

Munni Devi and ors. Vs. Anguri Devi

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Court : Madhya Pradesh

Decided On : May-09-1998

Reported in : AIR1999MP31; 1998(2)MPLJ648

Judge : S.P. Srivastava, J.

Acts : [Succession Act, 1925](#) - Sections 372; [Evidence Act, 1872](#) - Sections 114

Appeal No. : M.A. No. 220 of 1997

Appellant : Munni Devi and ors.

Respondent : Anguri Devi

Advocate for Def. : V.K. Bharadwaj, Adv.

Advocate for Pet/Ap. : S.S. Bansal, Adv.

Judgement :

ORDER

S.P. Srivastava, J.

1. Feeling aggrieved by an order under Section 383 of the Indian [Succession Act, 1925](#) (hereinafter referred to as the Act), on the application filed by the contesting respondent, the mother of the deceased Hari Shankar, revoking the grant of succession certificate issued in their favour vide the order dated 7-7-1989, passed

in Case No. 23 of 1989, the present appellants who had claimed the succession certificate in the aforesaid case No. 23 of 1989, have now approached this Court seeking the reversal of the impugned order and the restoration of the earlier order dated 7-7-1989.

2. I have heard the learned counsel for, the appellants as well as the learned counsel representing the contesting respondent, and have carefully perused the record.

3. The relevant facts as they emerge from the pleadings of the parties and the evidence brought on record lie in a narrow compass. Hari Shankar, who was born on 1-1-1951, was selected and appointed on the post of Aarakshak in the State Police Department on 4-4-1980. At the time of his appointment in the State Police Department, Hari Shankar was required to furnish various informations in a prescribed form which was submitted to the State Police Department on 4-4-1980. In his aforesaid statement while supplying the names of his family members, Hari Shankar had disclosed that Munni Devi/Bai (hereinafter referred to as Munni), the present appellant No. 1, was his wife. At the instance of Hari Shankar, in his service book, a note was made that his heir would be his wife, Smt. Munni.

4. On 21-7-1985, the aforesaid Hari Shankar had also submitted a nomination for the release of the benefits under the Madhya Pradesh Government Employees Group Insurance Scheme in the event of his death nominating Munni, his wife and Avadh Behari, his son whose age was disclosed to be only 4 month as his nominees to the extent of 50% each. In this nomination, Hari Shankar had clearly indicated that Munni was his wife. Even in the nomination form for D. C. R. G., Hari Shankar had nominated Munni clearly describing the relationship between them to be husband and wife. This nomination form was signed in the presence of two witnesses.

5. It may be noticed that in the Madhya Pradesh Police Service Roll which was prepared under Article 886 of the Civil Service Regulations and was prepared on 4-4-1980, Hari Shankar had disclosed Munni to be his wife and his heir and it was on the basis of his declaration that Munni was shown to be his heir in his service book.

6. Munni, the appellant No. 1 was born on 1-3-1953, and was two years younger to the aforesaid Hari Shankar. She was selected for the training course of Nurses in (he year 1974, and after completing the training; she was granted appointment on the post of staff nurse in the year 1978. The entries made in her service book maintained by the State Department indicate that she had disclosed her relationship with Hari Shankar to be that of wife and husband. A copy of the service book (Ex. N. A. 34) prepared on 7-4-1984, which has been brought on record indicates lhe above.

7. However, in the proforma which has been filed as Ex. N. A. 8 which does not appear to have been signed by Munni indicates that the name of husband of Munni was Jagadish Prasad Saxena. The document, Ex. N. A. 34, however, has been signed by Munni and countersigned by Zilla Parivar Kalyan Avam Swasth Adhikari (District Family Welfare and Health Officer), Guna, and is dated 25-4-1984 whereas the unsigned proforma is dated 7-4-1984.

8. Hari Shankar was murdered on 2-10-1988. Thereafter, the present appellants initiated proceedings under Section 372 of the Act, praying for the grant of succession certificate in their favour for the entire amount left behind by the deceased, Hari Shankar to which he was entitled towards service benefits and the other amounts deposited by him while he was in service including the interest which had accrued thereon. The application for obtaining the succession certificate was filed on 18-2-1989, and as has been noticed hereinabove Case No. 23 of 1989 was registered on its.basis which was decided by the V Additional District Judge, Gwalior, on 7-7-1989.

