
(2001) 02 AHC CK 0116
In the Allahabad High Court
Case No : Civil Revision No. 452 of 1999

Dulia Devi

APPELLANT

Vs

Dulia Devi

RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Succession Act, 1925 — Section 372, 373

Citation : AIR 2001 All 195 : (2001) AWC 1052 : (2001) 3 CivCC 90 : (2001) 4 RCR(Civil) 614

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Triveni Shankar, for the Appellant; S.N. Singh and H.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—This revision u/s 115, C.P.C. has been directed against the order dated 8-10-1999 passed by Sri Ramesh Chandra Singh, VIIth Additional District Judge, Varanasi in Succession Appeal No. 204 of 1998.

2. The facts giving rise to this revision are as follows :

The applicant moved an application for issue of succession certificate regarding the estate of her husband claiming herself to be widow of Panna Lal, who was the employee of Railway. The opposite parties filed objections alleging that the applicant is not the widow of Panna Lal. On the other hand, the opposite parties are the widow and son of Panna Lal. Therefore, they requested that the application for issue of succession certificate of the applicant be rejected and the succession certificate be issued in their favour.

3. The learned Civil Judge, (Senior Division) , Varanasi decided the matter and found that the applicant is not the widow of Panna Lal. He further held that the opposite parties are legal heirs of Panna Lal and therefore, he directed that the

succession certificate be issued in their favour. Against that order the succession appeal No. 204 of 1998 was filed which has also been dismissed by the impugned order. Aggrieved by it, the present revision has been preferred.

4. I have heard Sri Triveni Shankar, learned counsel for the revisionist and Sri H. N. Singh, learned counsel for the opposite parties and perused the record.

5. The findings that the applicant is not the widow and legal heir of Panna Lal has been challenged before me. However, I found that both the Courts below have recorded a finding that the applicant is not the widow and legal heir of Panna Lal. This concurrent finding of fact is based on appreciation of facts and the entire evidence adduced by the parties concerned: Learned counsel for the applicant could not point out any evidence or circumstances which might not have considered by the Courts below or misreading of evidence. Therefore, the finding of fact stand concluded by two concurrent judgments of the Court below and in this revision the evidence cannot be re-examined to record a different finding of fact. In the circumstances the argument of the learned counsel is therefore, cannot be accepted.

6. Learned counsel for the applicant faced with the difficulty that finding of fact cannot be challenged in this revision has mainly confined his arguments on the point that the succession certificate can be issued in favour of the applicant only. It is contended that on a finding that the applicant is not the heirs of Panna Lal, the application for succession certificate should have been rejected, but both the Courts below has committed a gross error of law in issuing succession certificate in favour of the opposite parties. Learned counsel has referred to the provisions of Chapter X of Indian Succession Act, 1925. Section 372 provides for application for certificate and the particular be mentioned in the same. Sub-section (2) of Section 373 provides that whether the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him. Sub section (3) provide that in case the intricate question of law are involved the Judge may grant certificate to the applicant if he appears to be the person having prima facie the best title thereto. Sub-section (4) provide that whether there are more applicants than one for a certificate, the Judge may grant certificate considering the extent of interest and the fitness in other respect of the applicants. Section 374 provides regarding contents of certificate. It is contended that all these provisions provides for the issue of certificate in favour of the applicant and nowhere provides for issue of certificate in favour of the opposite parties. On the basis of these provisions it has been argued by the learned counsel that the order for issue of succession certificate in favour of the opposite parties should be quashed.

7. I have considered the arguments: No doubt it was true that the applicant alone has made the application for issue of succession certificate. However, the opposite parties filed objections and requested that succession certificate be issued in their names. Therefore, the controversy in this case regarding the issue of certificate could be decided, and it was not necessary for the opposite parties

to move a fresh application for issue of succession certificate. The opposite parties in their objection made a request for issue of certificate and therefore, for the purpose of Sections 372, 373 of the Indian Succession Act, 1925 the opposite parties shall be deemed to be applicants to issue succession certificate. There is no bar that succession certificate cannot be issued in favour of the objectors. The multiplicity of the suits should never be encouraged. The matter for issue of succession certificate question could be decided in the application moved by the applicant itself and therefore, there was no necessity for moving of fresh application by the opposite parties. The entire evidence was considered and the certificate has been issued in favour of the person found best entitled.

8. In my opinion, there is no illegality in the order. No other point has been pressed before me in this revision. The revision therefore, fails and is hereby dismissed.