

(2005) 08 PAT CK 0080

In the Patna High Court

Case No : Civil Revision No. 1024 of 2001

Ram Sumeri Devi @ Sumeri Devi and Another

APPELLANT

Vs

Shiva Pandey @ Sheo Kumari Devi @ Sheo Kumari Pandey

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Succession Act, 1925 — Section 373, 8

Citation : (2006) 1 PLJR 571

Hon'ble Judges : Nagendra Rai, J; Barin Ghosh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This Civil Revision is directed against the order dated 5.3.2001 passed by the 8th Additional District & Sessions Judge, Saran in Misc. Appeal No. 9/1996 dismissing the appeal against the order dated 19.1.1996 passed by the 1st Subordinate Judge, Chapra in Succession Certificate Case No. 30/1993 rejecting the claim of the petitioner and ordering for grant of succession certificate in favour of the Opposite Party-widow, Shiva Pandey @ Sheo Kumari Devi @ Sheo Kumari Pandey. The matter was placed before the learned Single Judge, who has referred the matter to Division Bench on the point as to whether the observations of the learned Single Judge of this Court in his order dated 3.8.1999 passed in Civil Revision No. 371/1999, which was filed against the interlocutory order in succession case, is binding on the appellate court while deciding the succession matter finally.

2. The factual aspect involved in this Civil Revision is that one Ashok Kumar Pandey was an employee of New India Assurance Company Limited and he died on 6.3.1993 leaving certain amounts deposited in different accounts of Provident Fund, Group Insurance, Group Service Linked Insurance, Group Insurance Employees Co-operative Society as well as the leave encashment. He died leaving behind his widow-opposite party and the petitioner-mother apart from other relations. The widow-opposite party No. 1 filed a claim for succession which

was registered as Succession Certificate Case No. 30/ 1993 in the Court of the 1st Subordinate Judge, Chapra for grant of succession certificate with regard to the aforesaid amount claiming herself to be the only legal heir of said Ashok Kumar Pandey.

3. When the petitioner-mother came to know about this fact, she appeared before the Subordinate Judge and filed an objection petition. It was stated that Ashok Kumar Pandey has another brother, namely, Subodh Kumar Pandey, who is petitioner No. 2 in this revision application, and four sisters apart from the wife and the mother, and all are legal heirs of the deceased. She also stated that Subodh Kumar Pandey, the other brother was the nominee of the deceased and as such he was entitled to grant of succession certificate. It was also submitted that the mother being the Class-I heir, the succession should be granted in her favour. In the meantime, one other objection was filed by the father of the deceased, Ram Balak Pandey and Subodh Kumar Pandey, Petitioner No. 2 claiming succession certificate in their favour. They filed a petition for making amendment in the objection petition which was rejected by the Court below. Against that they came to this Court and filed Civil Revision No. 371/ 1999, which was finally disposed of by the learned Single Judge on 3.8.1999, a copy of which has been annexed as Annexure-1 to the Civil Revision application.

4. Learned Single Judge dismissed the amendment sought for in the objection petition on the ground that that would not serve any purpose on the ground that the nomination does not create any right and according to law of succession governing the parties read with Section 373 of the Indian Succession Act, the wife has the best claim, as such she is entitled to succession certificate. So far as the main claim is concerned, that claim was allowed by the original court. The matter came in appeal before the appellate authority. The matter was remanded again. The claim of the widow was allowed and against which an appeal was filed by the petitioners which has been dismissed primarily on the ground that in view of the observations of the High Court when the widow is entitled to succession, the appellate court cannot pass an order contrary to the said direction. The learned Single Judge has referred the matter as stated above, to consider as to what is the legal effect of the observation in deciding the matter finally.

5. Learned counsel appearing for the petitioners submitted that the said observation was made in an interlocutory matter before this Court when the issue was not as to who is entitled for grant of succession certificate, the issue was only whether the amendment would be allowed or not. This controversy as to who is entitled to succession certificate was neither heard, especially the widow-mother was not even given an opportunity to present her version before the aforesaid finding. It was further submitted that the proposition of law having been laid down in Civil Revision is contrary to the provisions of the Hindu Succession Act. Learned counsel appearing for the opposite parties, on the other hand submitted that once the learned Single Judge has made an observation in a Civil Revision with regard to entitlement of a widow in a succession case, even if

the observations are contrary to law, the same is binding on Subordinate Judge.

6. In view of the admitted fact that the deceased died leaving behind his widow and the mother, as also in view of the settled statutory law as contained in the Hindu Succession Act, and in view of the statutory provision that the widow and the mother are Class-I heirs in terms of Section 8 read with Schedule appended to the Act, the question arises as to whether any observation made by this Court will be treated to have settled the controversy or the question is still open for determination by the authority concerned/Subordinate Court while finally disposing of the succession matters. No doubt, in the same proceeding, if an order is passed by the same Court or a superior Court deciding a controversy between the parties, in the sense, that the matter has been finally heard and decided then that will amount to res judicata and the other party, who has lost the matter, cannot again re-agitate the same but the question is as to whether that is the situation in this case. In this case, admittedly, the civil revision was filed against the rejection of amendment of objection. The whole issue before the learned Single Judge of this Court was as to whether amendment to the objection petition is to be allowed or not. That having been rejected and thereafter an observation, as stated above, has been made that the widow has a superior claim for grant of succession or without taking note of the fact that the mother is also alive and she has raised an objection and also claimed before the Court below. Thus the issue was neither agitated nor opportunity of hearing was given and in such a case, any observation made by this Court will not amount to either a res judicata or a binding order passed by the Court on the Subordinate Court. No doubt, even an observation by a superior Court has to be respected but when the observation is contrary to law and having been rendered without even hearing the concerned party, in our view cannot prevent the Subordinate Court to decide the matter. It is to be stated that the question of grant of succession certificate was still pending before the Court below for final determination when the observations were made by the learned Single Judge. In a Civil Revision, there is no question of determination of succession certificate matter when the whole matter was pending before the lower court and the matter before this Court has come for limited point.

7. We are of the view that the appellate court committed a serious error of law in disposing of an appeal on the basis of the observations made by this Court in the aforesaid Civil Revision. It is to be made clear that while deciding the question for grant of succession certificate, the relevant question is as to who is entitled to succession certificate in terms of the statutory law governing the parties and dependency has nothing to do with the grant of succession certificate. In the result, the appeal is allowed. The order passed by the appellate authority is set aside and the matter is remitted back to the appellate court to consider the matter afresh in the light of the observations made above.