

(2006) 05 JH CK 0041
In the Jharkhand High Court

Sanichariya Devi @ Orain and Others APPELLANT

Vs

Chhaya Devi
 Chhaya Devi Vs Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Citation : (2008) 3 JCR 333

Hon'ble Judges : M.Y. Eqbal, J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Mr. A.K. Sahani and Dr. S.N. Pathak, learned Counsels appearing for the parties.
2. These two matters, one appeal and another writ petition, have been heard together and are disposed of by this common order since common question of law and facts are involved.
3. Late Rurh Singh was employed as driver in Bihar State Electricity Board, Ranchi. He died on 14.8.1994. After his death, appellant Sanichariya Devi along with her children filed Succession Case No. 228 of 1996 for the grant of succession certificate on the ground, inter alia, that she is legally married wife of deceased Rurh Singh and appellant Nos. 2 to 4 are the children born out of their marriage. The case of the appellant was that prior to her marriage with Late Rurh Singh, he was unmarried and therefore they are legally entitled to succeed debts and securities including retiral benefits of deceased Rurh Singh. In the said succession case, one Smt. Chhaya Devi, who is the writ petitioner, was impleaded as opposite party as she was claiming to be the legally married wife of Late Rurh Singh. The Additional Judicial Commissioner, Ranchi, after hearing the parties, disposed of the succession case in terms of judgment and order dated 7th May, 2004. The Court below recorded a finding that the appellant Sanichariya Devi has failed to prove that she was the legally married wife of deceased Rurh

Singh. Accordingly, succession case was dismissed.

4. In the meantime, Smt. Chhaya Devi claiming to be the first wife filed the instant writ petition seeking a direction for the payment of death and retiral benefits. Both the writ petition and the appeal were heard together and in the writ petition, interim order dated 14.1.2007 was passed, which reads as under:

W.P.(S) No. 1625 of 2006 has been filed by the petitioner Chhaya Devi claiming herself to be the legally married wife for payment of retiral benefits of her husband late Rurh Singh who superannuated from the service of the Bihar State Electricity Board. This Court took up several cases of similar nature along with the instant case and passed order dated 7.4.2006, directing the respondent-JSEB to pay retiral benefits to the petitioner after setting their disputes before the Lok Adalat.

It appears that one Sanichariya Devi filed an application before the Judicial Commissioner, Ranchi for grant of succession certificate in respect of the assets and for payment of retiral benefits of her deceased husband payable to the claimant. The said case was registered as Succession Case No. 228/1996. The Additional Judicial Commissioner, Ranchi disposed of the Succession Case by judgment-dated 7.5.2004 holding that Chhaya Devi is the only legally married wife and she is entitled to get all the retiral benefits. Against the said judgment, Sanichariya Devi filed the aforesaid Misc. Appeal being M.A. No. 138/2004. Both the cases have been referred to this Bench for hearing.

The writ petition (WPS No. 1625/06) as also the Misc. Appeal (M.A. No. 138/04) are admitted for hearing.

In the meantime, having regard to the judgment passed by the Additional Judicial Commissioner, Ranchi holding that Chhaya Devi is the legally married wife, the respondent-Board is directed to release 50% of the total retiral benefits in favour of Chhaya Devi. Remaining 50% of the retiral benefits shall be kept by the respondent-Board which shall be released on the basis of the decision that may be passed in these two cases.

Hearing of both the cases shall be expedited.

5. Today both the matters have been heard together. We shall deal with the appeal arising out of the judgment and order passed by Additional Judicial Commissioner, Ranchi in the Succession Case No. 228 of 1996.

6. As noticed above, it was specific case of the petitioner-appellant that she was the legally married wife of Late Rurh Singh and out of the said wedlock, two sons and one daughter (the appellants), born, who are minor till date. Although, the Court below, after considering the evidence, recorded a finding that the appellant Sanichariya Devi has not been able to prove that she is the legally married wife, but nothing has been discussed with regard to the legitimacy of the children. Even assuming that marriage was allegedly void, the question arises whether the children are entitled to succeed the estate of the deceased. The judgment and

order passed by the Additional Judicial Commissioner, Ranchi cannot be sustained in law inasmuch as it has not considered various aspects of the matter including the presumption of legitimacy of the children and also the onus to prove.

7. For the reasons aforesaid, this appeal is allowed and the impugned judgment and order passed by the Additional Judicial Commissioner, Ranchi in Succession Case No. 228 of 1996 is set aside. The matter is remitted back to the Court below for passing fresh judgment after considering all aspects of the matter and the law to that effect. In view of the order aforesaid passed in the appeal, no further order need to be passed in the writ petition particularly when by interim order, direction has already been issued for payment of 50% of the benefits to the writ petitioner. Needless to say, the final judgment and order that will be passed in the succession case, shall finally decide the right of the parties with regard to the estate of the deceased.