9. The applicants in the aforesaid case had impleaded 'all concerned' as respondents, and pursuant to the order passed by the Court, a public notice was published in the daily newspaper Navprabhat on 17-4-1989, inviting objections from any one concerned.

10. In the aforesaid proceedings, the statement of Munni was recorded and on the basis of the oral and documentary evidence produced by her in that case, a succession certificate as claimed was granted subject to certain conditions.

11. A perusal of the order dated 7-7-1989, granting succession certificate in favour of the present appellants indicates that Hari Shankar had died on 2-10-1988 while combating with the criminals and had left behind his wife, Munni, and his son Manoj Kumar aged 17 years, daughter Kum: Hemlata, aged 15 years, daughter Kum. Seema, aged 13 years, daughter Kum. Guddan aged 5 years and son aged about 4 years who were his only successors-in-interest. It was also provided in the order that all the amounts payable to the deceased Hari Shankar towards Ex-employees Group Insurance Scheme, Parivar Kalyan Yozana, Ex-gratia, P. F., Gratuity, etc., amounting to Rs. 92,942/- was payable to them. But, out of that amount, an amount of Rs. 50,000/- was to be kept in a nationalised bank for a period of at least 5 years for the benefit of the minor children in their names.

12. Thereafter, an application was filed by Anguri Devi, the contesting respondent under Section 383 of the Act on 7-8-1989, praying that the succession certificate granted in favour of the present appellants in Case No. 23 of 1989, be revoked, and after affording an opportunity to the applicant, Anguri Devi, to file objections and lead evidence, the succession certificate be granted to her. Case No. 116 of 1989 giving rise to the present appeal was registered on the basis of this application.

13. It may be noticed that although Anguri Devi while seeking revocation of the succession certificate had prayed that the same be granted in her favour yet she had initiated separate proceedings for the grant of succession certificate in the year 1997, on the basis of which application, succession case No. 33 of 1997, has been registered which is pending in the Court of V Additional District Judge, Gwalior. This Court vide its order dated 13-10-1997, had directed that the proceedings in that case shall go on but the final order shall not be passed.

14. In her application seeking revocation of the succession certificate granted in favour of Munni and others, the contesting respondent had asserted that she was the mother of the deceased, Man Shankar. who was in police service since the year 1980, and had died in harness on 2-10-1988. It was claimed that Hari Shankar had died as a bachelor and had never married. She asserted that Munni was wrongly claiming to be the wife of the deceased Hari Shankar and the

claimants Nos. 2 to 6 to be the children born out of the wedlock with him. It was further claimed that Munni had been married to one Jagadish and the claimants Nos. 2 to 6 were born out of the wedlock of Munni and Jagadish. The mother claimed that the succession certificate had been obtained by Munni and others in a fraudulent manner on incorrect facts. The mother claimed to be the only heir and legal representative of the deceased Hari Shankar and entitled to the amount of P. F., Group Insurance, etc., It was also claimed that no information was given to the mother nor she could see the newspaper as she resided in Morena. It was also claimed that Munni was married to Jagadish Prasad and since there had not been any divorce, Munni could not marry Hari Shankar. As has been noticed hereinabove, the mother claimed that Munni had in fact not been married to Hari Shankar and the succession certificate had been obtained on incorrect assertions which deserved to be revoked.

15. The present appellants contested the afore-said application denying the assertions made therein. It was claimed that Munni had been married with Hari Shankar in accordance with the Hindu rites in the year 1968. It was specifically denied that Munni had ever been married with Jagadish Prasad. It was claimed that the appellants No.s. 2 to 6 were born out of the wedlock of Munni and Hari Shankar. It was further asserted that the due publication of the notice was given and Anguri Devi was having full knowledge of the proceedings.

16. The trial Court vide the impugned order placing reliance on the document ex. N. A. 7 which was a certificate issued by Dr. Ruparn Jain, wherein the name of husband of Munni was disclosed to be Jagadish and the service book (Ex. N. A. 8) at page 103, wherein the name of the husband of Munni was disclosed to be Jagadish Saxena, and further the statement of Rajeev Dubey, came to the conclusion that Munni was not the wife of Hari Shankar holding that the statements of Devi Singh, Basant Kumar, Putin Singh Bhadoriya, Baghirath Ramole and Ramprakash, examined on behalf of Munni were not reliable.

17. The trial Court, however, found that non-applicants Nos. 2 to 6 were the children of Hari Shankar and not Jagadish.

18. The trial Court further found that it was not proved that Munni had been married with Hari Shankar. It was also found that Hari Shankar had died as a bachelor.

