
(2010) 01 AHC CK 0098
In the Allahabad High Court

Chandra Mohan and Another

APPELLANT

Vs

Smt. Chandra Devi

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 3 AWC 2188 : (2010) 125 FLR 13 : (2010) 2 UPLBEC 1679

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Sri Ashok Kumar Malviya, counsel for the appellants and Sri R. N. Rai appearing for respondent.

2. This is a dispute between a father-in-law and the alleged grandson on one side and a widow of a military personnel on the other, both the sides claiming posthumous benefits admissible to a deceased military personnel who died in-harness in 1993 suffering from liver cancer.

3. It emerges from the record that a Suit No. 9 of 1995, Chandra Mohan and Anr. v. Smt. Chandra Devi was filed in the year 1995 by the appellants Krishna Murari Mishra, father of the deceased and one Chandra Mohan claiming himself to be son of Pradeep Kumar Mishra (or made to claim such by his grandfather) deceased in the Court of Civil Judge (Senior Division), Mirzapur seeking payment of posthumous benefits Insurance Relief, Provident Fund Pension, etc. admissible to the legal heirs of Pradeep Kumar Mishra, a T. A. Gunner working in the Indian Army. This Jawan was suffering from the liver cancer and was admitted in Military Hospital, Lucknow for his treatment. Later on, he had died on 10.5.1993. It was alleged in the suit that Pradeep Kumar Mishra was the son of the plaintiff Sri Krishna Kumar Mishra, a school teacher. His son Pradeep Kumar joined the Indian Army in the year 1985 and was married with Smt. Chandra Devi in the year 1986. As alleged in the plaint, out of wedlock, a son Chandra Mohan Mishra,

plaintiff No. 1 was born in the year 1992. It was further averred in the plaint that before few months of his death, Sri Pradeep Kumar Mishra came to his native village Berampur, Tehsil Chunar. district Mirzapur where he had executed a Will on 12.4.1993. It was notarized. It was indicated in the said Will that his son Chandra Mohan will be entitled to all the property and the benefits accrued to family members and successor of Sri Pradeep Kumar after his death. As per Will, the wife was not entitled to share the amount to be paid by the Government but was to be maintained by Chandra Mohan and father-in-law Krishna Kumar Mishra.

4. After the death of Pradeep Kumar, Chandra Devi had given an affidavit in Allahabad Bank that one Chandra Mohan was her son and in the same way Krishna Murari had purchased several Kisan Vikas Patras and had made fixed deposits in the name of Krishna Murari Mishra and Smt. Chandra Devi, widow of his son. This amount comes to Rs. 1,55,000. It has been alleged that after this event Chandra Devi had left her material home to stay with her parents' family. Since the daughter-in-law Chandra Devi was pressing hard for payment of the monetary benefits to her only with the help of Military and Govt. authorities, the father-in-law Krishna Murari Mishra was compelled to file the suit. According to him the wife of deceased Military Jawan cannot claim the posthumous benefits.

5. The plaintiff-appellant had filed a declaratory suit on 4.1.1995 before the aforementioned Court. The suit was contested by the widow Smt. Chandra Devi categorically denying that Chandra Mohan was her son. According to her he was his husband's elder brother's son. The entry recorded in the kutwnb register was later on corrected by the concerned authority. She had claimed herself to be nominee of Pradeep Kumar Mishra, deceased army personnel and staked her claim on all the payments which were to be made by the Government on the death of Pradeep Kumar Mishra.

6. The trial court had dismissed the suit taking note of the rival submissions after going through the evidence and other material. The appeal preferred against the dismissal of suit before the Addl. District Judge, Court No. 2, Mirzapur was also dismissed giving cause of action to the appellants to file this second appeal.

7. In the present case, learned Counsel for the appellant has assailed both the judgments passed by the trial court and the first appellate court on the ground that learned courts below had neither considered the genuineness and authenticity of the Will which was executed by Pradeep Kumar Mishra nor considered the affidavit given by the defendant-respondent wherein she had accepted that Sri Chandra Mohan was his son. The kutumb register and school leaving certificate were excluded from consideration. The trial court had not properly appreciated the material on record. In fact the Will should have been given proper consideration. The Will was mechanically disbelieved by both the courts below without credible reasons and without giving finding. The evidence was not rebutted. As per learned Counsel for the appellants, following substantial questions of law are involved in this second appeal:

1. "Whether the question involved in the case, that the affidavit given by the defendant-respondent before the learned trial court in which defendant-respondent herself accepted that Chandra Mohan son of Pradeep Kumar born with defendant-respondent whether that can be reverted by the defendant herself?

