

Savitri Vs. Chandrakala and ors.

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Court : Madhya Pradesh

Decided On : Oct-07-2004

Reported in : 2005(1)MPHT237; 2005(1)MPLJ455

Judge : Shantanu Kemkar, J.

Acts : [Succession Act, 1925](#) - Sections 371, 372 and 384

Appeal No. : Misc. Appeal No. 157/1996

Appellant : Savitri

Respondent : Chandrakala and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Chetan Kotecha, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

Shantanu Kemkar, J.

1. This is an appeal under Section 384 of the Indian [Succession Act, 1925](#) against the order passed in M.J.C. No. 7/94 by learned District Judge, Betul on 4-9-95 revoking the succession certificate granted to the appellant vide order dated 9-7-

93 passed in Case No. 9/93.

2. The undisputed facts of the case are that deceased Mohan was working as a Railway Gaceman. He died during the course of his employment when posted at Taku Railway Station, District Hoshangabad. The last rites were performed by the respondent No. 1 Chandrakala and she was granted ex-gratia compensation for the death of Mohan. Mohan was resident of Village Pimpalgaon, District Nagpur, Maharashtra. The appellant Savitri claiming herself to be widow of the deceased filed an application seeking succession certificate in her favour and in the ex-parte proceedings the learned District Judge, Betul vide order dated 9-7-93 allowed the application and issued succession certificate to the appellant Savitri Bai.

3. As per the respondent Chandrakala deceased Mohan married to her about 12 years prior to his death. From their wedlock she conceived two sons and a daughter namely Ankush, Ku. Ashwani and Ashish. Respondent No. 1 Chandrakala was residing with Mohan at Taku in the quarter allotted to Mohan by the Railways.

4. The revocation of the succession certificate was sought on the ground that at the time of his death deceased Mohan was ordinarily residing at Taku in the Civil District of Hoshangabad and the property which the deceased was possessing at the time of his death was at Pimpalgaon, District Nagpur, Maharashtra. In this view of the matter, the District Court, Betul had no jurisdiction to grant the succession certificate to the appellant Savitri Bai. The provisions of Section 372 about furnishing of the particulars about the ordinary resident of the deceased and the place where his property is situated, the details of his family or other relatives were not furnished in the application for succession certificate and the respondent Nos. 2 and 4 who are the sons and daughter of the deceased were not made party to the application, the application being filed malafidely suppressing the material facts and as such the certificate issued on the basis of such application was sought to be revoked.

5. In reply to the averments made by the respondents in their application for revocation of the certificate, the appellant Savitri denied the contentions and submitted that she is a married wife of deceased. She married with the deceased

in the year 1983. She and the deceased were residing at Betul. She further stated that in the year 1985-86 Mohan was transferred from Betul to Katol and therefore to Taku. She further contended that even if Mohan had married to the respondent No. 1 Chandrakala, the said marriage is void.

6. The Central Railway, Nagpur was also made non-applicant in the aforesaid proceedings. The Railways filed their separate reply and supported the case of respondent No. 1 Chandrakala.

7. The learned District Judge, Betul holding that the deceased died at Taku which is in Hoshangabad Civil District allowed the application of the respondents and set aside the order dated 9-7-93 and revoked the succession certificate granted in favour of the appellant.

