(1992) 02 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 140 of 1982

Rukmanibai APPELLANT

Vs

Bismillabai RESPONDENT

Date of Decision : 27-02-1992

Acts Referred:
Succession Act, 1925 — Section 372

Citation : AIR 1993 MP 45

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : B. Pandya, for the Appellant; M.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.—This is an appeal by the appellant/objector u/s 384 of the Indian Succession Act, 1925 (for short, the ''Act'') against the order dated 16-3-1982, passed in Succession Case No. 23/1981, by the Ninth Additional Judge to the Court of District Judge, Indore (for short, the ''Succession Court''), granting succession/certificate to the respondent for the debts and securities left by deceased Babu.

2. The material facts leading to this appeal are thus : Deceased Babu son of Nathu was employed in the Rajkumar Mills; Indore, who died on 28-5-1980, having left Rupees 15,000/- in his Provident Fund Account with the Regional Provident Fund Commissioner, Indore, and Rs. 10,000/- as EDLI Benefits; the deceased in his lifetime renounced his Hindu religion and converted himself to a Mahomedan. The respondent Bismillabai, the daughter of the deceased, applied u/s 372 of the Act for the grant of succession certificate. To that the appellant objected and prayed for the grant to her, being the niece of the deceased. The Succession Court after holding an enquiry and on the material produced, held that the deceased converted himself to a Mahomedan and, therefore, the rights of inheritance were governed by the personal law applicable to a Mahomedan. On evidence the Succession Court found that Bismillabai was the daughter of the

deceased; the deceased during his lifetime opened ajoint account in his name as well as Bismillabai''s name in the Central Bank, Siyaganj Branch, Indore City; the deceased made Bismillabai as his nominee to the provident fund account. Aggrieved in this grant to the respondent, the appellant has come up in appeal.

3. Shri B. Pandya, counsel for the appellant, and Shri M. A. Khan, counsel for the respondent, were heard.

4. After hearing counsel, I am of opinion that this appeal has no merit. In para 1 of the application u/s 372 of the Act, Bis-millabai averred that she is the daughter of deceased Babu, who died on 28-5-1980. The fact that the applicant Bismillabai is the daughter of deceased Babu was admitted. Besides the admission, evidence was adduced by the applicant Bismillabai, that from the wedlock of the marriage of Babu with the applicant''s mother, Bismillabai and her younger brother Mohan were born, to whom the deceased was very much attached; therefore, he was made a nominee, but Mohan died; hence, in place of Mohan''s name, Bismillabai was made a nominee in the Provident Fund Account and EDLI benefits which was proved by P.W. 2 Sagarmal, in-charge of Provident Fund Accounts in Raj-kumar Mill. P.W. 6 Rajendra Kumar Jain, an employee in the Siyaganj Branch of Central Bank of India, has proved that the deceased was operating a joint account in his name as well as in the name of Bismillabai. P.W. 3 Kashiram, P.W. 4 Bansilal and P.W. 5 Nathusingh proved that the deceased converted himself to a Mahomedan and was married in Ahmedabad. After the death of the wife of the deceased, the deceased was living with Bismillabai, who was looking after him; the deceased was buried in a graveyard. To rebut this evidence, Rukmanibai examined herself as NAW 1, who was aged about 191 years at the time of recording of her statement, NAW 2 Buddha, NAW 3 Mithileshbai and NAW 4 Bhaiyalal, who stated that the deceased was a bachelor and did not renounce his Hindu religion to become a Mahomedan.

5. On this evidence, coupled with the fact of admission in para 1 of the objection, in my opinion, the Succession Court took the view in the right direction that deceased Babu converted himself to a Mahomedan and Bismillabai is his daughter, who is entitled to the grant of succession certificate.

6. Section 21 of the Principles of Mahomedan Law provides that in the absence of a custom to the contrary, succession to the estate of a convert to Mahomedanism is governed by the Mahomedan Law. The Privy Council in case of AIR 1930 251 (Privy Council) has held that when once a person has changed his religion and changed his personal law, that law will govern the rights of succession of his children. It may, of course, work hard to some extent upon expectant heirs, especially if the expectant heirs are the children and perhaps the unconverted children of the ancestor who does in fact change his religion, but, after all, it inflicts no more hardship in their case than in any other case where the ancestor has changed the law of succession.

7. The daughter was entitled to her share, but as there was no Residuary, the

share of the Residuary also reverted back to her in accordance with Section 66 of the Mahomedan Law. In the circumstances, the grant of succession certificate to the respondent cannot be held to be illegal. Therefore, the grant of certificate to the appellant was rightly refused, and the succession certificate was rightly granted to the respondent.

8. In the result, the appeal is devoid of any substance and is dismissed with no order as to costs.

