

Rakesh Sharma Vs. Civil Judge, Senior Division Iv, Mathura and ors.

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Court : Allahabad

Decided On : Apr-22-2002

Reported in : 2002(3)AWC2035

Judge : Anjani Kumar, J.

Acts : [Indian Succession Act, 1925](#) - Sections 213

Appeal No. : C.M.W.P. No. 16451 of 1997

Appellant : Rakesh Sharma

Respondent : Civil Judge, Senior Division Iv, Mathura and ors.

Advocate for Def. : Janardan Sahai and ;Manish Kumar Nigam, S.C.

Advocate for Pet/Ap. : Vishnu Behari Tiwari, Adv.

Disposition : Writ petition dismissed

Judgement :

Anjani Kumar, J.

1. By means of the present writ petition under Article 226 of the Constitution of India, petitioner has challenged the order dated 9.4.1997, passed by respondent No. 1 on an application 66K filed by the petitioner, Annexure-5 to the writ petition.

2. The facts leading to the filing of present writ petition are that during the pendency of civil appeal, the sole appellant Ramesh Chandra Sharma died. According to the assertion made by the petitioner, Ramesh Chandra Sharma died leaving behind his adopted son Rakesh Sharma, the present petitioner. The respondent No. 5, Ramesh Chandra, son of Late Narayan Ji also filed an application for substitution on the strength of the 'Will' dated 14.7.1989 as legatee with the prayer that he may be substituted in place of deceased Ramesh Chandra Sharma. Smt. Sharda Devi, the widow of Ramesh Chandra Sharma also filed an application claiming herself to be the only surviving legal heir. The present petitioner Rakesh Sharma and Ramesh Chandra, son of Late Ram Narayan Ji have supported their case in support of their substitution applications, but none of them has been able to support their case, either by producing the succession certificate issued by the competent court, or any order passed by the competent court. The appellate authority on the rival contentions after discussed the case set up by the petitioner Rakesh Sharma and Ramesh Chandra, the respondent No. 5 has found that none of them are entitled to succeed and since nobody has denied the fact that Smt. Sharda Devi is not the widow of deceased Ramesh Chandra Sharma, therefore, the appellate authority has rejected both the applications of the present petitioner as well as the respondent No, 5.

3. Learned counsel for the parties at bar have cited different decisions in support of their respective claim. In the case of Mrs. Hem Nolini Judah (since deceased) and after her legal representative Mrs. Marlean Wilkinson v. Mrs. Isolyne Sarojbhashini Base and Ors., AIR 1962 SC 1471. In the aforesaid case, the Apex Court has ruled, which is quoted below :

'Section 213(1), which governs this matter is in these terms :

(1) No right as executor or legatee can be established in any court of justice, unless a court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

This section clearly creates a bar to the establishment of any right under Will be an executor or a legatee unless probate or letters of administration of the Will have

been obtained.'

4. In view of the law declared by the Apex Court, the case set up by the petitioner as well as the respondent No. 5, in my opinion, has rightly been rejected by the appellate authority. The order passed by the appellate authority impugned in the present writ petition does not require any Interference as the appellate authority has given cogent reasons for not accepting the case of petitioner Rakesh Kumar Sharma. The appellate authority has dealt with both the alternative cases set up by the petitioner Rakesh Kumar Sharma ; (i) that he is adopted son and (ii) that he is entitled to succeed by virtue of the 'Will' in question as the 'Will' is neither probated under law of administration nor has been issued under the rules and in view of the provisions of Section 213 of the Successions Act, the petitioner is not entitled to succeed. So far as the jurisdiction of the Court is concerned, Order XXII, Rule 5 compliance of jurisdiction, which is not disputed by the counsel for the petitioner.

5. In view of above discussion, this writ petition devoid of any merits is accordingly dismissed. The interim order dated 12.5.1997 is hereby vacated. However, the parties shall bear their own costs.

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