
(2007) 03 PAT CK 0122
In the Patna High Court
Case No : M.A. No. 395 of 2002

Md. Hadish Ali

APPELLANT

Vs

Mostt. Asma Khatoon and Others

RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (2007) 4 PLJR 391

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This miscellaneous appeal is directed against the order dated 21.6.2002 passed by 7th Addl. District Judge, Rohtas at Sasaram in Misc. Case No. 251/2001, Tr. No. 41/2001 under which he has dismissed the application of the applicant Hadish Ali filed u/s 372 of the Indian Succession Act for issuance of succession certificate to him in respect of the property left by his father Mustakim Ali, who died on 23.1.1994. The case of the appellant is that his father died when he was in Government service working in the Department of Electricity and posted as Line Inspector, Kochas, in the district of Rohtas. A sum of Rs. 1,33, 910/- payable to his father towards his provident fund, gratuity, insurance etc. is lying with the department. He is the sole heir of his father and thus, is entitled to the amount and succession certificate.

2. Respondents No. 1 to 9 and 10 to 12 appeared in court and opposed the prayer by filing rejoinders. Respondents No. 1 to 9 in their joint rejoinders contended that respondent No. 1 Ashma Khatoon is second wife of Mustakim Ali and respondents No. 2 to 9 are her sons and daughters through Mustakim Ali. Mustakim Ali had married her after the death of Jumratan Bibi, the first wife, the mother of Hadish Ali, Mustakim Ali did not have good relationship with his son Hadish Ali and so he gave him some lands through registered deed and separated him. He had good relationship with Ashma Khatoon and he gifted the

above entire dues in her favour and made her his nominee by swearing in an affidavit on 29.3.1993. Hence, Ashma Khatoon alone is entitled to the amount.

3. The case of the respondents No. 10 to 12 in their rejoinder is that they are married daughters of Mustakim Ali through Jumratan Bibi and are also successor in interest of the deceased alongwith their brother Hadish Ali.

4. The appellant examined four witnesses in support of his case. The respondents 1st set examined five witnesses. The learned Addl. District Judge on the basis of oral and documentary evidence held that Ashma Khatoon was the wife of Mustakim Ali and respondents No. 2 to 9 are her sons and daughters through Mustakim Ali and Hadish Ali was separated from Mustakim Ali and that respondents No. 10 to 12 are the daughters of Mustakim Ali by the first wife. He further held that the appellant was the sole heir of late Mustakim Ali and thus, is entitled to the succession certificate. He accordingly dismissed the application of the appellant.

5. Counsel for the appellant and the respondents were heard.

6. Learned counsel for the appellant submitted that the learned District Judge has wrongly applied the principles of Hindu Law of partition between the father and the son and came to an erroneous finding that after partition the applicant was not entitled to any share in the property left by his father. Under the Muslim Law none of the heirs is barred from inheritance whether he/she lived with or were separate from the father during his lifetime. So, admittedly the appellant is the son of late Mustakim Ali and entitled to his share in the above family, succession certificate should have been granted in his favour.

7. Learned counsel for respondents No. 1 to 9 defended the order.

8. It is not disputed during the hearing that respondent No.1 is the widow of late Mustakim Ali and respondents No. 2 to 9 are her sons and daughters through Mustakim Ali and that respondents No.10 to 12 are the married daughters of Mustakim Ali through first wife Jumratan Bibi and own sisters of the appellant Hadish Ali. A.W.1 also admitted in evidence that Ashma Khatoon (respondent) is the second wife of Mustakim Ali and respondents No. 10 to 12 are the sisters of the appellant. O.P.W. 1, 2, 3, 4 have also stated that Ashma Khatoon was married to Mustakim Ali and respondents No. 2 to 9 are sons and daughters through her.

9. It is, therefore, clear that the appellant and all the respondents are heir of late Mustakim Ali and entitled to property left by him.

10. The contention of the learned counsel for the appellant is that the Addl. District Judge has wrongly applied the principle of Hindu Law that a separated son does not inherit the property of his father. But from the impugned order it does not appear that the learned Addl. District Judge held that the appellant is not the heir of late Mustakim Ali. According to the learned A.D.J, the appellant was not the sole heir as has been pleaded.

11. Now though the appellant is one of the heirs of late Mustakim Ali, the evidence of Ashma Khatoon which is corroborated by Ext. C (Affidavit) is that Mustakim Mian had sworn affidavit with regard to successor of the above amount in her favour and in favour of the children. Therefore, a doubt is created whether even though the appellant is the son of the heirs he is entitled to any portion of the above amount. Besides this, according to the learned counsel himself, the appellant is entitled to get Rs. 13,019.02 of the total amount, whereas the respondent 1st set is entitled to get Rs. 1,01,362.42 (which includes Rs. 16,738.76, a share of respondent No.1). Therefore, when the share of the appellant is much smaller as compared to the respondents I think it alone is sufficient to deny the succession certificate to the appellant.

12. In the result, the appeal is dismissed. The appellant would be at liberty to file a suit when the total amount is withdrawn for realising his share and in that event the court would pass order in accordance with law without in any way prejudiced by this order.