
(2012) 04 MP CK 0006
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 306 of 2010

Oliya Begum and Others

APPELLANT

Vs

Abdul Rashid and Another

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (2012) ILR (MP) 1419 : (2012) 2 MPLJ 687

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Imtiaz Hussain, for the Appellant; Smita Arora Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—This revision is directed against the order dated 21-7-2010 passed in Misc. Civil Appeal No. 9672010 by the DC Additional District Judge, Bhopal by which reversing the order dated 11-5-2010 in M.J.C. No. 30/2004 of the I Additional Judge to the Court of I Civil Judge, Class-I, Bhopal, direction has been issued to issue a succession certificate u/s 372 of the Indian Succession Act to the respondent No. 1. The facts giving rise for filing of this revision are that the petitioners No. 1 and 1(a), 1(b) and 1(c) herein have made an application for grant of succession certificate on account of death of one Abida Sultan, who was said to be the daughter of petitioner No. 1 and sister of petitioners No. 1(a), 1(b) and 1(c). It was contended that on account of a motor accident on 19-10-1997, said Abida Sultan had died. She was an employee in the Madhya Pradesh Laghu Udyog Nigam Limited on the post of Lower Division Clerk and she was to be granted certain benefits accrued to her on account of such service. She was to be granted Rs. 1,00,000/- as Insurance amount, Rs. 80,000/- being Provident Fund and Rs. 45,000/- being gratuity and a total sum of Rs. 2,25,000/- was required to be paid to her. Since the petitioners were the only succeeding heirs of said Abida Sultan because her husband, the respondent No. 1, had given her divorce

(Talaq) three months before the date of death, therefore, a succession certificate be granted to the petitioners. The objections were filed in the said claim made by the petitioners by the respondent No. 1. The other petitioners in this case were also named as respondents in the said succession case. The objection of the respondent No. 1 was considered and in view of the law laid-down by the Apex Court, taking into account the fact relating to personal law, the trial Court held that the petitioners were entitled to grant of such succession certificate and passed an order on 11-5-2010. The respondent No. 1 preferred a Misc. Appeal against such an order before the Court of DC Additional District Judge, Bhopal and since the said appeal has been allowed and it has been directed that the succession certificate be issued in favour of respondent No. 1, this revision is required to be filed.

2. Learned Counsel for the petitioners has drawn attention of this Court to the order passed by this Court in Misc. Appeal in which the claim for enhancement of compensation was made by the respondent No. 1. Drawing attention of this Court to the specific finding recorded that the factum of divorce cannot be disbelieved, it is contended by the learned Counsel for the petitioners that if respondent No. 1 was a divorced husband, he was not entitled to grant of a succession certificate as per the provisions of Mohammedan Law as a divorcee husband has no right to claim the benefits in the property of a divorced wife. It is also contended that there was material evidence available on record to this effect, which was not taken into account by the Court below and if proper appreciation of evidence, as was done by the trial Court, would have been done by the lower Appellate Court, the entire claim of respondent No. 1 would not have been accepted at all. It is also contended that as per the Mohammedan Law even if it is accepted that there was no divorce (Talaq) proved, the entire share of the property of the deceased Abida Sultan was not to be given to the husband as the right of other sharers as defined in Chapter-VII of Mohammedan Law relating to Hanafi Law of Inheritance, the petitioners would have been entitled to 1/2 share. This particular aspect has not been considered by the lower Appellate Court and, therefore, the order impugned is bad in law.

