
(2015) 05 UK CK 0052

In the Uttarakhand High Court

Case No : Civil Revision Nos. 06, 13, 14 and 15 of 2010

Gayatri Verma and Others

APPELLANT

Vs

Anil Kumar Verma and Others

RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Arya Marriage Validation Act, 1937 — Section 2
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)
Succession Act, 1925 — Section 372, 372(3), 373, 387

Citation : (2015) 3 UC 2334

Hon'ble Judges : Umesh Chandra Dhyani, J.

Bench : Single Bench

Advocate : B.D. Pande, Advocate, for the Appellant; Piyush Garg, Advocate, for the Respondent

Judgement

Umesh Chandra Dhyani, J.—By means of present civil revisions, the revisionists seek to set aside the judgment and order dated 22.02.2010 and pray for grant of succession certificate in favour of the heir of the revisionist. A prayer has also been made to allow the Succession Cases in favour of present revisionists. A Succession Suit No. 30 of 2003 was filed by Anil Kumar Verma and Km. Iwaski Verma @ Jyoti (minor) against Govindi Verma, Pawan Verma, Hema Verma, Rishabh Verma, Gayatri Verma, Master Utkarsh Verma and other relatives under Section 372 of Indian Succession Act. Connected succession suit was filed on behalf of Gayatri Verma against Anil Kumar Verma, Km. Iwaski Verma, Govindi Verma, Pawan Verma, Hema Verma and Master Rishabh Verma. Learned Civil Judge (Sr. Div.), Udham Singh Nagar, vide judgment and order dated 16.08.2007, partly allowed the succession application and partly dismissed it. Aggrieved against the same, Anil Kumar Verma and Km. Iwaski Verma @ Jyoti, as also Govindi Verma filed two different misc. civil appeals bearing Nos. 74 of 2007 and 75 of 2007, which were decided by learned Addl. District Judge/III F.T.C., Udham Singh Nagar, vide judgment and order dated 22.02.2010. Operative portion of said judgment is reproduced here-in-below for convenience:

"Appeal Nos. 72 of 2007, 73 of 2007, 74 of 2007 and 75 of 2007 are hereby allowed and the judgment and order dated 16.08.2007, passed by the Civil Judge (Sr. Div.), Rudrapur, Udham Singh Nagar is set aside. A succession certificate be issued in favour of Km. Iwaski Verma on furnishing by her an indemnity bond for rendering an account of debts and securities to be received by her in pursuance of the succession certificate and for indemnify of persons who may be entitled to any part of those debts and securities. In addition to indemnity bond she will have to furnish one surety bond of a surety for Rs. 5,38,154.71 which is the claimed amount in the application. It is also ordered that certificate shall be issued on payment of requisite court fee only. The indemnity bond and surety bond shall be furnished to the Court of Civil Judge (Sr. Div.), Rudrapur, Udham Singh Nagar and that Court shall issue the certificate upon fulfillment of the above mentioned conditions. A copy of judgment be sent to the lower court for compliance. Record of lower court also be sent bank to lower court.

One copy of judgment be kept in each file of Misc. Civil Appeal Nos. 73, 74 and 75 of 2007. Files of all the appeals be consigned to Record Room."

2. Aggrieved against the same, the revisionists have filed above mentioned four civil revisions, which are being heard and disposed of together for the sake of brevity and convenience.

3. The facts giving rise to the present civil revisions are that Anil Kumar Verma for himself and as guardian of Km. Iwaski Verma @ Jyoti (minor) filed an application under Section 372 of Indian Succession Act against Smt. Govindi Verma, Pawan Verma, Smt. Hema Verma and Rishabh Verma (minor) through his natural guardian by their specific names and all other relatives in general for obtaining a succession certificate in their favour in the Court of Civil Judge (Sr. Div.), Rudrapur, Udham Singh Nagar. The same was registered as Succession Case No. 30 of 2003. According to the applicants, late Prakash Lal Verma, who was real brother of Anil Kumar Verma and father of Km. Iwaski Verma, upon his death, left a sum of Rs. 5,38,154.17 together with interest thereon. Prakash Lal Verma died on 21.06.2003. Rs. 5,38,154.71, were invested under various saving schemes. According to the applicants, there was no other relative or legal representative of the deceased except them and respondents. A prayer was made that the succession certificate be issued in their favour. Smt. Gayatri Verma and Master Utkarsh Verma filed an application under Order 1, Rule 10(2) C.P.C. for impleadment on the ground that Prakash Lal Verma, after the death of his wife Pushpa Verma, married to Gayatri Verma and out of their wedlock a son named Master Utkarsh Verma was born. Gayatri Verma and Master Utkarsh Verma were added as respondent Nos. 6 and 7.