2. Whether the Kisan Vikash Patras and National Savings Certificate which are purchased jointly in the name of plaintiff-appellant No. 2 and the defendant can be encashed without permission of the Court?

3. Whether the question involved in the case that courts below have not decided the relevant and settled principles of law and disbelieved without it?

8. Sri R. N. Rai has resisted the motion and has drawn the attention of the Court to the various findings and conclusions recorded by the two courts below and he has led the Court to various pages of the judgment in which all the issues were dealt by the trial court and the first appellate court in rejecting the contentions of the plaintiff-appellant herein.

9. I have heard learned Counsel for the parties and perused both the judgments, that is, of the trial court and the appellate court, materials on record including the papers filed alongwith affidavit and memo of appeal. Both the Courts have recorded concurrent findings of fact indicating therein that Chandra Mohan was not the son of late Pradeep Kumar Mishra. In fact he was son of Pradeep Kumar's brother Anil alias Om Prakash. Both the courts have placed reliance on corrected entry of the kutumb register maintained in the village. In the present case an enquiry was conducted by the A.D.O., Panchayat, Sub-Divisional Officer and the military authorities to find out the correct facts. In the papers maintained in the record office of the concerned section of Military at Nasik, the name of Chandra Devi was recorded as nominee of Pradeep Kumar Mishra. The Warrant Officer representing the employer had put in appearance before the Court proving the authenticity of the documents that Chandra Mohan was never recorded as son of Pradeep Kumar Mishra. No information was furnished to the concerned military department regarding the existence of a Will. It was proved before the two Courts that there was no nomination ever made by the late Pradeep Kumar Mishra in favour of his father appellant Krishna Kumar Mishra or Chandra Mohan. Even in the Medical Treatment Entitlement Certificate and Service Records Smt. Chandra Devi was recorded as nominee as per relevant provisions contained in the pension rules applicable to army personnel. Even for other purposes like pension, insurance and other dues, the name of Chandra Devi finds place in the record.

10. Both the Courts have taken note of various documentary evidence like there was specific nomination in respect of the widow in the service records maintained in the record office of Artillery at Nasik under "Defence Service Pension Regulations (Other Ranks), 1961. After entry in the service records, pension papers are prepared. An army personnel has to indicate his successor. This entry

in the service record is duly verified by the Commanding Officer. Thereafter service records are sent to the military record office P.A.O. Records. In the present case, Sri Pradeep Kumar Mishra deceased was a gunner in the artillery and as such his service record was sent to military records office, Nasik.

11. The statutory nomination which is enjoined by the statutory regulations cannot be ignored in preference to a fabricated Pradhan's report or a null and void entry in the kutumb/parivar register. In the present case, the District Panchayat Raj Officer/S.D.O./Military Officer as a result of enquiry have found that Chandra Mohan was not the son of Pradeep Kumar Mishra deceased born out of wedlock of Pradeep Kumar Mishra and Smt. Chandra Devi. All these reports including the medical treatment entitlement certificate were part of the record. The Soldier Welfare Rehabilitation Officer/Branch Recruitment Officer who belong to Indian Army had also conducted an enquiry and found truth in the widow's claim that she was nominee and Chandra Mohan was not her son.

12. In normal course, it cannot be imagined that in a court of law a legally wedded wife, mother that too a widow aged 22 years can deny the existence of her one year old real son if she has one from her deceased husband. There appears to be no reason to do so in the present circumstances. In fact Chandra Mohan was not her own son. He was his husband's elder brother's son. Interestingly after receiving a substantial amount of about Rs. 1,55,000, it was invested in the joint names of Krishna Kumar Mishra and Smt. Chandra Devi, widow of late Sri Pradeep Kumar Mishra, Kisan Vikash Patras and National Savings Certificates were purchased. Name of Chandra Mohan, the alleged minor son does not appear in the Fixed Deposit receipts or Kisan Vikash Patras nor these certificates did provide any benefit to the mother of Pradeep Kumar Mishra, the deceased army personnel.

