

Urmila Devi Vs. Madhulika Devi

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Court : Patna

Decided On : May-16-2011

Judge : Anjana Prakash, J.

Appeal No. : FIRST APPEAL No. 196 OF 2008

Appellant : Urmila Devi

Respondent : Madhulika Devi

Advocate for Def. : Mr. Varun Kumar, Adv.

Advocate for Pet/Ap. : Mr. Ashok Kumar Mishra, Adv

Judgement :

1. The appellant has filed this First Appeal against the Judgment and Order dated 18.07.2008 passed by the learned District Judge, Rohtas at Sasaram in Civil Misc. (Succession) Case No.50 of 2008 whereby the application filed by the appellant for grant of succession certificate has been dismissed.

2. The appellant filed the application for grant of succession certificate regarding the fixed deposit dated 20.09.1997 in Punjab National Bank, Dehri-on-sone Branch made by her mother, Budhiya Devi. She filed the said application praying for grant of succession certificate alleging that her mother Budhiya Devi died on 10.12.2004 leaving behind the petitioner Mungeshwar Sahoo, J. 2 appellant, Urmila Devi as the only heir. Deceased, Budhiya Devi had no sons and no other

descendants except the petitioner-appellant. Therefore, the appellant only is entitled to receive the full amount of 40,000/- deposited in fixed deposit scheme in the Punjab National Bank, Dehri-sonsone Branch deposited by Budhiya Devi on 20.09.1997. The respondent is the daughter of appellant.

3. The appellant, Urmila Devi was examined as P.W.1 and the respondent was also examined who did not object to the grant of succession certificate. However the learned Court below dismissed the application only on the ground that death certificate has not been filed to prove that actually Budhiya Devi died.

4. The learned counsel for the appellant submitted that the learned Court below has wrongly dismissed the application because nobody made any case that Budhiya Devi is alive. The appellant in her deposition has categorically stated about the death of her mother and the respondent also supported the said fact that Budhiya Devi died on 20.09.1997 but the learned Court below did not rely on the said evidence.

5. From perusal of the record, it appears that the application was filed by the appellant specifically stating that her mother died. The appellant was examined as witness and on oath she stated before the Court that her mother died. The respondent who is daughter of the appellant was also examined who also deposed that Budhiya Devi has died. Therefore, before the Court, there is specific pleading and also there are evidences in support of the said fact about death of Budhiya Devi. There was no other version before the Court below. In other words the pleading and evidence before the Court below was uncontroverted. The fact that a particular person died may be proved by adducing evidence oral as well as documentary. There is no law that unless the death certificate is produced, no finding regarding death of dead person can be recorded on the basis of oral evidence. The fact of death can be proved in the same way and same manner by adducing evidence like any other fact. Here as stated above, the learned Court below has suo motu insisted that death certificate should have been filed. In my opinion, the learned Court below has approached the case in wrong angle, particularly when there were evidences before the Court below on the basis of which the finding of death could have been recorded.

6. In view of the above discussion and the materials available on record, I find that the evidence of the appellant is uncontroverted and, therefore, there is no option but to rely upon oral evidences. Further, nobody has made out any case that Budhiya Devi is still alive. I, therefore, find that there is no reason as to why the evidence of the appellant be not relied upon. Accordingly, the finding of the Court below to the effect that in absence of any such document about the death of Budhiya Devi, the succession certificate cannot be legally granted is set aside.

7. In the result, this First Appeal is allowed and the impugned Order is set aside. The appellant's application for grant of succession certificate is allowed. Let a certificate be issued to the appellant.

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