3. Per contra, it is contended by the learned Counsel for respondent No. 1 that it was amply proved by the respondent No. 1 that there was no divorce in between the respondent No. 1 and said Abida Sultan. From the evidence available on record, it has been tried to point out that even the statements were recorded in which it was categorically stated that the deceased was going to her husband at Indore when she met with an accident and ultimately died in M.Y. Hospital at Indore. It is contended that if this piece of evidence is taken into account, it will be clear that the finding recorded by the lower Appellate Court was just and proper. It is also contended that the last rites etc. of the deceased were performed by the respondent No. 1. Even in the claim case the compensation was granted to the respondent No. 1. The fact relating to divorce was specifically denied by the respondent No. 1 in his Court statement and, therefore, the lower Appellate Court was right in granting the succession certificate in favour of

respondent No. 1 only. It is also put forth by learned Counsel for respondent No. 1 that in a case u/s 372 of the Indian Succession Act, there is no role of personal law and as such the objection raised in this respect by the learned Counsel for the petitioners is not acceptable. However, learned Counsel for respondent No. 1 could not point out as to how the respondent No. 1 only was entitled to all the claims in the property of deceased Abida Sultan, but it is contended that in view of the facts aforesaid, there is no force in the revision petition and the same deserves to be dismissed.

4. Heard learned Counsel for the parties at length and perused the record.

5. True it is that allegations are made with respect to the divorce of said Abida Sultan with respondent No. 1. It is also true that an observation is made by this Court in a Misc. Appeal filed by the respondent No. 1 for enhancement of the award amount. However, cursory observations made by this Court will not prove the fact of divorce in between late Abida Sultan and respondent No. 1. The entire evidence adduced in this respect is marshaled. There may be an oral divorce (Talaq) as per the provisions of the Mohammedan Law but proof of the same is also required to be given as is prescribed under the law. There is nothing on record to indicate that such a fact was proved. On the other hand, the documentary evidence with respect to the marriage and the oral evidence of the parties indicate that the fact of divorce was specifically denied by respondent No. 1 and the alleged divorce was not successfully proved by the petitioners by adducing any evidence in this respect. Therefore, finding in this respect given by the Court below cannot be said to be perverse. If the evidence of respondent No. 1 recorded in the trial Court is scrutinized, he has categorically pointed out the fact relating to divorce in paragraph 13. He was aware of the procedure as to how the divorce under the Mohammedan Law is required to be given. There was an admission to the effect made by the witness of petitioners that late Abida Sultan was visiting respondent No. 1 at Indore occasionally and even on the date of accident she was going to Indore to meet her husband when she met with an accident. If this is the evidence, it cannot be said that the fact of divorce of said Abida Sultan by the respondent No. 1 is proved. In view of mis, the finding given by the lower Appellate Court in this respect requires no interference.

6. Now the next aspect is whether the respondent No. 1 alone was entitled to grant of succession certificate. As has been pointed out hereinabove, there are three classes of legal heirs as per the Mohammedan Law. Section 61 prescribes the classes of legal heirs. It is not disputed by the respondent No. 1 that the parties are governed by Hanafi Law of Inheritance. Section 63 of the said part of Mohammedan Law prescribes the sharers. Admittedly the husband is given 1/2 share in the property of the wife. If any residuary property is left, that is to be devolved in the manner indicated in the said provision. Accordingly, the mother is also entitled to 1/6 share in the said property. Of course 1/2 is required to be given to the husband and remaining 1/2 will go in the residuary, which is to be devolved in accordance to the provisions of section 65 of the Mohammedan Law.

Thus, the lower Appellate Court was not right in granting the succession certificate for the entire money to the respondent No. 1 only. The respondent No. 1 would be entitled to 1/2 share and rest of 1/2 share will be devolved in between the petitioners and other legal heirs of said Abida Sultan as per the provisions of section 65 of Mohammedan Law treating it as residuary share. The succession certificate is required to be issued in this respect by the Court below. The share in the aforesaid amount of claim is required to be distributed accordingly.

7. The revision succeeds to this extent and is allowed with a direction that the respondent No. 1 would be entitled to only 1/2 share in the property of deceased Abida Sultan and rest of the 1/2 share will be devolved in between the petitioner and others as per the provisions of section 65 of the Mohammedan Law treating the said share as residuary share. The succession certificate be issued accordingly to this extent. Parties to bear their own cost.