13. This Court has also asked the learned Counsel for the parties about the age of the contesting parties. It has found that Smt. Chandra Devi at the time of her husband's death was 22 years old and she is now 38 years old. The father of Pradeep Kumar Mishra, namely, Sri Krishna Kumar Mishra is 65 years old. The widow may be living longer than the father-in-law and she does need sustenance, support in life. Father-in-law is a retired teacher and is getting pension and has agricultural land and support of two sons. The widow may have to face life alone. There is nothing on record to show that she has remarried.

14. As far as the execution of the Will is concerned, both the Courts have found it to be unreliable, fabricated. It is neither registered nor the writer of the Will Gulab Singh or witnesses Ram Nihor Singh and Shankar Singh were examined to prove the Will. It is a condition precedent to prove the Will in the Court that at least one of the witnesses must appear before the Court and verify the contents of the Will and that the person writing the Will was of sound mind and the Will was written before him. This Court has also applied the test laid down in *Yumnam Ongbi Tampha v. Yumnam Joykumar Singh and Ors.* 2009 (107) RD 48 : 2009 (2) AWC 1442 (SC). Both the Courts have rightly found that the Will

was fabricated. There was interpolation in date. No family member had signed it as a witness. It was notarized. No witness had come forward before the Court to prove it. It is noteworthy that the original Will was not produced in the Courts nor it has been produced in this Court. The widow in her affidavit submitted in the Bank had specifically mentioned that her husband Pradeep Kumar Mishra had not written any Will.

15. The evidence placed on record in both the Courts led to show that Chandra Mohan was in fact son of deceased Pradeep Kumar Mishra's elder brother Anil alias Om Prakash. He had no children. The burden of proving that Chandra Mohan was son of Pradeep Kumar Mishra was on the appellant No. 2, father-in-law. He had failed to discharge the burden before the two courts below, i.e., trial court as well as the first appellate court and before this Court. In the present case, the Warrant Officer and District Army Welfare Officer, Mirzapur had proved the record maintained in the military department. The S.D.O., Chunar, an administrative authority, D.P.R.O., Mirzapur had also conducted an enquiry that Chandra Mohan was not son of Sri Pradeep Kumar Mishra. This Court has noted that an F.I.R. was also lodged against the appellant No. 2 and Pradhan of village in this regard for sending false information to the military authorities. The Pradhan had taken a turn around later and admitted that a wrong incorrect entry was made in the privar register.

16. In view of the above, there is nothing on record to persuade the Court to form any other opinion other than the one recorded by the two courts below writing concurrent findings of fact. No substantial question of law arises to be considered in this second appeal to persuade this Court to take a different view of the matter and interfere. No ingredients or elements of substantial questions of law as required to be attracted u/s 100 of the CPC are available in this case. The disputed questions in respect of facts have already been settled by two Courts after appreciating oral and documentary evidence. This Court has also scrutinized this case in the light of the law laid down by the Hon'ble Apex Court in the judgments in Kashmir Singh Vs. Harnam Singh and Another, Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, and Kashibai and Another Vs. Parwatibai and Others, and does not find any ingredients as required u/s 100 of the CPC attracted in the present case. Accordingly, the appeal is dismissed.

17. It may be noted that here is a case where a father-in-law, a retired teacher has dragged a 22 years old widow of his deceased son, an army Jawan in a long drawn litigation which was initiated in the year 1995. At the time of death of the son the widow was 22 years old and she is now 38 years old. Her best days of youth have been lost in the prolonged litigation without getting any pension, monetary benefits which were admissible to an Army Jawan's widow at the time of sudden death of her husband in the year 1993.

18. It is made clear that since the second appeal has been dismissed, all the concerned parties including the concerned military authorities, pension releasing authority and concerned banks, etc., shall ensure that the payments which are

admissible to Smt. Chandra Devi, nominee of late Pradeep Kumar Mishra shall be made available to her without any hindrance and delay. Since both the orders passed by the trial court and the first appellate court have been upheld, all the necessary consequences shall follow.