
(2011) 01 AHC CK 0294
In the Allahabad High Court
Case No : Special Appeal No. 3 of 2011

Phool Chand Singh

APPELLANT

Vs

The Central Defence Account (CC) and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Citation : (2011) 1 ADJ 892 : (2011) 4 AWC 3695

Hon'ble Judges : Ashok Srivastava, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—In this special appeal the Appellant has challenged the order dated 02nd December, 2010 passed by the learned Single Judge in Civil Misc. Writ Petition No. 12446 of 2004 (Phool Chand Singh v. The Central Defence Account (CC), Lucknow and Ors.), whereunder learned Single Judge refused to grant any relief towards payment of monetary benefits subsequent to death of one Kanta Singh and held that though according to the writ Petitioner-Appellant succession certificate was issued in his favour but there is absolutely no material on record, which could substantiate as on what basis and on what conditions the succession certificate has been issued.

2. We find three things from the record. Firstly, there is an order of the Civil Judge (Senior Division), Ghazipur issuing succession certificate, pursuant to the application dated 27th August, 2001, in favour of the Appellant as well as one Sri Ram Briksha Singh. Such succession certificate is restricted only towards the amount lying in the State Bank of India, Ghazipur Branch, District Ghazipur and market value of certain securities on the date of application, which is stated to be "Nil". So far as this part is concerned, the matured value of the said account of State Bank of India has been given to the Appellant by the bank. According to the Appellant, Ram Briksha Singh never objected in receiving such amount. Secondly, there is an order dated 10th May, 2002 with regard to declaration of right under the will in favour of the Appellant and the order has also been passed

by the Civil Judge (Senior Division), Ghazipur. However, the dispute is mainly with regard to amount of gratuity and others. In this respect, we find from the counter affidavit of the Union of India filed in the writ petition before the learned Single Judge that there are two nominees for gratuity amount, one Gulab Singh and Anr. Harish Chandra. Neither they are the parties herein nor their claim as nominees can be ignored. In spite of the same, learned Counsel appearing for the Appellant has contended that there is no necessity of issuing any notice to Gulab Singh and Harish Chandra in view of the order of the Civil Court declaring right of the Appellant as per the will.

3. We are of the view that meanings of nominee and heir are totally different. If the heir is stated to be nominee then there is no problem with regard to any claim. But if the nominee is different from the heir, then the authorities normally release the amount in favour of the nominee because they are not supposed to decide the title of any property. It is duty of the heir claiming any property or corpus from the nominee to initiate a civil proceeding, if the nominee refuses to pay. In this regard, a Division Bench of this Court, presided over by one of us (Amitava Lala, J.), has already clarified the position in the judgment in *Bihasu Yadav Vs. Post Master, Mau Nath Bhanjan, Department of Posts of India and Branch Post Master*, and held as follows:

6 ... Therefore, the reasonable interpretation is that the nominee is the holder or recipient of the amount but not owner of the amount in case dispute arises. Normally the nominations are being made within the family, e.g., husband in favour of wife or wife in favour of the son/daughter etc. In such cases no question comes up. But whenever nomination appears to be contrary to succession and/or made for a person outside the family then there would be obvious conflict and in such conflict by virtue of this Act, necessity of succession cannot be ignored. If we keep eyes open to this Act alongwith the Succession Act conflicting situation will obviously arise. According to us right of succession has not been properly spelt out at the time of introduction of this Act. In other words pious desire of the Legislature was to make easier banking transaction in between Bank and Post Offices in one hand and depositors under the instrument on the other hand. It is only said that the deposits have to go in favour of the nominee in absence of the depositor. Therefore, when both the Acts are existing the reasonable interpretation of the Court would be that the nominee might have been the beneficiary of the amount normally but when there is a dispute the nominee is not more than holder of such amount. In such case he cannot be the beneficiary/successor as a matter of course. The dispute about succession will be governed by the respective Succession Act alone. As such we cannot hold it good to say that nomination gives absolute and unfettered right of ownership of the amount to a nominee by virtue of such section. In *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, it was held that the nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession

governing them.

4. In view of the aforesaid, it is very difficult for this Court to come to an appropriate conclusion and give directions to any of the authorities to release any amount in favour of the Appellant without any order by the Civil Court. Hence, the special appeal cannot be admitted and is hereby dismissed, however, without imposing any cost.

5. In any event, passing of this order will no way affect the right of the Appellant to proceed before the appropriate forum in accordance with law and get an independent disposal. The Civil Court, upon being called, will not be influenced by any observation of the Court.

Ashok Srivastava, J.

6. I agree.