

Ashish Kumar and anr. Vs. Smt. Leela Bai (Dead) Through Her L.Rs. and anr.

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Court : Madhya Pradesh

Decided On : Feb-07-2002

Reported in : AIR2002MP150; 2002(2)MPHT114; 2002(3)MPLJ110

Judge : S.P. Khare, J.

Acts : [Succession Act, 1925](#) - Sections 373 and 387

Appeal No. : Civil Revision No. 1889/2001

Appellant : Ashish Kumar and anr.

Respondent : Smt. Leela Bai (Dead) Through Her L.Rs. and anr.

Advocate for Def. : Sunil Mishra, Adv.

Advocate for Pet/Ap. : Mohd. Ali, Adv.

Disposition : Civil revision dismissed

Judgement :

ORDER

S.P. Khare, J.

1. This is a revision by the applicants against the order by which their appeal under Section 384 of the Indian Succession Act challenging the order refusing to grant a succession certificate in their favour on their application under Section 372

of the Act, has been dismissed.

2. It is not in dispute that deceased Shakuntalabai was a teacher in Primary School, Chandana and she died on 7-6-1998. Non-applicant Smt. Leela Bai was her mother. Shakuntalabai declared name of her mother Smt. Leela Bai in the Government records as her nominee.

3. Applicant No. 2 Nathuram claims to be the husband and applicant No. 1 Ashish Kumar, aged 7 years, claims to be son of Shakuntalabai. They submitted an application under Section 372 of the Indian Succession Act for grant of a succession certificate in their favour. Non-applicant No. 1 Smt. Leela Bai, mother of Shakuntalabai, opposed this application. According to her, the applicants are not in any way related to Shakuntalabai as she died unmarried. The Court of Civil Judge, Clause I, Balaghat after appreciation of the evidence adduced by both the parties held that applicant No. 2 Nathuram is not the husband of Shakuntalabai. It was found that Nathuram is already married to another woman in 1977 and he has five children through her. Therefore, it was held that even if there was a marriage between Nathuram and Shakuntalabai that was void in view of Section 11 of the Hindu Marriage Act, 1955 being in violation of Section 5(1) of the Act. The marriage of Nathuram was already subsisting. So far as applicant No. 1 Ashish Kumar is concerned, the Court held that he has not proved to be the son of Shakuntalabai. Ex. P-4 card was disbelieved on the ground that it is not signed by any competent officer. In the certificate (Ex. P-6) the name of mother of Ashish Kumar is not given. Marriage of Nathuram with Shakuntalabai was said to have taken place on 9-6-1997 while Ashish Kumar was said to have born in the year 1991. In Paragraph 15 of the order it was specifically held that it is not established that applicant No. 1 Ashish Kumar is son of Shakuntalabai. This finding has been affirmed by the Appellate Court by order dated 7-9-2001. The grant of succession certificate in favour of the mother of Shakuntalabai has been confirmed by the Appellate Court also. Thus there is a concurrent finding of fact of the two Courts that Nathuram is not husband of Shakuntalabai and Ashish Kumar is not her son. The Revisional Court cannot interfere in the concurrent finding of the two Courts.

4. The Succession Court in Paragraph 15 of its order has held that the applicants are free to file a declaratory suit to the effect that they are heirs of Shakuntalabai. This is in conformity with the correct legal position. It is well settled that the enquiry under Section 373 of the Indian Succession Act is of a summary nature. That is borne out from the language of Section 373(3) of the Act. Section 387 of the Act further provides that no decision under this part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

5. Thus according to Section 387 of the Act decision of the Succession Court in the matter of succession certificate is in no way final or binding between the parties. In *Indramani v. Hema Dibya* (AIR 1977 Orissa 88) it has been held that Section 387 enables an unsuccessful party to a proceeding for succession certificate to file a regular suit in a competent Civil Court on the same question, and so the decision of that Court on that matter may ultimately affect the succession certificate already granted in favour of some other person. The order issuing the succession certificate is final so far as it relates to a proceeding under the Succession Act and regarding matters under that Act, but because of the provisions of Section 387, the said order can be questioned by a suit in a competent Civil Court. A Division Bench of this Court in *Savitri Devi v. Smt. Manorama Bai*, 1998 (1) MPLJ 254, has also taken the view that a separate suit is maintainable for challenging the succession certificate. Section 387 of the Act enables the unsuccessful party to file such a suit.

6. In view of the above legal position, the proper remedy for the petitioners is to file the declaratory suit challenging the succession certificate.

7. The revision is dismissed.