4. Objections were filed by Smt. Gayatri Verma that applicant No. 1 had no right to move succession application. Objection was also raised that the opposite parties-respondents do not fall under the category of heirs of late Prakash Lal Verma and, therefore, they have no right to make a claim regarding the assets

left by late Prakash Lal Verma. Smt. Gayatri Verma objected that she got married to Prakash Lal Verma on 28.04.1996 at Arya Samaj Mandir, Subhash Nagar, Dehradun. A son named Utkarsh Verma was begotten by her out of such wedlock. Prakash Lal Verma met with an accident and died on 23.06.2003. According to Gayatri Verma, Prakash Lal Verma left behind him Km. Jyoti Verma and Master Utkarsh Verma as his only heirs, and they alone are entitled to make any claim and none else. Pawan Verma is the real brother of Prakash Lal Verma. Hema Verma is wife of Pawan Verma and Rishabh Verma is the son of Pawan Verma. They objected that Iwaski Verma @ Jyoti was not living under the care of applicant No. 1. In fact, she was living under the care and guardianship of Pawan Verma. Pawan Verma has claimed entitlement to a share in the assets left by the deceased, in as much as he was providing maintenance to Iwaski Verma @ Jyoti and the house constructed by the deceased was constructed with the money of Joint Hindu Family and he himself was a contributory to the same.

5. Smt. Govindi Verma admitted the relationship of Anil Kumar Verma and Iwaski Verma with deceased, but asserted that Prakash Lal Verma left only two legal heirs, who were entitled to his assets. They are Iwaski Verma and Govindi Verma (herself) being the mother of late Prakash Lal Verma. She denied the second marriage of Prakash Lal Verma with anyone. Smt. Gayatri Verma for herself and on behalf of Utkarsh Verma (minor) filed separate application for issuance of succession certificate in their favour, which succession certificate was registered as Succession Case No. 02 of 2005. Anil Kumar Verma and Iwaski Verma filed their objections on the same. They stated that the marriage certificate submitted by Gayatri Verma, indicating her marriage with Prakash Lal Verma, is a forged document and that Prakash Lal Verma never nominated Gayatri Verma or Utkarsh Verma as his nominee in the service records. Govindi Verma also filed objections to say that Prakash Lal Verma was never married to Gayatri Verma and that Prakash Lal Verma married only once in his lifetime with Pushpa and out of their wedlock only one issue (Km. Iwaski) was born. Smt. Pushpa died on 26.02.1995. Prakash Lal Verma never married again.

6. Learned Civil Judge (Sr. Div.), Rudrapur, Udham Singh Nagar held that Km. Iwaski Verma, Smt. Govindi Verma, Smt. Gayatri Verma and Utkarsh Verma are only legal heirs of the deceased, therefore, only these four are entitled to get the succession certificate and ordered to issue a joint succession certificate in their favour. By the impugned judgment learned lower court (Civil Judge) has also ordered to divide the claimed liquidated amount of money amongst them in specific shares, i.e., one third in favour of Km. Iwaski Verma, one third in favour of Smt. Gayatri Verma and one third in favour of Smt. Govindi Verma. It has also been held that Utkarsh Verma shall be entitled to get his share out of his mother's share equally therefrom. Treating Utkarsh Verma as minor, his share was ordered to be deposited in a nationalized bank till he attains majority.

