

(2004) 03 JH CK 0081

In the Jharkhand High Court

Case No : M.A. No's. 91 and 180 of 2003

Shogra Khatoon and Others

APPELLANT

Vs

Shairun Bibi and Others
 Shairun Bibi Vs Shogra
Khatoon and Others

RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Succession Act, 1925 — Section 373

Citation : AIR 2004 Jhar 109 : (2004) AIR Jhar HCR 1666 : (2004) 2 BLJR
1309 : (2005) 1 CivLJ 586 : (2004) 3 JCR 299

Hon'ble Judges : P.K. Balasubramanyan, C.J

Bench : Single Bench

Advocate : Manjula Pd and M.K. Habib, for the Appellant;

Judgement

P.K. Balasubramanyan, C.J.—M.A. 91 of 2003 is filed by the respondent in an application u/s 372 of the Indian Succession Act. M.A. 180 of 2003 is filed by the petitioner in that application. The appellants in M.A. No. 180 of 2003 made that application claiming that they are the second wife and children of one Md. Siddique who was a retired Railway employee. He died on 11.7.1996. The respondents in the application were the admitted wife of Md. Siddique and his children through her. They came forward disputing the status claimed by the petitioner No. 1 as the second wife and the other petitioners, as the children of Md. Siddique. It is seen that Md. Siddique had nominated the first respondent, his admitted wife, as the nominee in his service records for receipt of service benefits.

2. Evidence was taken by the Trial Court, which posed itself for decision the question whether petitioner No. 1 before it, was the legally wedded wife of Md. Siddique and the other petitioners, his children through her. On an appreciation of the evidence, the Court below upheld the plea of the petitioners and granted a succession certificate in respect of a sum of rupees 1,09,000/- (rupees one lakh and nine thousand) remaining in deposit In the Punjab National bank. Regarding

the other service benefits, the Court found that since respondent No. 1 had been nominated, she would be the person entitled to this amount. Thus, the succession certificate was granted to both the parties in respect of the sum deposited in the Punjab National Bank. The respondents in that application have filed appeal, M.A. 91 of 2003, challenging the finding that petitioner No. 1 was the legally wedded wife of Md. Siddique and that the other petitioners are his children, through her. The first petitioner in that application has filed the M.A. No. 180 of 2003 complaining that the Court below was wrong in observing that she was not entitled to claim anything of the service benefits due on the death of Md. Siddique.

3. Learned counsel for the appellant in M.A. No. 91 of 2003 pointed out that a complicated question of fact and law had arisen in this case regarding the status of the petitioner in the Succession Certificate Case No. 23 of 1996 and the Court dealing with that application, should have referred the parties to a suit, rather than trying to decide the dispute even prima facie. Counsel referred to Section 373(3) of the Indian Succession Act. That Sub-section provides that if the Judge cannot decide the right to a certificate without determining a question of law and fact, which seems to be intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he is the person, prima facie, having the best title thereto. Counsel submitted that the person prima facie having best title to the succession certificate was respondent No. 1 in the proceedings, the appellant in M.A. No. 93 of 2003 and not petitioner No. 1 whose status was seriously questioned and the decision on which involves complicated questions of fact and of law.

4. After all, the proceedings u/s 373 of the Succession Act is a summary proceeding and there is no final adjudication of title involved in any decision that may be taken by the Court in such an application. Therefore, no final adjudication has been made by the Court below regarding the status claimed by the parties or the title to the estate of the deceased Md. Siddique. In that situation, I am not satisfied that it is necessary to go into the merits of the contentions sought to be raised by the parties before me in the respective appeals. I think that the proper course to adopt is to clarify that the grant of succession certificate in the manner done by the Trial Court, will not stand in the way of either of the parties approaching the Civil Court to work out their rights in accordance with law and from establishing their exclusive title or joint title to the estate of Md. Siddique.

5. With the clarifications as above, these appeals are disposed of.