

(2014) 04 RAJ CK 0160
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 931/2002

Mukbul Khan

APPELLANT

Vs

Harkhas Va Aam

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Succession Act, 1925 — Section 384

Citation : (2014) 3 WLN 441

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Mahesh Gupta, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This miscellaneous appeal under Sec. 384 of the Indian Succession Act, 1925 (hereinafter "the 1925 Act") has been filed against the judgment Dt. 25.01.2002 passed by the Additional District Judge, Neemka Thana, District Sikar dismissing an application for issue of Succession Certificate seeking grant of Rs. 1,69,491.60 thereunder. The appellants Maqbool Khan (now represented through his legal representatives) and Zamila are the parents or one Iqbal, who died while working at Saudi Arabia in the year 1988. At the time of his death in the 1988 Iqbal was married to respondent No. 2 Hasina Bano it appears that on Iqbal's death a compensation of Rs. 8,47,458/- was determined for the purpose of disbursement to his legal heirs and dependents. The appellants as parents of the deceased Iqbal applied for compensation to the extent of entitlement whereon out of Rs. 8,47,458/-, Rs. 6,78,000/- was disbursed. An amount Rs. 1,69,491.60 was not disbursed to them. In the circumstances an application under Sec. 384 of the 1925 Act was moved before the Court below for issuing Succession Certificate in respect of remainder Rs. 1,69,491.60. In the aforesaid application for a Succession Certificate, the appellants admitted that the deceased Iqbal was married to respondent No. 2 Hasina Bano at the time of his death. It was however stated that subsequently

on 12.01.1994 the respondent No. 2 had married to one Faiyaz Ahmed and had been since residing as his wife. It was submitted that consequently the respondent No. 2 Hasina Bano was not entitled to any amount of compensation or any part of Rs. 8,47,458/- relating to Iqbal's death while working in Saudi Arabia. And even though the appellants have received an amount Rs. 6,78,000/- out of Rs. 8,47,458/- a Succession Certificate be issued to them for the remainder amount as there were no other dependents of Iqbal Kahn.

2. The application for grant of Succession Certificate as aforesaid was resisted by the respondent No. 2 Hasina Bano. It was stated that she was the legally wedded wife of Iqbal Khan at the time of his death in the year 1988. It was submitted that following death of Iqbal Khan, she was harassed by her in-laws, consequent to which she left her matrimonial home and returned to her father's house. Then after a gap of about 5 years on 12.01.1994 she was indeed re-married to one Faiyaz Ahmed Khan. It was submitted that she thus had a right to claim a part of the compensation Rs. 8,47,458/- resulting from the death of Iqbal Khan in the year 1988. At the relevant time she was entitled to Vi share of the amount of compensation under Muslim Law as Iqbal's widow not having borne any child in the course of her marriage with Iqbal Khan. It was submitted that disbursement of an amount of Rs. 6,78,000/- to parents of the deceased Iqbal Khan had in fact been in excess by Rs. 42,381/- to which they were not entitled, and the remainder amount Rs. 1,69,491.60 as sought in application for Succession Certificate be not disbursed to the applicants.

The Court below on pleadings of the parties framed three issues:--

3. On consideration of the matter and evidence led before it, the Court below held that the respondent No. 2 Hasina Bano was indeed the married wife of Iqbal Khan at the time of his death in the 1988. Succession opened immediately on Iqbal's death, whereupon the respondent No. 2 Hasina Bano was entitled to Vi of Iqbal's estate in view of the fact that she had not borne any child during her marriage with Iqbal Khan. The Court below held that the subsequent marriage of the respondent No. 2 Hasina Bano with Faiyaz Ahmed on 12.01.1994 would not adversely affect her right as in the year 1988 at the time of death of her husband Iqbal Khan her rights crystalised. In these circumstances, the parents of the deceased Iqbal Khan already having availed their share of Rs. 6,78,000/- more than permissible in law were not entitled to issue of Succession Certificate in respect of Rs. 1,69,491.60. This in accordance with Mohammaden Law fell to the share of respondent No. 2 Hasina Bano. So holding the learned Court below dismissed the application under Sec. 384 of the 1925 Act for grant of Succession Certificate. Hence this appeal.

4. Heard learned counsel for the appellants and perused the impugned order Dt. 25.01.2002 passed by the Court below.

5. Learned counsel for the appellant has submitted that the respondent No. 2 having married one Faiyaz Ahmed on 12.01.1994 ceased to have any right over

the estate of the deceased Iqbal Khan including the amount of compensation resulting from death of Iqbal Khan in Saudi Arabia. It was submitted that consequently the remainder amount Rs. 1,69,491.60 out of the amount of compensation Rs. 8,47,458/- ought to have been allowed to be disbursed to the parents of the deceased Iqbal Khan by issuing Succession Certificate to them as there were no other legal heir of the deceased Iqbal Khan.

6. I however find no force in the submission of learned counsel for the appellants. It is trite that succession opens immediately on death of a person. In the instant case when Iqbal Khan died in the year 1988 while working at Saudi Arabia, the respondent No. 2 Hasina Bano was his legally wedded wife, as admitted by the appellants. In these circumstances, as per Mohammaden Law, she was entitled to 1/4 share of the compensation, as she had not borne any child from the marriage with the deceased Iqbal Khan. The appellants had no right to receive Rs. 1,69,491.60 in respect of which the Succession Certificate was sought. The learned Court below has rightly dismissed the application for Succession Certificate. There is no perversity or error apparent of law in the impugned order and it occasions no manifest injustice to the appellants. There is no merit in the appeal and the same is dismissed.