

Vimala Devi Vs. Shobha Walia and ors.

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Court : Chhattisgarh

Decided On : Dec-01-2006

Reported in : AIR2007Chh36; 2007(1)MPHT65

Judge : V.K. Shrivastava, J.

Appellant : Vimala Devi

Respondent : Shobha Walia and ors.

Disposition : Petition allowed

Judgement :

ORDER

V.K. Shrivastava, J.

1. This revision under Section 384(3) read with Section 388 of the Indian Succession Act, 1925 (henceforth, 'the Act') is directed against the order dated 23-4-1996 passed by District Judge, Raipur, in Misc. Judicial Case No. 4/95 whereby an order for grant of succession certificate in favour of non-applicant Nos. 1 and 2 has been passed.

2. Rajan Yashpal, who was resident of Raipur, died on 18-6-1986. During his life time he was doing the business of selling motor parts. He opened a locker with Dist. Co-operative Central Bank, Raipur. After his death non-applicant No. 1

Sobha Walia Claiming herself to be the wife of Rajan Yashpal and non-applicant No. 2 Vikki Claiming himself to be a minor child of Rajan Yashpal filed an application for grant of succession certificate under Section 372 of the Act, for access to the locker and to receive the ornaments kept therein. Applicant Vimala Devi Claiming herself to be the mother of deceased Rajan Yashpal pleaded that during life time of her son Rajan Yashpal, marriage tie in between her son and Sobha Walia was broken by a divorce agreement in accordance with their custom. Non-applicant No. 2 namely Vikki is not son of Rajan Yashpal. She also filed an application under Section 372 of the Act for grant of succession certificate in her favour for access to locker and recovery of ornaments kept therein. Both the applicants were filed before the Civil Judge, Class I, Raipur, who registered the case, investigated the Claim and passed a common order dated 2-3-1995 in Succession Case No. 33/86.

3. Learned Trial Court held that Smt. Sobha Walia is a legally wedded wife of Rajan Yashpal, no valid divorce took place in between them and Vikki is the legitimate child of Rajan Yashpal, but taking into the fact that Smt. Sobha Walia was living separate from her husband and when she left him, she at that time received all her articles, the key of the locker was found with Vimala Devi and her statement regarding ornaments does not appear to be unreasonable, therefore, finding a dispute regarding ownership of the property kept inside the locker, refused to grant succession certificate in favour of any of the parties. The order was assailed in appeal and the Appellate Court vide impugned order allowed the appeal and directed the Lower Court to issue succession certificate in favour of Smt. Sobha Walia and Vikki on furnishing security to the tune of value of the ornaments.

4. Learned Counsel for the applicants contended that access to locker; and ornaments kept therein do not fall within the definition of debt and security, therefore, no succession certificate in favour of any of the parties is permissible to be issued under Chapter X of the Indian Succession Act. On the contrary, learned Counsel for non-applicant Nos. 1 and 2 opposed the same.

5. From reading as a whole, the provisions as enshrined in Part X of the Act, it is as clear as crystal that the Court has only power to issue succession certificate with respect to any debt or security.

6. Security has been enlisted in Section 370(2) of the Act. Admittedly, access to locker and the ornaments kept inside it, do not fall within the list as enshrined under Section 370(2) of the Act.

7. It is well established that a sum of money which is certainty and in all events payable is a debt, without regard to the fact whether it is payable now or at future time. Access to locker and ornaments kept inside it do not fall within the definition of debt. I am of the opinion that requirement to have a succession certificate for access the bank lockers or for realizing the ornaments kept inside the locker is not envisaged by Section 370 of the Act, therefore, succession certificate could not be granted for access to bank locker or articles which are lying in the locker of the bank.

8. On merit it is submitted by learned Counsel for the applicant that Sobha Walia took all her articles along with her when she left her husband, therefore, no succession certificate could have been issued in her favour. On the other hand, learned Counsel for non-applicant Nos. 1 and 2 contended that may it be true, but she being a legally wedded wife and non-applicant No. 2 being a legitimate child of the deceased, have right to succeed.

9. It is evident that Sobha Walia took all her articles back when she left her husband. Key of the locker was found with Smt. Vimala Devi, mother of the deceased Rajan Yashpal, who is Claiming the property to be of her own. There is a serious dispute regarding property found inside the locker.

10. Under Section 373 of the Act, in case of complication, the Court has been empowered to issue succession certificate if the applicant appears to be the person having, prima facie, the best title thereto. Here in the instant case, title was seriously disputed and even prima facie, it appears difficult to hold with whom the best title lies. In view of the above facts, none of the parties is entitled for grant of succession certificate.

11. In the result, the revision is allowed and the impugned order passed by the District Judge, Raipur, is set aside. However, parties are at liberty to approach appropriate forum for their redressal.

Parties shall bear their own costs.

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