
(2018) 05 GAU CK 0188
In the Gauhati High Court
Case No : Intest. Cas. 1 of 2008

Anima Das

APPELLANT

Vs

Samaresh Majumdar

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Indian Succession Act, 1925 — Section 371, 372, 383, 384
Hindu Succession Act, 1956 — Section 15, 15(1), 15(2)

Citation : (2018) 05 GAU CK 0188

Hon'ble Judges : SUMAN SHYAM, J

Bench : Single Bench

Advocate : R Kaur, K Boruah

Final Decision : Disposed Off

Judgement

1. This appeal has been preferred against the judgment and order dated 03-09-2007 passed by the court of District Judge, Dibrugarh in Misc. (S.C.)

Case No. 186/2003 rejecting the objection filed by the appellant opposing the grant of Succession Certificate in favour of the respondent.

2. The facts of the case, briefly stated, are that the deceased daughter of the appellant, viz. Late Gouri Das was an employee under the Department

of Telecom who died in harness on 15-11-1997. At the time of her premature death, Gouri Das had left behind valuable securities and immovable

properties. After the death of Gouri Das, her husband, i.e. the respondent had filed a petition under Section 371/372 of the Indian Succession Act,

1925 registered as Misc. Succession Case No 186/2003, praying for grant of Succession Certificate in his favour in respect of the debts and securities

left behind his deceased wife. It further appears from the record that general succession notices were issued in the aforesaid proceeding but since

none had appeared to file objection, the matter proceeded ex-parte. However, before the Succession Certificate could be granted in favour of the

respondent, the appellant had appeared and filed an application under Section 383 of the Indian Succession Act, 1925 praying for revocation of

Succession Certificate. By the impugned Judgment and Order dated 03-09-2007, the learned District Judge, Dibrugarh had rejected the objection filed

by the present appellant by holding that she was not entitled to receive the Debts and Securities during the life time of the husband. Accordingly, by

the impugned order dated 03-09-2007 direction was issued to grant Succession Certificate in favour of the respondent. Hence, this appeal under

Section 384 of the Indian Succession Act, 1925.

3. The case of the appellant, as projected through the pleadings, is that her daughter had nominated the appellant in the service book for the Death-

cum-Retirement benefits and also in respect of the Postal Endowment Assurance Policy No. AM/5564 T/F which are the self acquired properties of

late Gouri Das. It is also the case of the appellant that although her daughter was married to the respondent, yet, he did not take care of his wife, as a

result of which, Gouri Das had to leave her matrimonial home and continued to live with the appellant until her death. Since the respondent did not look

after his wife, hence, according to the appellant, he is not entitled to the self acquired properties left behind by his deceased wife.

4. Mr. S. Dutta, learned Sr. counsel for the appellant submits that the appellant is a widow who does not have any source of income of her own and

therefore, if the respondent, who did not discharge his duties and responsibilities towards his deceased wife, is allowed to appropriate the entire

amount then the same would not only cause injury to the rights and interests of the appellant but the same would also lead to serious miscarriage of

justice. Under the circumstances a prayer has been made to set aside the judgment and order dated 03-09-2007. Mr. Dutta has, however, invited the

notice of this court to a decision of the Supreme Court in the case of Omprakash & Ors. Vs. Radhacharan & Ors. reported in (2009) 15 SCC 66 to

submit that by interpreting Sections 15(1) and (2) of the Hindu Succession Act, 1956, the Apex court has held that although the law is silent with

regard to the self acquired property of the women, however, in view of the provision contained in Section 15(2), there is no distinction between the self

acquired property and the property which a women had inherited. In view of the above, submits Mr. Dutta in all fairness, the appellant may not be

entitled to appropriate the amount due to her daughter under the securities and debts in question. The learned senior counsel has however, prayed that

by invoking the equitable jurisdiction this Court may permit the appellant to appropriate the amount having regard to the facts of the case.

5. Mr. Gupta, learned counsel appearing for the respondent, on the other hand, has resisted the case of the appellant and submitted that the law is well

settled that the nominee would not have any beneficial interest on the amount payable on the death of the assured but would only be the hand which is

authorized to receive the amount. In support of his above argument, Mr. Gupta has relied upon a decision of the Supreme Court in the case of Smti.

Sarbati Devi & Anr. Vs. Smti. Usha Devi, reported in (1984) 1 SCC 424. The learned counsel has also submitted that the court below has passed a

reasoned order after discussing the decision of the various courts covering the issue and therefore, this Court may not interfere with the impugned

judgment, since under the law, the appellant would not be entitled to any share of the property left behind by her deceased daughter.