19. On the aforesaid findings, the trial Court held that by suppressing the correct facts and acting in a fraudulent manner and on misrepresentation, the said succession certificate had been obtained. It was, therefore, revoked allowing the application of Anguri Devi.

20. On the aforesaid findings while revoking the succession certificate granted vide the order dated 7-7-1989, the prayer made by Anguri Devi for the grant of succession certificate in her favour was refused leaving it open to her to move a fresh, application under Section 372 of the Act.

21. The finding returned by the Court below so far as the paternity of the appellants Nos. 2 to 6 was concerned, was in their favour holding that their father was Hari Shankar and not Jagadish.

22. The trial Court simply on the basis of the entries in the service book of Munni wherein she was alleged to have disclosed her husband to be Jagadish Prasad Saxena had rejected, her claim holding that it could not be believed that Jagadish Prasad Saxena was the alias of Hari Shankar or that Hari Shankar was also known as Anil or Jagadish.

23. The learned counsel for the appellants has assailed the correctness of the findings returned against Munni asserting that they are based on incorrect assumptions which are not at all supported by the evidence and the materials on the record. It has further been urged that the Court below has manifestly erred in overlooking altogether the presumption in regard to legitimacy which was available to the appellants Nos. 2 to 6.

24. It has further been contended that it stood established from the evidence and materials on the record that Munni and Hari Shankar had been cohabiting as wife and husband for a very long duration and from this union five children were born. This long cohabitation as husband and wife with habit and repute, it is contended

gave rise to a presumption in regard to the marriage in law which presumption had not been rebutted in any manner.

25. It has next been urged that taking into consideration the own clear cut and categorical admissions of the deceased Hari Shankar, there could be no manner of doubt about his having married Munni.

26. It is further contended that the evidence adduced in support of her claim by Munni was relevant and consistent with the provisions contained in Section 50 of the Evidence Act. The trial Court, it is contended erroneously ignored the relevant evidence which proved the relationship and the fact that Hari Shankar and Munni had throughout been treated as husband and wife and enjoyed such a status and repute. It has also been pointed out that even the father-in-law of Munni i.e., the husband of Anguri Devi had never disputed the relationship between the deceased Hari Shankar and Munni as was apparent from his letters on the record which have been ignored altogether by the Court below.

27. It is urged that the finding of the Court below on the question relating to the marriage was _perverse and liable to be set aside.

28. The learned counsel for the contesting respondent has however tried to support the findings returned by the Court below and has urged that no such compelling circumstance has been pointed out which could justify any interference in the appraisal of the evidence by the trial Court which had the advantage of watching the demeanour of the witnesses.

29. The learned counsel for the contesting respondent has strenuously urged that the application filed by Munni and others for succession certificate deserved to be rejected as the requirement stipulated under Section 372(1)(c) of the Act were not complied with.

30. The aforesaid provision requires that the applicant should set forth in the application the particulars of the family or other near relatives of the deceased and their respective residences.

31. It is contended that the mother of the deceased Hari Shankar was a member of the family of the deceased and also fell in the category of near relatives but her name was not shown in the application filed by Munni. In the circumstances, it is urged that the application suffered from a fatal defect and was liable to be rejected outright.

32. In the aforesaid connection, it has been pointed out that a succession certificate granted under the provisions of the Act could be revoked if the proceedings to obtain the certificate were defective in substance, or that the certificate was obtained fraudulently; by the making of a false suggestion, or by the concealment from the Court of something material to the case; or that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently:

33. The learned counsel for the appellants has contended that a public notice in respect of the application had been published in a widely circulated newspaper inviting objections to the application and Anguri Devi had to be deemed to have knowledge and in law must be imputed with knowledge of the contents of the application filed by Munni and the pendency of the proceedings. In the aforesaid circumstances, it is urged that a defect even if it be assumed to be there, cannot be of a fatal character. Anguri Devi could still in view of the publication of the notice in the widely circulated newspaper, file the objections, if any; and contest the application.

34. I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties.

35. In the present case, a succession certificate had been claimed by Munni and others asserting that Hari Shankar since deceased had married her and out of this wedlock, the claimants Nos. 2 to 6 had been born. The applicants claimed to be the heirs of the deceased Hari Shankar falling under the Class I of Schedule I of the Hindu Succession Act. This required establishing the marriage of Hari Shankar with Munni.

