
(2011) 01 CHH CK 0014
In the Chhattisgarh High Court
Case No : Civil Revision No. 101 of 2004

Satyabhama @ Sohagbati and Others APPELLANT
Vs
Smt. Kamladevi and Others RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Evidence Act, 1872 — Section 50
Hindu Marriage Act, 1955 — Section 16, 5
Succession Act, 1925 — Section 372

Citation : (2011) 4 CGLJ 610

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Judgement

Hon"ble Shri N.K. Agarwal, J.—Legality and propriety of the order dated 10-2-2004 passed in Civil Appeal No. 16/2002 by the District Judge, Rajnandgaon dismissing the applicants" appeal and confirming the order passed by the Civil Judge Class I, Rajnandgaon in Succession Case No. 9/98 and 10/98 dated 16-8-2002 is under assail in the instant revision.

Facts of the case in brief are as under :--

Satyadev Dubey, Head Constable died on 9-8-1997 in Government Hospital, Rajnandgaon while he was on duty. Respondent Smt. Kamladevi @ Sohagbati is his widow respondents No. 2 and 3 are his son and daughter.

2. After death of Satyadev Dubey, respondents No. 1 to 3 as well as applicants have preferred applications u/s 372 of Indian Succession Act, 1925 for grant of succession certificate with regard to the amount of D.P.C. Gratuity, Group Insurance, Widow fund, surrendered leave, Departmental Provident Fund and Family Pension amounting to Rs. 2,78,777/- lying deposit with the office of Police Superintendent, Rajnandgaon. Case of the applicants was that after divorce between late Satyadev Dubey and the respondent No. 1, the applicant No. 1 got married with late Satyadev Dubey and started living with him as his wife and

applicants No. 2 to 4 are children out of their wedlock. The applicants were nominated by late Satyadev Dubey in pension case and therefore, the applicants are entitled for grant of succession certificate for retrial dues of late Satyadev Dubey. The respondents No. 1 to 3 have also preferred application for grant of succession certificate for the same amount. Both have denied the claims of each other in their reply.

3. Learned trial Court on appreciation of the evidence led, submissions made and material placed on record, dismissed the applicants' application and allowed the application of respondents No. 1 to 3. The appellate court after re-appreciating the entire evidence and documents placed held, the applicants failed to prove that the applicants No. 2 to 4 and respondent no. 4 are children legitimate or illegitimate born out of relationship of applicant and late Satyadev Dubey; the nomination form is doubtful and dismissed the appeal. Hence this revision.

4. Shri Anoop Majumdar, learned counsel for the applicants would submit, the nomination was admitted by the trial court in applicants' favour. However, the applicants' claim was denied on the ground that the applicants are not family members of late Satyadev Dubey in terms of the provisions and are not entitled for grant of succession certificate. The trial court declined to grant succession certificate on the ground that marriage was not proved between the applicant No. 1 and late Satyadev Dubey; admittedly there was no divorce between the respondent No. 1 and late Satyadev Dubey and the applicant no. 1 is legally married wife of one Yogendra, above findings are not correct. He would further submit that as per Section 16 of the Hindu Marriage Act, at least the applicants No. 2 and 3 are entitled for grant of succession certificate along with respondents even assuming that they are illegitimate children in terms of Section 5 of the Hindu Marriage Act and the finding recorded by the first appellate court is not correct that the applicants No. 2 to 4 and respondent No, 4 are not born out of relationship between the applicant No. 1 and late Satyadev Dubey and thus they are not the children of late Satyadev Dubey legitimate or illegitimate.

5. On the other hand, Shri Sameer Singh, learned counsel appearing for the respondent No. 1 to 3 would submit that as per the evidence adduced and documents produced in the case and the case put forth by the applicants, it is crystal clear that neither she was wife of late Satyadev Dubey nor applicants No. 2 to 4 and respondent No. 4 are children born out of their relationship. He would further submit that late Satyadev Dubey had already nominated the respondent No. 1 as his nominee for family pension (Ex. P-75-C). As per the evidence of Clerk of office of Superintendent of Police (N.A. 1), there is no order sheet regarding inclusion of D-1 and D-2 in the service book and there is a difference in the signature in the nomination filled in the year 1975 and in the year 1980. The trial court as well as the first appellate court after taking into consideration the entire evidence adduced by both the parties have granted succession certificate in favour of respondents no. 1 to 3 and there is no jurisdictional illegality committed by the court below and the instant revision deserves to be

dismissed.

6. I have heard learned counsel for the parties and perused the record of the courts below and the order impugned.

7. Shri Anoop Majumdar, learned counsel for the applicants vehemently argued that as per Section 50 of the Evidence Act, the nomination filed by deceased Satyadev Dubey is very relevant piece of evidence which shows that the applicant No. 1 is wife and other applicants are children of the deceased. Both the Courts below have ignored this aspect of the matter. For this, reliance has been placed on the decision of the Supreme Court in the case of Bant Singh and Another Vs. Niranjana Singh (D) by Lrs. and Another, The above judgment of Supreme Court lays down that the essential requirements of the section 50 are i.e. (1) there must be a case where the court has to form an opinion as to the relationship of one person to another; (2) in such a case, the opinion expressed by conduct as to the existence of such relationship is a relevant fact; (3) but the person whose opinion expressed by conduct is relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfil the condition laid down in the latter part of the section. If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Here in the instant case, learned appellate court has doubted correctness of D-1 and D-2 which were in fact filled for the purpose of gratuity amount. On facts, it was found the applicants are not family members. In such a state of affairs, if learned both the courts below have concurrently held that the respondents No. 1 to 3 are entitled for grant of succession certificate then it cannot be said that learned courts below have committed any jurisdictional irregularity.

8. While dealing with the scope of revision, hon'ble Supreme Court in case of The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, has observed in para 5 of its judgment as under:--

5. In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate court. It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law, but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction under S. 115 of the Civil Procedure Code.

9. More over, the succession certificate only gives right to collect and the applicants are always at liberty to establish their title in the civil court.

10. I view of above, I do not find any scope of interference in the impugned orders in exercise of revisional jurisdiction of this Court. The revision being

devoid of substance is liable to be and is hereby dismissed.