
(2004) 04 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : Civil Ist Appeal No. 36 of 2003

Abdul Gani Rasti and Another	Vs	APPELLANT
Qurat-ul-Ain and Another		RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Citation : AIR 2004 J&K 147 : (2010) 4 JKJ 290

Hon'ble Judges : Bashir-Ud-Din, J

Bench : Single Bench

Advocate : Z.A. Qureshi, for the Appellant; J.H. Reshi, for the Respondent

Judgement

Syed Bashir-Ud-Din, J.—After the District Judge Srinagar granted Succession Certificate in Succession File No.267/96 on 22.05.2000 to

parents, widow and minor daughter of Khuda Baksh Rasti in respect of debts and securities specified and described in the application on the said

file. Father and mother of said Khuda Baksh Rasti namely Abdul Gani and Hajra moved an application before the District Judge, Srinagar, the

Court of Succession, seeking Succession Certificate to the extent of their share in the ratio of 1/6: 1/6. However, the Ld. District Judge after

hearing the counsel for the parties dismissed the application for modification in the Succession Certificate granted by that Court on 22.5.2000 on

the ground that the order of the District Judge in granting the original Succession Certificate has been confirmed by the High Court.

2. The second limb of the order under challenge in this Appeal is for dismissal of the prayer seeking extension of the certificate in respect of pay

and other arrears due to deceased to be collected from the employer, the SKIMS.

3. Bare perusal of record would reveal that the Succession Certificate in respect

of the debt, securities and other payments due to Khuda Baksh

Rasti, deceased, is claimed by and granted to Abdul Gani Rasti and Hajra Begum, father and mother of the deceased, Muneera Begum widow of

the deceased and Qurat-ul-Ain minor daughter, of the deceased. While working out the shares/ ratio in which the amount, part of heritable estate

of the deceased is to be shared by the parents, widow and the daughter mistake is apparently committed by the District Judge which has translated

into the appellate court order/ decision. The contents of the certificate granted by the District Judge beside specifying the debts, securities and

other payments due for payment to be received by the empowered persons are also to be shown to the extent of their interest and the ratio which

each of the person(s) granted the certificate is to receive. While specifying the share of the claimants who have been granted certificate under the

personal law (Sunni in this case) instead of showing father and mother 1/6th share each both have been shown 1/6th share together in the

Succession Certificate. Calculating extent of share of each of the parents (father and mother) in the debt, security and the payments due to the

deceased as part of the Mutrooka heritable estate of Khuda Baksh Rasti, deceased, as per Muslim Law, applicable to parties comes to 1/6.

4. As regards the other part, the refusal to extend Succession Certificate dated 22.5.2000 to other debts and payments due to the deceased is also

defective, in as-much-as the Succession Certificate Court of District Judge, Srinagar has not determined whether the amount due to the petitioner

from his employers whether as arrears of salary or otherwise forms part of heritable mutrooka estate of the deceased or its payment to the

dependents or named persons is to be governed by some special rules not covered by Succession Certificate Act. Whether for disbursement of

the amount there is a special set of rules falling beyond the ambit of Succession Certificate Act or / and is covered by the Act so as to give the

employer owing such debt/ payments to the employee a valid discharge of the debt / payment and further whether independently of succession

certificate the employer gets full indemnity as regard such persons to whom debt/ payment is due, are primal issues, which need to be addressed to

and decided.

5. In the aforesaid view of the matter, the impugned order of the District Judge

Srinagar is set aside and the Ld.District Judge is directed to decide afresh the extension of the Succession Certificate, if any, to debts/ securities/ payments due to the deceased claimed before the Succession Certificate Court in respect of the certificate issued on 22.5.2000 in Succession file 27/96 . The District Judge, shall rectify the extent of interest and indicate the share to be received by each of the parents as also the widow and the daughter in respect of the amounts specified in the certificates lying with SKIMS Srinagar and J & K Bank Soura.