36. In case a marriage in fact is established there would be a presumption of a marriage in law. However, where the parties consistently, continuously and openly lived as husband and wife, cohabited together had five children and were regarded and recognised by friends and relations as husband and wife and enjoyed such a repute in general public, sufficient ground is made out for raising a presumption about the existence of a marriage and such a marriage in law creates the same rights and obligations on the parties as originate and flow from establishing a marriage in fact. The presumption of marriage on account of long cohabitation with habit and repute of that particular status which flows from a lawful marriage is further strengthened, in case the evidence on the record indicates that such union gave birth to children as there is a presumption in regard to the legitimacy of such children. The presumption of legitimacy necessarily involves that the union which gave birth to such children was lawful. The presumption in favour of a marriage as indicated above cannot be rebutted in case the husband himself admits the marriage and such an admission has to be accepted as conclusive especially in the absence of any material to indicate that the admission had been obtained in a manner not recognised by law.

37. In fact, where the parties consistently, continuously and openly lived as husband and wife, cohabited together for a long period had five children and were regarded and recognised by friends and relatives as husband and wife, it furnishes a clear evidence of marriage raising the presumption unless it is shown that the connection started in mere concubinage. Before raising the presumption of marriage arising from long cohabitation with habit and repute, it is necessary that the requisite conditions of a valid marriage stood satisfied in the sense that such a marriage was not prohibited under the law.

38. It must be emphasised that presumption in regard to marriage on the basis of evidence of habit and repute referred to hereinabove cannot be raised in a case where no valid marriage is possible or permissible under the law as no amount of evidence in regard to habit and repute could establish it in such a case. In other words, the presumption of legal marriage from cohabitation for long period is not available where it is not possible to have legal marriage.

39. In the present case, what I find is that no such fact or circumstance has been pleaded or proved which could indicate in any manner whatsoever that Munni was living in sin or the alleged marriage or the relationship had its origin in concubinage. Further, there is nothing on the record to indicate that no legal marriage could be permissible between them.

40. According to Munni, her marriage with Hari Shankar had taken place in the year 1968. At that time, she was about 15 years of age. The age of their eldest son at the time of the moving of the application is shown to be about 17 years. Therefore, he must have been born somewhere in the year 1972.

41. It was claimed by the mother-in-law of Munni that Munni had been previously married with Jagadish and the children were bom out of this wedlock. In support of her claim, Anguri Devi besides examining herself had examined, Barkat Ali, Bhagwandas as well as Maheshchand Jain.

42. Barkat Ali in his deposition before the Court below stated that he came to know about Munshilal Chitoria, the father of Hari Shankar in the year 1964. He claimed to have seen Munni in the house of Tularam, in the year 1969-70. He further claimed that he got acquainted with Jagadish in that year and had seen Munni living in the house of Tularam for one or two years, and thereafter, he had not seen her or Jagadish. He further stated that he had heard that Jagadish had died but he could not remember the date or the year of death.

43. Bhagwandas who was examined as a witness by Anguri Devi had in his examination-in-Chief stated that the name of the wife of Jagadish was Munni but he had immediately corrected himself and stated that Jagadish had never married and had no wife.

44. Maheshchand Jain, however, stated that Hari Shankar died as a bachelor.

45. Anguri Devi, had asserted that Munni had been married with Jagadish who was resident of Kampoo, Gwalior, and she came to know about Munni when she was living in the house of Tularam as a tenant. She had stated that out of the wedlock of Jagadish and Munni, one son and one daughter had been born.

46. However, in her cross-examination, she stated that she knew Munni from the year 1965-66 and had seen her only for a period of about 2 or 3 years. She showed her ignorance about the members of the family of Hari Shankar as indicated in the Ration Card. She asserted that Hari Shankar died as a bachelor.

47. Munni in support of her claim besides examining herself had examined Rajeev Dubey, Devisingh, Vasantkumar Jain, Puftusingh Bhadoriya, Bhagirath Ramole and Ram Prasad. She had also proved the letters brought on record which had been written by Hari Shankar and her father-in-law, Munshilal Chitoria.

48. The oral evidence tendered by Munni was admissible under Section 50 of the Evidence Act, and had proved the relationship in question. This evidence was also consistent with the own admissions of Hari Shankar to which a reference has already been made hereinabove.

