

(2019) 04 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Civil First Appeals (CFA) No. 32 Of 2018, IA No. 03 Of 2018

Shagufta Jan & Anr

APPELLANT

Vs

Naseema Akhter & Ors.

RESPONDENT

Date of Decision : 05-04-2019

Acts Referred:

Insurance Act, 1938 — Section 39

Code Of Criminal Procedure, 1973 — Section 488

Citation : (2019) 04 J&K CK 0057

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : Rizwan Bhat, Jahangir Iqbal, Suhal

Final Decision : Disposed Of f

Judgement

1. The court of learned Principal District Judge, Anantnag had been approached by the respondents herein for issuance of succession certificate on 13.11.2018 in respect of debts and securities of the one Abdul Rashid Shah S/o Gull Mohammad Shah R/o Panzath, Qazigund, who is stated to have died in harness. Objections to this application had been filed by the present appellants, wherein they had stated that respondent No.1 herein namely Naseema Akhter, is divorcee of deceased Abdul Rashid Shah and respondent No.5 herein namely Zohra Rashid is adopted child of late Abdul Rashid Shah, and so both of them do not fall within the category of legal heirs of the said deceased Abdul Rashid Shah and are not entitled for any share out of the estate left behind by the deceased. It is further contended that only appellants and respondent Nos. 2 to 4 herein are the real legal heirs of the deceased Abdul Rashid Shah and are entitled to any amount left behind by the deceased.

2. The judgment dated 13.11.2018 passed by the learned Principal District Judge, Anantnag, in terms of which succession certificate was granted, is under challenge in terms of the instant appeal. Learned Principal District Judge, Anantnag, in terms of the impugned order held the appellants and respondent

Nos. 1 to 4 as successors of the deceased Abdul Rashid Shah and found them entitled to get the amount left behind by the said deceased and directed to be distributed strictly in accordance with the Personal Law(Shariat).

3. The appellants herein through the medium of the instant appeal seek setting aside and quashing of the said judgment dated 13.11.2018 to the extent of granting succession certificate in favour of respondent No.1 namely Naseema Akhter and also the share granted in her favour be directed to be distributed among all the legal heirs of deceased except respondent No.1 and 5, mainly on the ground that the respondent No.1 and 5 herein do not fall within the legal heirs and have no right to claim any share from the debts and securities of the deceased Abdul Rashid Shah. Respondent No.1 is said to be divorcee and respondent No.5 is stated to be adopted child of the said deceased. It is pleaded that the parties being Muslims are governed by the Muslim Personal Law(Shariat) and according to the provisions of the said Law, neither divorcee nor adopted child can be said to be the legal heir of the deceased. It is also prayed that Rs.1.00 lac, which has been granted as funeral expenses of the deceased in favour of the appellants but has been released to the respondents, may be directed to be recovered from the respondents and released in favour of the appellants.

4. This Court, in terms of the order dated 20.11.2018, after considering the instant case, had stayed the disbursement of amount in favour of respondent No.1. Thereafter, an application bearing IA No.02/2018 came to be filed on behalf of respondents 2 to 4, seeking direction upon SSP, Anantnag for disbursement of amount in terms of succession certificate granted in terms of order dated 13.11.2018 passed by the learned Principal District Judge, Anantnag. The said application came up for consideration before this Court on 13.12.2018, whereby it was observed and also clarified that the order dated 20.11.2018 passed by this Court shall not come in the way of SSP, Anantnag in making the disbursement in favour of respondents 2 and 4 in terms of the succession certificate issued by learned Principal District Judge, Anantnag, subject to further outcome of pending CFA. The said IA was accordingly disposed of.

5. Now another application bearing IA No.03/2018 has been filed on behalf of the appellants seeking direction upon SSP, Anantnag for disbursement of amount in their favour in terms of the succession certificate granted vide order dated 13.11.2018 passed by the learned Principal District Judge, Anantnag.

6. Heard. Considered.

7. The contention of Mr.Rizwan, learned counsel for the appellants is in tune with that what has been stated in the memo of appeal. He has relied on the judgment rendered by the High Court of Karnataka in Smt. Lakshmi Priyadarshini Vs. Smt. Kamalamma and the Branch Manager, State Bank of India. In the said case the appellant was a divorcee and had remarried; thereafter her ex-husband died leaving behind a huge amount in his bank account, to which the

appellant(divorcee) had claimed her right/share. Their lordships' while considering the facts of the said case had observed and directed that:-