7. After considering the rival contentions and having gone through the evidence brought on record, learned lower appellate court held that an cumulative reading

of these sections makes it abundantly clear that in a proceeding for succession certificate if an intricate question of fact or law arises which is necessary to determine the legal heirship and entitlement of a person to get the claim, the court, instead of deciding the same itself, may issue the certificate in favour of person best entitled to claim. While awarding the certificate the Court shall keep in view the extent of interest and fitness in other respect of the applicant for benefit of all the heirs/beneficiaries after taking an undertaking from him to safeguard the interests of all those persons who shall be found legal heirs of the deceased in any legal and competent proceedings. So in complicated matters the Succession Court, instead of deciding the matter in summary manner, may issue the certificate as aforesaid and parties may raise the complex question of facts and law in appropriate proceedings.

8. Learned lower appellate court also held that, prima facie, only Govindi Verma and Km. Iwaski Verma are entitled to claim the assets of the deceased as one is real mother and other is real daughter. Their relation with the deceased is not disputed at all. In fact the same is admitted to all the parties. Since Smt. Govindi Verma is an old lady so it would be proper to issue the certificate in favour of Km. Iwaski Verma who has attained majority during pendency of the appeal. The certificate however shall be issued in her favour for the benefit of all the beneficiaries upon furnishing a bond of indemnity for rendering an account of debts and securities to be received by her in pursuance of the succession certificate and for indemnify of persons who may be entitled to any part of those debts and securities. In addition to indemnity bond she will have to furnish one surety bond for Rs. 5,38,154.17 which is the claimed amount in the application.

9. The view taken by learned lower appellate court finds support from a decision rendered by this Court in the case of Neeraj Kumar Goyal Vs. Sri Krishan Lal Arora, . Relevant paragraph of said judgment is being quoted here-in-under:

"However, merely for the reason that the respondent Krishan Lal has been prima facie able to show that he was husband of the deceased, does not necessarily entitle him to the succession certificate under the proceedings under Indian Succession Act, 1925. In this connection, sub-section (4) of Section 373 of the aforesaid Act is relevant to be quoted here:

"(4) When there are more applicants than one for a certificate and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.""

10. Learned counsel for the revisionists drew the attention of this Court toward Section 2 of the Arya Marriage Validation Act, 1937, which is being quoted here-in-below for reference:

"2. Marriage between Arya Samajists not to be invalid. -

Notwithstanding any law, usage or custom to the contrary no marriage contracted whether before or after the commencement of this Act between two persons being at the time of the marriage Arya Samajists shall be invalid or shall be deemed ever to have been invalid by reason only of the fact that the parties at any time belonged to different castes or different sub-castes of Hindus or that either or both of the parties at any time belonged to a religion other than Hinduism."

11. But in Neeraj Kumar Goyal's case (supra) this Court has again observed that -"But, succession and inheriting property of a person is different than granting of succession certificate to one of the applicants. This Court has no hesitation in observing that in the matters of issuance of succession certificate, it only absolves the third party from discharging it from payment of dues of the deceased, and merely for the reason that the succession certificate is issued in favour of one person, it doesn't deprive the other persons of their shares, if they are the real heirs entitled to succession. They can claim their share from the person in whose favour succession certificate is issued, and who received the payment. However. for that purpose, such person is required to move to the competent civil court for declaration of his rights or recovery of money."

12. Learned counsel for the revisionists drew attention of this Court towards a decision rendered by Hon'ble Karnataka High Court in Smt. Radhamma Vs. Union of India and Others, . Learned counsel for respondent Nos. 1 and 2 contended that, firstly, the facts of the instant case are different from that of Radhamma's case (supra) and, secondly, Radhamma's case (supra) did not discuss Section 372(3) of the Indian Succession Act, which says that application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

13. In Radhamma's case (supra) intricate questions of law and facts were not involved, whereas in the instant case such facts are involved and, therefore, learned Addl. District Judge was right in holding that the revisionists may prefer suit before the Civil Judge having jurisdiction. Prima facie, I am inclined to agree with the submission of learned counsel for respondent Nos. 1 and 2 that the intricate questions of law and facts are involved in this case and, therefore, decision rendered in Radhamma's case (supra) would not be applicable to the facts of this case.

