

Prabha BhasIn Vs. the State

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Court : Delhi

Decided On : Jan-17-1989

Reported in : AIR1989Delhi244; 1989RLR113

Judge : Mahesh Chandra, J.

Acts : [Succession Act, 1925](#) - Sections 372; [Hindu Succession Act, 1956](#) - Sections 8

Appeal No. : Civil Revision Appeal No. 150 of 1989

Appellant : Prabha Bhasin

Respondent : The State

Advocate for Pet/Ap. : Rakesh Sawhney,; Yakesh Anand and; Poonam Bawa, Advs

Judgement :

Mahesh Chandra, J.

(1) This revision petition is directed against the order dated 18th November, 1988 of Shri S.K. Iandon. Administrative Sub-Judge, Delhi whereby he had directed that the brothers and sisters of the deceased be also impleaded as respondents in the petition as they are necessary parties.

(2) The facts giving rise to this petition are that Smt. Prabha Bhasin, wife of the deceased had filed an application for grant of Succession Certificate under Section 372 of the Indian [Succession Act, 1925](#) in respect of the movable property left by her husband, Shri Krishan Kumar Bhasin. In the said application it was submitted that apart from the petitioner, the deceased had also left one married daughter namely Smt. Poonam Bawa as an heir and that deceased had died intestate. In course of time said Smt. Poonam Bawa is said to have filed an affidavit bringing out that she had no objection to the grant of Succession Certificate with regard to moveable property of her deceased father to the petitioner, Smt. Prabha Bhasin. The statement of said Prabha Bhasin was recorded as Public Witness -1. Thereafter, a supplementary statement of the said Prabha Bhasin was recorded in which it came on record that the deceased had also left behind three brothers and two sisters. It was thereupon that the learned Administrative-Sub-Judge directed that they are necessary parties and that they should be impleaded in the petition.

(3) It has been argued that in view of the provisions of Section 8 read with Schedule of Hindu Succession Act the brothers and sisters were not necessary parties to the application. I find weight in the submission to the learned counsel for the petitioner. Section 8 of the Hindu Succession Act lays down as under:-
SECTION-8:

'THE property of a male Hindu dying inter state shall devolve according to the provisions of this Chapter :- (a) firstly, upon the heirs, being the relatives specified in class-I of the Schedule; (b) secondly) if there is no heir of class I. then upon the heirs, being the relatives specified in class II of the Schedule ; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased.'

(4) From the perusal of the Schedule under Section 8, I find that the widow and the daughter have been described in class I of the Schedule. The said Schedule further shows that brothers and sisters have been shown in class II of the Schedule in category II at Serial Nos. 3 and 4. Section 9 of the [Hindu Succession Act, 1956](#) provides as under :- Section 9 :

'AMONG the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first class in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.'

(5) When provisions of Section 8 are read with Section 9 and the Schedule, it becomes clear that in the presence of an heir of class I, heirs of class II do not succeed and class II heirs are excluded totally from the succession. In this situation, it would be difficult to accept that heirs of class II are even proper parties much less necessary parties to the application filed under Section 372 of the Indian Succession Act. A perusal of Section 372 of the Indian [Succession Act, 1925](#) does not indicate that the brothers and sisters are necessary parties to the application. In the circumstances of this case the only requirement in the said Section for the petitioner was to furnish the names of the family or other near relations of the deceased and their respective residences. But, this requirement can not be extended to those persons who are heirs of class II in the presence of heirs of class I under Schedule of Section 8 of the Hindu Succession Act and in view thereof it cannot be said that the court was justified in asking the petitioner to implead the brothers and sisters in the said petition. Furthermore, a public notice of the application is published in the newspaper which would be sufficient notice to heirs of class II and consequently they need not be impleaded as parties to the application under Section 372 of the Indian [Succession Act, 1925](#). From whichever angle the matter may be considered, I do not find that the brothers and sisters are necessary parties to the application under Section 372 of the Indian Succession Act in the presence of the wife and daughter of the deceased. For my discussion and finding this revision petition must succeed and is allowed and the impugned orders are quashed and set aside. The lower court shall now proceed to dispose of the application for grant of Succession Certificate in accordance with law.