

Kamalkant Vs. Gargidevi and ors.

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Court : Madhya Pradesh

Decided On : Feb-10-1995

Reported in : I(1995)DMC416

Judge : U.L. Bhatt, C.J.

Acts : [Indian Succession Act, 1925](#) - Sections 375

Appeal No. : M.A. No. 2 of 1985

Appellant : Kamalkant

Respondent : Gargidevi and ors.

Advocate for Def. : S.S. Samvatsar, Adv.

Advocate for Pet/Ap. : S.D. Sanghi and ;S. Upadhyaya, Advs.

Disposition : Appeal allowed

Judgement :

U.L. Bhatt, C.J.

1. Respondents herein are the second wife, first wife and mother, respectively of the now deceased Janki Prasad. Appellant is the son of Janki Prasad and the first respondent. Janki Prasad was in Government service. Amounts were due in regard to provident fund account, family benefit fund account and ex-gratia

payment. The appellant and second respondent filed separate applications seeking grant of succession certificates in regard to these amounts under the provisions of Indian, Succession Act. The applications and the Will dated 17.2.1982 said to have been executed by Janki Prasad bequeathing his entire estate to his son were opposed by the present respondent, first wife of the deceased challenging the second marriage and the genuineness of the Will and contending that she is the nominee in regard to all the amounts under the relevant rules. The learned District Judge held that the marriage and the Will were proven, that there was a valid nomination in regard to these amounts and accordingly dismissed the applications filed by the appellant and second respondent. The dismissal of his application is being challenged by the appellant.

2. Learned Counsel for the appellant contends that his client is legitimately aggrieved by the purported finding that there is a valid nomination in favour of the second respondent. It is no doubt true that there is a nomination in her favour, but whether it fulfils the legal requirements is not necessary to be decided in an application filed by persons other than the nominee. There could be no doubt that nomination by itself does not create any right in favour of the nominee. To find the repository of the title, the Court will have to follow the law of inheritance governing the parties.

3. Since the fact of nomination in favour of the second respondent is beyond doubt, it is only proper that succession certificate should be granted in her favour so that she may collect the amount and hold it in trust for the rightful owners. Learned Counsel for the second respondent stated that he is prepared to offer proper security. In these circumstances. I find no impropriety in passing an order in favour of the second respondent though she did not file an application or an appeal or cross-objection. In fact, learned Counsel for the appellant also suggested that if second respondent is prepared to give security, certificate can be issued in her favour.

4. It is admitted that only sums due under the provident fund account and gratuity account are remaining to be collected. The judgment relates only to these amounts.

5. In the result, the impugned order is set aside and it is directed that a succession certificate will be issued in favour of second respondent on her furnishing adequate security to the satisfaction of the District Court. If she fails to furnish security, the District Court may issue succession certificate in favour of the appellant on his furnishing adequate security to its satisfaction. The appeal is allowed. No costs.

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