14. Learned counsel for the revisionists also laid emphasis on paragraph 16 of Radhamma's case (supra), which is being reproduced here-in-below for reference:--

"This is a case where a person claims a lady as his wife. He acknowledged, treated and lived with her as his wife. There is a long co-habitation between the deceased and also the 4 respondent. The society treated them as such. Ladies normally would not venture to say at the cost of their future life that a deceased person is their husband just for the sake of some money, moreso Indian ladies.

In this case, the 4th respondent is an educated lady and was working in the same office and she has sacrificed her job probably at the instance of the deceased Sridhar Murthy after the marriage. But a third person, i.e. the mother of the deceased in this case disputes the marital status of her son with the 4th respondent. No allegations are made that the documents produced in this case are either concocted or forged by the 4th respondent. On the other hand, the signatures of the deceased have been admitted and in regard to the contents of those documents, when they were brought to the notice of the appellant, she merely stated that she does not know. Such being the case, the burden is very heavy on the appellant to disprove the factum of marriage. Needless to say that the 4th respondent had sacrificed her job and she claims that the deceased is her husband. Such being the case, if the Court were to hold that there is no relationship of husband and wife it will be hard blow on a young and educated lady. With this background I have gone through the entire Judgment, the evidence both oral and documentary and I am fully convinced for the reasons stated above that there is sufficient material to hold that the deceased and R-4 lived as husband and wife and it was within the knowledge of the appellant and her family members. Even one can go to the extent of saying that the family members also accepted them as husband and wife, least they would not have lived with them in their house. Further, it is also supported by the voters list. There is nothing to indicate that the voters list was concocted where all the appellant, her husband, deceased and R-4 were living. However, the learned District Judge also has considered all the evidence in its proper perspective. Such being the case, I do not find any merit in this appeal. Accordingly, the appeal is dismissed and the Judgment passed by the Court below is confirmed."''

15. Learned counsel for respondent Nos. 1 and 2 submitted that there was no evidence of long co-habitation between late Prakash Lal Verma and Gayatri Verma. Prakash Lal Verma was a Government Servant, who used to work in Social Welfare Department as ADO. Nowhere Prakash Lal Verma informed his department that Smt. Gayatri Verma was his wife. No paper was filed to recognize the claim of Gayatri Verma. Neither the department was informed about the same, nor was there any paper nominating Gayatri Verma to receive the claims of GPF of Prakash Lal Verma after his death. The priest of Aray Samaj Mandir produced before the court below has stated that marriage between the parties was solemnized by Sri K.L. Kundalia, as priest, and he has only signed as a witness to said marriage. It was also stated that he personally does not know the parties, nor had the authorities of the temple took any documentary proof from the parties with regard to their identity. No voters list was supplied, to show that she married to Prakash Lal Verma, which voter list was supplied in Radhamma's case (supra).

16. Succession certificate will get entitlement to an applicant to receive the claims on behalf of the deceased, but does not gave him absolute rights, which are always subject to the decision of the competent civil court. The distinctive feature between probate and succession proceedings are that probate

proceedings can be tried like a suit, but while granting succession certificate the Court can determine the same in summary proceeding.

17. It will also be useful here to reproduce the provisions contained in Section 387 of Indian Succession Act, 1924 in this regard. The same is quoted as under:

"387. Effect of decisions under this Act and liability of holder of certificate thereunder. -No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto."

18. It, therefore, follows that if the factum of the marriage of Gayatri Verma with Prakash Lal Verma (since deceased) is decided by the competent court, the observation made by lower appellate court in Misc. Civil Appeal Nos. 72 of 2007, 73 of 2007, 74 of 2007 and 75 of 2007 shall not be binding on such Civil Court, nor the Civil Court shall be influenced by any of the observations made by the lower appellate court.

19. There is no scope of interference in the judgment impugned. The same is, accordingly, affirmed.

20. As a consequence thereof, present revisions fail and are dismissed. Let lower court record be sent back to the court below.