

(2016) 07 MP CK 0025

In the Madhya Pradesh High Court

Case No : Civil Rev. Nos. 80 and 101 of 2010

Afroz Jahan

APPELLANT

Vs

Bilquees Jahan

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (2017) 169 AIC 525 : (2016) 4 MPLJ 232

Hon'ble Judges : Anand Pathak, J.

Bench : Single Bench

Advocate : A.H. Afsar, Advocate, for the Petitioner in C.R. No. 80 of 2010; A.H. Afsar, Advocate, for the Respondent No.2 in C.R. No. 101 of 2010; K.N. Gupta, Senior Counsel with Mahesh Goyal, Advocate, for the Respondent Nos. 1 to 6 in C.R. No. 80 of 2010; K.N. Gup

Final Decision : Dismissed

Judgement

Anand Pathak, J.—Shri A.H. Afsar, learned counsel for the petitioner Afroz Jahan in C.R. No. 80/2010 and for respondents No. 2 in C.R. No. 101/2010.

Shri K.N. Gupta, learned senior counsel with Shri Mahesh Goyal, learned counsel for respondents No. 1 to 6 in C.R. No. 80/2010 and petitioners in C.R. No. 101/2010.

2. With the consent of learned counsel for the parties, matter is heard finally.

3. This order shall govern the disposal of C.R. No. 80/2010 (Smt. Afroz Jahan v. Bilquees Jahan and ors.) and C.R. No. 101/2010 (Bilquees Jahan and ors. v. General Public and ors.) as both these revisions arise out of the common order dated 21st April, 2010 passed in Miscellaneous Civil Appeal No. 16/2010.

4. For the convenience, facts of Civil Revision No. 80/2010 are taken into consideration.

5. This civil revision under section 115 of Civil Procedure Code has been

preferred by the petitioner against the order dated 21-4-2010 passed by Third Additional District Judge, Vidisha in Misc. Civil Appeal No. 16/2010 reversing the order dated 26-9-2008 passed by Civil Judge, Class-I, Vidisha in Succession Case No. 11/2008. Respondent No. 1 - Bilquees Jahan earlier has preferred an application under section 372 of Indian Succession Act contending that she is the married wife of Mustaq Khan and therefore, she along with her children Nisha, Hima, Huma, Hanif Khan and Musran Khan (three daughter and two sons) are the successor of deceased Mustaq Khan. Present petitioner Afroz Jahan has filed an objection and contended that Mustaq Khan has given divorce to Bilquees Jahan in year 1996 and has married to her on 9-3-1997. Therefore, nobody else other than her can be the successor of Mustaq Khan.

6. Afroz Jahan has also filed an application under section 372 of the Indian Succession Act and case was instituted as Succession Case No. 10/2008.

7. Trial Court has framed as many as four issues and parties led evidence in respect of the said issues. From the perusal of issues, it is clear that the trial Court dealing with the succession has categorically held that the Late Mustaq Khan has given the divorce to Bilquees Jahan as per the Mohammedan Law. Trial Court as regards Issue No. 2 concluded that after the said divorce, Mustag Khan has married Smt. Afroz Jahan and under the Issue No. 3, the Court has given the opinion that Afroz Jahan (second wife) has been nominated for all death benefits. But in respect of Issue No. 4 which deals regarding the claim of Afroz Jahan for the death benefits, because of subsequent nomination of Late Mustaq Khan in her favour, same has been rejected by the Court and neither the Bilquees Jahan nor her children nor Afroz Jahan were found entitled to be declared nominees of Late Mustaq Khan.

8. Thus, in short, the benefits of nomination were denied to ail the parties concerned. Being aggrieved by the said order, both the parties i.e. Smt. Bilquees Jahan and her children as well as Smt. Afroz Jahan have preferred respective appeals challenging the said order dated 26-9-2008.

9. First Appellate Court considering the fact situation of the case came to the conclusion that Bilquees Jahan is not entitled for any claim as she had been divorced by Mustaq Khan but her children (total five in number) are entitled for death benefits and ordered for issuance of succession certificate in favour of Bilquees Jahan being the guardian of five children. For Afroz Jahan, appellate Court has given ? share from the death benefits of Late Mustaq Khan from the department M.P. Electricity Board, Kurwai, District Vidisha as according to Clause 63 of the Mohammedan Law, Smt. Afroz Jahan is entitled for ? share of the total benefits and for remaining half, 1/2 and 1/4 was given to the daughters and double of the said division was to be given to the sons.

10. Trial Court dealing with the application under section 372 of Indian Succession Act has crystallized the claims in respect of status of divorce and marriage of the parties but could not crystallize the division between the parties.

Appellate Court has undertaken the division as per the findings given by it looking to the Clause 63 of the Mohammedan Law. Prima facie there appears no infirmity, illegality, perversity or jurisdictional error committed by the Courts below. Under Clause 63 of the Mohammedan Law, there is a table in which share of different persons has been shown. The said table indicates that the wife is entitled to get share of ? of the total share. The said legal position could not be disputed by the learned counsel for the parties. Similarly, they could not be able to explain the distinction between the wife and the widow, therefore, the present case is covered by the said clause which stipulates ? share to be given to wife Afroz Jahan. Thus, no infirmity, illegality, perversity or jurisdictional error has been caused in passing the impugned order and same is therefore, found to be just and proper, which deserve no interference by this Court in revisional jurisdiction under section 115 of Civil Procedure Code. Thus, both the revision petitions are hereby dismissed. The parties are mainly fighting for retiral dues of deceased Mustaq Khan and are in need of money for their subsistence. Therefore, parties are set at liberty to move appropriate application/representation before the office of M.P. Electricity Board, Kurwai, District Vidisha seeking expeditious withdrawal of the amount in terms of the instant order and the of the order dated 21-4-2010 passed in Miscellaneous Civil Appeal No. 16/2010. Parties to bear their own costs.