49. There is nothing in the evidencce tendered by Anguri Devi which could in any manner establish that the clear'cut and categorical admissions of Hari Shankar in regard to his having married with Munni was in any manner incorrect or could be said to have been explained away. The evidence led by Anguri Devi, therefore, was not sufficient to rebut the presumption available in regard the marriage of Hari Shankar with Munni.

50. In the circumstances indicated hereinabove, it seems to me that the entire approach of the trial Court was erroneous. The clear cut and categorical admissions of Hari Shankar were ignored without any justifiable basis.

51. The trial Court erroneously totally ignored the service book of Munni prepared in the year 1984 wherein she had herself indicated the name of her husband to be Hari Shankar. There was no such evidence on record which could establish that Munni was ever married with a person by the name of Jagadish. According to the witness produced by Anguri Devi herself, Jagadish had died long ago and had not been heard for about 12 years. One of her witnesses had clearly admitted that Jagadish had never married. The oral evidence tendered by Munni was consistent with the documentary evidence and the admissionsof Hari Shankar himself and was not liable to be discarded as unworthy of credit. The said evidence inspires

confidence.

52. In the aforesaid view of the matter, the finding returned by the trial Court to the effect that Munni could not be treated to have been married with Hari Shankar is not liable to be sustained especially when the trial Court itself has found that the sons and daughters who have been impleaded as respondents Nos. 2 to 6 were the children of Hari Shankar.

53. The expression 'family' has not been defined under the Indian Succession Act. Even the expression 'near relatives' has also not been defined.

54. I am of the considered opinion that the expression 'near relatives' as used in Section 372 of the Indian Succession Act, must refer to the persons who would be entitled to succeed the person who had died intestate on the principle of nearer excluding the remoter. The 'family' may comprise of the husband and wife and their minor children either being sons or unmarried daughters for the purpose of the law. The 'family' may have a restricted meaning as a small unit. It cannot be lost sight of that in modern times the trend indicates 'fission' and not 'union'. The bigger family concept of joint Hindu family is by and by withering away giving rise to small units of family.

55. In the circumstances, the omission in question does not appear to be a fatal one so as to vitiate the entire proceedings especially when the publication of the notice referred to hereinabove ensures and secures notice of the proceedings to every person having a claim or interest in the estate left by the deceased. The requirement in question, therefore, is only directory.

56. Anguri Devi, in her application seeking revocation of the succession certificate granted in favour of Munni, had prayed for the grant of succession certificate in her favour after revoking the earlier succession certificate. ,

57. The trial Court while revoking the certificate granted in favour of Munni, had left it open to Anguri Devi to initiate fresh proceedings for getting the succession certificate.

58. I am of the clear opinion that in the facts and circumstances of the present case, there was no occasion for such an exercise which would have resulted in mere duplication of the proceedings. According to Anguri Devi, the order granting succession certificate in favour of Munni was an ex parte one which had been passed without affording an opportunity of hearing to her. In the circumstances, since Anguri Devi had put forward a claim to get a succession certificate in her favour exclusively, this matter could have been gone into by the trial Court since all the necessary parties were before it and had led the evidence in support of their respective cases.

59. In the facts and circumstances of the present case and the findings referred to hereinabove, it is apparent that Munni along with her sons and daughters and Anguri Devi, the mother of the deceased Hari Shankar fell in the category of heirs of Class I of the Schedule as indicated in Section 8 of the Hindu Succession Act. It is not in dispute that Hari Shankar had died intestate. The provisions contained in Section 8 of the Hindu Succession Act, stipulate that the property of a male Hindu dying intestate shall devolve firstly upon the heirs being relatives specified in Class I of the Schedule. The sons, daughters, widow as well as the mother of the deceased are relatives falling in Class I of the Schedule appended to the Hindu Succession Act, and therefore, succeed simultaneously with equal shares. The mother, Anguri Devi, therefore, had 1/5th share in the property in question.

60. In view of my findings indicated hereinabove and further taking into consideration the nomination of the deceased, 'Hari Shankar, this appeal is disposed of finally with a direction to the trial Court to prepare a fresh succession certificate in succession Case No. 23 of 1989, in the light of the observations and findings referred to hereinabove indicating clearly therein that Anguri Devi is also entitled to 1/5th share in the property in dispute left by the deceased, Hari Shankar. The order passed by the Court below on 7-7-1989, in Misc. Case No. 23 of 1989 (Succession) shall stand modified accordingly.

61. Considering the circumstances, there shall be no order as to cost of this appeal.