8. Heard learned Counsel for the appellant and perused the record.

9. In support of the application respondent No. 1 Chandrakala (P.W. 1) has deposed that she married with the deceased 12 years prior to his death. Deceased was transferred from Betul to Katol where they were residing for five years thereafter deceased was transferred from Katol to Taku. At Taku they were residing together in the quarter allotted by the Railways. Balram (P.W. 2) deposed that he was knowing Mohan since long and he used to visit the house where Chandrakala was residing with him as his wife. Motiram (P.W. 3) has also supported the version of the Chandrakala. Mohan's elder brother Bhau (P.W. 4) has stated that Chandrakala is wife of his younger brother Mohan. Ankush, Ashwani and Ashish are Mohan's children. Mohan died at Taku. Mohan alongwith the other family members is holding the land at Pimpalgaon, District Nagpur, Maharashtra as per khasra entry (Ex. P-1). Yoadhraj Singh (P.W. 5), Station Master of Central Railway in his evidence proved Hx. P-2 and Ex. P-3 letters issued by the Railways to Chandrakala for vacating the quarter allotted to Mohan. He also issued a certificate (Ex. P-4) to prove that Mohan died on 21-3-92 while he was on duty as a Railway Gateman at Taku Railway Station and was allotted the quarter at Taku which was vacated by his wife Chandrakala and children after six months of death of Mohan. He has also deposed that Taku is in Hoshangabad Civil District.

10. In rebuttal the appellant Savitri examined herself as D.W. 1. In her evidence she has deposed that she was married with the deceased in the year 1983. After a year there was dispute between herself and the deceased and she went to her parental house. Thereafter, there was compromise Ex. P-10 and then again she started living with her husband. In her cross-examination she stated that she does not know how many persons are in the family of the deceased where his land is situated. She also shown her ignorance to the fact whether deceased was allotted any quarter by the Railways at Taku. She further stated that she got the information about death of her husband after about a month. She did not participate in the last rites. Ghudan Singh (D.W. 2) stated that deceased was married to Savitri and both of them were living together between 1982 to 1985 at Betul. Shanker (D.W. 3) has stated that the deceased resided at Betul for three years with Savitri Bai. D.M. Kamle (D.W. 4), Station Superintendent, Bctul could only prove that from 11-7-82 to 7-9-85 deceased was posted at Betul. Thus, from the entire evidence led by the parties it is clearly established that for about 7-8 years prior to his death, deceased was living at Taku which is in Hoshangabad district as held by the Trial Court.

11. Section 371 of the Succession Act deals with jurisdiction of the Court to grant certificate. It empowers the District Judge, within whose jurisdiction the deceased ordinarily resided at the time of his death, or if at that time he had no fixed place of his resident, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate. On examination of the evidence led by the parties the findings arrived at by the Trial Court that undisputedly the deceased died at Taku, District Hoshangabad and his property was at Pimpalgaon, District Nagpur, Maharashtra appears to be correct. There is absolutely no evidence that the deceased was ordinarily resident of Betul or he was having any property at Betul. The documents (Exs. P-1 and P-4) proved by the Chandrakala (P.W. 1) and her other witnesses clearly establishes the fact that deceased was residing at Taku since last 7-8 years prior to his death and he was having property at Pimpalgaon in Nagpur District (Maharashtra).

12. In this view of the matter the findings recorded by the Trial Court, that Betul Court was not having any territorial jurisdiction to deal with the application for grant

of succession certificate is perfectly legal. The order passed on 9-7-93 in Succession Case No. 9/93 by the Court having no territorial jurisdiction, has rightly declared to be null and void by the learned District Judge and he committed no error in revoking the succession certificate. There is no dispute to the fact that the earlier proceedings filed by the appellant were filed only against the respondent No. 1 Chandrakala stating therein that she is not legally wedded wife of the deceased. This indicates that the appellant was knowing that the deceased was living with respondent No. 1 and also with respondent Nos. 2,3 and 4 who are his children, still they were not made parties. Thus the certificate being obtained by means of untrue allegations and suppressing the fact essential in point of law to justify the grant of succession certificate, therefore, revocation order as passed was inevitable.

13. Thus, I find that the learned District Judge has correctly appreciated the evidence on record and the findings that the order granting succession certificate was passed by the Court which was not having territorial jurisdiction appears to be correct. The certificate was obtained on the basis of non-disclosure of essential facts and was nullity. The impugned order is just and proper and I find no scope of interference in it.

14. Accordingly, this appeal fails and is dismissed with no order as to costs.