court at Gonda and not at Basti. A reading of Section 371 of the Act undoubtedly makes it clear that it is only

in those cases in which deceased at the time of his death had no fixed place of residence that recourse to the second part of the Section could be taken. Learned counsel for the respondent No. 3 urged, that the deceased 'had other properties, including immovable properties in village Parti Bazar. Tahasll Naugarh, district Basti and, therefore, the application for succession certificate was filed before the Court of Civil Judge (Junior Division), Basti. There is no dispute about the fact that the Civil Judge (Junior Division), Basti is the Court competent to take cognizance of an application for issue of succession certificate. It is not a case of lack, or want of inherent Jurisdiction. The jurisdiction of the Civil Judge (Junior Division). Basti has been challenged on the ground that he had no territorial jurisdiction as the application should have been filed before the civil court at Gonda. The objection filed by the petitioner dated 19.12.1980 has been brought on record in the form of Annexure-2 to the writ petition. There is not even a faint suggestion in the said objection to challenge the territorial Jurisdiction to entertain the application for succession by the Civil Judge (Junior Division). Basti. Even in the grounds of appeal, objection with regard to the territorial jurisdiction was not taken. It appears that the question of jurisdiction was raised for the first time during the course of argument before the appellate court. The appellate court has negatived the plea of Jurisdiction on the ground that it was never taken before the trial court or in the memo of appeal. Learned counsel for the petitioner urged that the plea of jurisdiction can be raised at any stage. in support of his contention, he placed reliance on the decision of the Apex Court in the cases of State of V. P. and others v. Dr. Anupam Gupta. 1992 (2) UPLBEC 1288 and Chiranji Lal Sri Lal Goenka v. Jasjit Singh, 1993 12) CRC 991. There can be no quarrel about the proposition of law that a new plea on pure questions of law, even if not raised earlier, can be permitted to be raised subsequently. Both these decisions pertain to inherent lack of jurisdiction. in a case where territorial jurisdiction of the Court is challenged, a specific plea is to be taken which is required to be supported by evidence. In the instant case, if the petitioner had initially taken the plea that the Civil Judge (Junior Division). Basti had no jurisdiction to entertain the application for succession as the deceased had ordinarily resided at Gonda at the time of his death, the parties would have joined hands on the issue which could be decided only after the evidence was led. Trial court had to take into consideration the evidence to decide

the question as to at which place the deceased ordinarily resided at the time of his death and that if he had no fixed place of residence in whose jurisdiction any part of the property of the deceased lay. In the absence of any plea on the point, trial court rightly did not go into the question of Jurisdiction and similarly in the absence of any specific plea, appellate court was handicapped in recording a concrete finding on the question of jurisdiction for want of evidence. Since the question of territorial jurisdiction is a mixed question of law and fact, the petitioner cannot be allowed to raise the said plea before the Court. It is not a case where a pure question of law has been raised with regard to jurisdiction of the CMJ Judge (Junior Division). Basti to entertain the petition,

13. Now it is time to consider the last point raised on behalf of the petitioner. It is urged that Smt. Tirtha-respondent No. 3 was not wife of the deceased Swaminath and therefore, she was not entitled to file application for issue of succession certificate claiming herself to be widow of the deceased. On this point, there is overwhelming evidence on record to support the finding of fact recorded by the trial court as well as appellate court that Smt. Tirtha-respondent No. 3 was, in fact, widow of the deceased Swaminath. She was living with Swaminath for the last about 40 years. The deceased and the respondent No. 3 were always treated as husband and wife. Not only this, the deceased himself had acknowledged Smt. Tirtha as his wife by making a declaration in the forms and documents maintained by the Railway Department. Learned counsel for the petitioner urged that the lower appellate court has wrongly recorded the finding that the name of Smt. Tirtha was recorded in the family register as wife of the deceased Swaminath, the recital of which fact is totally wrong and against the entries made in the family register, a copy of which is Annexure-5 to the writ petition. It is true that in the family register, a copy of which was issued in 1978, Smt. Tirtha has not been shown as the wife of the deceased Swaminath. Learned counsel for petitioner placed reliance on the decision of the Apex Court in the case of Santenu Mitra v. State of West Bengal, 1998 All JIC 68, in which it was observed that once the entry was recorded by an official in the performance of his duties, it cannot be doubted on the mere argument that it was not contemporaneous with the date of suggested date of birth of the appellant. A reference was also made to a decision of this Court in Rajendra Kumar and others v. Lala Shree Chand Jain and others, 1998 (89) RD 636, to

support the contention that though a writ court is not competent to reverse finding of fact of the Courts below, it can do so if the finding recorded by the Courts below are perverse or based on no evidence or are unreasonable and are vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter. The above observations were made in an entirely different context and set of facts. In the instant case, there is overwhelming evidence on record that the respondent No. 3, was the widow of the deceased Swaminath. The entry made in the family register omitting the name of the respondent No. 3 as wife of the deceased Swaminath is not sufficient to displace the admission or the declaration made by the deceased himself that Smt. Tirtha-respondent No, 3 was his wife. Admission of the deceased is further fortified and corroborated by the oral evidence. The entry in the family register cannot be treated as a clinching evidence to deny the status of wife of the deceased Swaminath to Smt. Tirtha. In view of the concurrent finding of fact recorded by the Courts below, this Court would be slow enough to disturb the said finding merely on the basis of the feeble submission made on behalf of the petitioner. The finding of fact recorded by the Courts below is clearly in keeping with the oral evidence, admission of the deceased, entries made in the official records and the facts and circumstances of the case. Smt. Tirtha being widow of the deceased was, therefore, entitled to move an application for issue of succession certificate. At this juncture. It would be apposite to refer a decision of Apex Court in *Marti Nariman Daruwala and Bharucha (Deceased through LRs and others v. Meharji K. Karkaria and another* AIR 1991 SC 1494. wherein Hon'ble Supreme Court has held that in the exercise of writ jurisdiction, the High Court can set aside or ignore the findings of fact of an inferior Court or Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or Tribunal has come to or in other words it is a finding which was perverse in law. Except to the limited extent indicated above, the High Court has no jurisdiction to interfere with the findings of fact. Similar view was taken by the Apex Court in *Chandauarkar Sita Ratna Rao v. Ashalata S. Guram.* : [1986]3SCR866 . Applying the aforementioned tests, this Court is unable to persuade itself to hold that the findings recorded by the Courts below suffer from such an infirmity so as to justify interference with the said finding under Article 226

or 227 of the Constitution.

14. In the result, the present petition fails as none of the grounds taken on behalf of the petitioner to challenge the order of issue of succession certificate in favour of the respondent No. 3 could withstand the test of judicial scrutiny. It is accordingly dismissed.

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