"....The Supreme Court has held that mere nomination made under Section 39 of the Insurance Act does not exclude the legal heirs from claiming the amount in accordance of law of succession Certificate governing them. Therefore, in view of aforesaid decision of the Supreme Court, it is obvious that there was no impediment for the mother being Class-1 legal heir to file a petition for the grant of succession Certificate notwithstanding the fact that the appellant was appointed as nominee. The court below based on the evidence placed by both the parties has held the mother being Class-1 legal heir is entitled for the grant of succession Certificate as prayed for by her. Even, otherwise, as on the death of the deceased, there was no relationship whatsoever between the deceased and the appellant, inasmuch as, the marriage was dissolved by decree of divorce on 10.02.2006. Not only that, after obtaining a decree of divorce, the appellant remarried on 10.01.2007. This being the state of affairs, though she was appointed as a nominee, she had absolutely no right to claim the said amount by succession. The respondent being the only surviving legal heir, she is entitled to receive the amount lying in the account of deceased-H.N. Jayasheelan her son and rightly the lower court has granted the succession certificate. Having obtained a decree of divorce and having remarried during the lifetime of her husband, now after death of her husband-the deceased, it is not open for the appellant to contend that she is nominee and therefore, the amount ought to have been paid to her by the Bank, which is difficult to accept. Looking from any angle we do not find any merit in this appeal.

Accordingly, the appeal filed by the appellant is dismissed."

8. Per contra, Mr. Jahangir, learned senior Advocate has submitted that the respondent No.1 is not a divorcee but legal heir of the deceased and so has every right to claim the share in the amount left behind by the deceased being his first wife. To substantiate the said fact he has produced a copy of the order dated 30.12.2013 of learned City Munsiff, JMIC, Srinagar passed on the application filed by the respondent No.1 herein under Section 488 Cr.PC for grant of maintenance, whereby the learned trial court, after considering the matter found and observed that the respondent therein has failed to produce any evidence to prove the divorce. Further the said court has observed that the duty of maintaining the wife rests on the husband and if he fails to discharge his duty, wife is within her rights to claim maintenance from her husband, of course subject to certain exceptions carved out under Section 488 of Criminal Procedure Code, and concluded as:-

"...On overall consideration of the matter, the petition as stated above is allowed with direction to respondent to pay monthly maintenance amount of rupees ten thousand(Rs.10,000/-) in favour of petitioner from the date of present judgment. The amount of interim maintenance granted in favour of petitioner shall be accordingly adjusted. The respondent is directed to make the payment on 10th

of every month next following that for which amount falls due to the applicant. Petition is accordingly disposed of."

9. I have given thoughtful consideration to the material available on record and on examination of the impugned order it is clear that the learned Principal District Judge, Anantnag has granted succession certificate in favour of the appellants and respondents 1 to 4 herein vide order dated 13.11.2018. Learned Judge has also made reference of the order dated 30.12.2013 of the Magistrate, in terms of which interim maintenance was granted in favour of the respondent No.1 herein (copy of which has been produced by learned counsel for the respondents during arguments).

10. For limited purpose of disposal of the proceedings before the District Court in terms of the Succession Certificate Act, reliance on the order (passed on 30.12.2013 by the court of learned City Munsiff, Judicial Magistrate Ist Class, Srinagar, which has not been challenged by the deceased during his life time), cannot be termed as bad on any count. Learned District Judge has also referred to the material on record including the statement of witnesses produced on behalf of the applicants therein i.e. respondents in the instant appeal and the statement of appellant No.1 and her brother.

11. I, as such, do not find any error in the order passed by the learned Principal District Judge, Anantnag in holding respondent No.1 herein entitled to the claim/share from the debts, referred in the appeal, being widow of the deceased namely Abdul Rashid Shah. In case any person including the appellants herein has any grievance about the status of respondent No.1 herein as a widow of the deceased Abdul Rashid Shah, as is being projected in terms of the instant appeal, proper remedy would be a civil action, which appellants may avail in case they or any other person claim interest in the debts, referred in the petition presented before the District court. It may, however, need a mention that the petition had been presented before the said District court for recovery of debts to the extent of Rs.47,10,000/-, for which order was required to be passed and the amount, if any already distributed, could not be directed to be re-appropriated. The certificate prepared and issued in pursuance of the impugned order dated 13.11.2018 is apparently not within the parameters delineated by the order in which it is stemmed (challenged herein). Furthermore, the said District Court could not pass any order with regard to distribution and apportionment of funeral expenses, which was not a debt within the meaning of the Act. The direction issued in terms of the certificate for re-appropriation and disbursement of Rs.1.00 lac is accordingly set aside.

12. Learned District Judge does not appear to have directed for payment of any amount in favour of respondent No.5(Zohra Rashid, adopted daughter) and so the contention raised that she is not entitled for the same is of academic importance.

13. With this modification, the impugned order dated 13.11.2018 is maintained.

The amount referred in the petition filed on behalf of the respondents herein shall stand distributed as directed by learned Principal District Judge, Anantnag among the appellants and respondents 1 to 4 herein.

14. Disposed of accordingly.