6. I have considered the submission advanced by the learned counsel appearing for the parties and have also gone through the materials available on

record. It is not in dispute that the daughter of the appellant, who was an employee under the BSNL, did not live with her husband after marriage nor

did the husband look-after her and that the daughter of the appellant was living with her widow mother till the time of her death. It is also not in dispute

that late Gouri Das had joined service and had bought the Postal Endowment Assurance Policy before her marriage from her personal income.

Therefore, these are the self acquired properties of the deceased without having any contribution from her husband. It is also not denied by the

appellant that the rights of the parties in this case would be governed by the Hindu Succession Act, 1956.

7. Section 15 of the Hindu Succession Act, 1956 deals with the law of succession in case of female Hindu. Section 15 of the Act reads as follows:-

â??15 - General rules of succession in the case of female Hindus. â??

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16.

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub- section (1),--

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre- deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.â??

8. The facts of the case in Omprakash & Ors. (Supra) is that one Smti Narayani Devi was married to Dindayal Sharma and she had become a widow

within three months of her marriage. Narayani was driven out of her matrimonial home immediately after the death of her husband and thereafter, she

never stayed in her matrimonial home. At the parental home Narayani was given education where-after, she got employment and ultimately died

intestate on 11-07-1996. Narayani had various Bank accounts and had left huge sum in her provident fund account as well. After her death, mother of

Narayani filed an application for grant of succession certificate in terms of Section 372 of the Succession Act, which was contested by the

respondents who were the sons of sister of Narayaniâ??s husband, who had also made a similar application. Rejecting the claim of Narayaniâ??s

mother which was later pursued by her brothers, the Supreme Court had made the following observation in the case of Omprakash (Supra):-

(9) It has not been disputed that the respondents are the heirs and legal representatives of Dindayal, husband of Narayani. Sub-Section (1) of Section

15 lays down the ordinary rule of succession. Clause (a) of sub- Section (2) of

Section 15 providing for a non-obstante clause, however, carves out an exception viz. when the property is devolved upon the deceased from her parents' side, on her death the same would relate back to her parents' family and not to her husband's family. Similarly, in a case where she had inherited some property from her husband or from her husband's family, on her death the same would revive to her husband's family and not to her own heirs.

(10) The law is silent with regard to self-acquired property of a woman. Sub-section (1) of Section 15, however, apart from the exceptions specified in sub-section (2) thereof does not make any distinction between a self-acquired property and the property which she had inherited. It refers to a property which has vested in the deceased absolutely or which is her own. The self-acquired property of a female would be her absolute property and not the property which she had inherited from her parents. In that view of the matter, we are of the opinion that sub-Section (1) of Section 15 of the Act would apply and not the sub-Section (2) thereof.

(11) This is a hard case. Narayani during her life time did not visit her in-laws' place. We will presume that the contentions raised by Mr. Choudhury that she had not been lent any support from her husband's family is correct and all support had come from her parents but then only because a case appears to be hard would not lead us to invoke different interpretation of a statutory provision which is otherwise impermissible.

10. In the case in hand, the husband of the deceased did not live with his wife and it is her widowed mother who had looked after her daughter till the last stage. But in view of the ratio of the decision of the Supreme Court in the case of Omprakash (Supra) it is clear that it is the husband i.e. the respondent in this case who would be entitled to even the self acquired property left behind by his deceased wife. The ratio laid down in the case of Omprakash (Supra) is squarely applicable to the facts of this case and would, therefore, be binding upon this court. Relief in equity cannot be granted by the court exercising appellate jurisdiction by going against the edict of law. As such, I am unable to accept the request of the learned senior counsel for the appellant to take a different view in the matter having regard to the hard facts of this case. Having regard to the law laid down by the Honâ??ble Supreme Court in the case of Omprakash (Supra) I am of the view that there is no scope for this court to interfere with the impugned

Judgment and order dated 03-09-2007 passed by the learned court below granting Succession Certificate to the respondent.

11. Before parting with the record, it would be relevant to note herein that in paragraph 5 of the appeal petition, the appellant has stated that she has

already received from the department, a part of the payment due and payable to her deceased daughter as the nominee. The said averment has not

been contested by the respondent. Having regard to the peculiar facts and circumstances of the case, for the ends of justice, it is hereby provided that

base on the Succession Certificate so granted in favour of the respondent, no recovery shall be made from the appellant in respect of any amount

already received by her as a nominee of her deceased daughter. With the above observation, this appeal stands disposed of. There would be no order

as to cost. Send back the LCR.