

(2010) 08 CAL CK 0107
In the Calcutta High Court
Case No : FAT No. 003 of 2010

Shrimati Lalita Mondal

APPELLANT

Vs

Pathiti Sardar and Another

RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (2011) 1 CHN 190

Hon'ble Judges : Subhro Kamal Mukherjee, J; Dipankar Datta, J

Bench : Division Bench

Advocate : Bhuneshwari Devi, for the Appellant; K. Vijay Kumar, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—This is an appeal against judgment and order dated July 31, 2008 passed by the learned District Judge, Andaman and Nicobar Islands, in Misc. Judicial Case No. 39 of 2001. The learned District Judge rejected an application filed by this appellant u/s 372 of the Indian Succession Act, 1925.

2. The facts leading to filing of the appeal are summarized as under:

a) One Pashupati Sardar was a resident of Shoolbay. He was an employee of the Forest Department. He died intestate on May 21, 2001.

b) This appellant, Lalita Mondal, filed the said application u/s 372 of the Indian Succession Act, 1925, for succession certificate in respect of the debts and securities of the said Pashupati Sardar. She contended that she was the wife of the deceased.

c) The application for grant of succession certificate was registered as Misc. Judicial Case No. 39 of 2001 in the Court of the learned District Judge, Andaman and Nicobar Islands.

d) The application was contested by the brothers of the deceased, namely, Pathiti

Sardar and Pavan Sardar. They jointly filed a written objection. In substance, they disputed the marriage between the deceased and the appellant. It was stated that the deceased did not marry the appellant; the appellant, namely, Lalita Mondal, on the contrary, was the mistress and/or concubine of the deceased, Pashupati Sardar. The brothers prayed succession certificate in their favour as Lalita Mondal was not the heir and legal representative of the deceased Pashupati Sardar.

e) The learned District Judge rejected the application filed by this appellant.

f) Being aggrieved by and dissatisfied with the said judgment and order dated July 31, 2008, the appellant has filed this appeal.

3. The appellant, Lalita Mondal, deposed as witness No. 1 for the petitioner. She stated that her marriage with Pashupati was solemnized on May 13, 2001 in presence of the villagers, the Panchayat member, the Panchayat Pradhan and the priest. She stated in cross-examination that Sabitri Devi, the then Gram Pradhan of Tirur village, was present at the time of marriage. One Haradhan Chakraborty acted as the priest of the marriage. She stoutly denied that she was a mistress or concubine of the deceased.

4. The father of the appellant, Gaurango Mondal, also, reiterated as the petitioner's witness No. 2 that marriage between the deceased and her daughter was solemnized on May 13, 2001 according to Hindu rites and customs at village Tirur in presence of Gram Panchayat Pradhan, Panchayat member and other co-villagers. He, also, stated that a priest performed the ceremony. He stated that he was a financially weak person. Therefore, he could not arrange for videography or photography of any kind to cover the marriage ceremony. He stated in cross-examination that the ceremonial rites of Hindu marriage were strictly observed including Saptopadi and Sindurdan.

5. One co-villager of Tirur village, B.N. Mondal, also, deposed as a witness on behalf of the petitioner. He was the petitioner's witness No. 3. He stated that the marriage between Pashupati and Lalita was performed in his presence. In cross-examination he reiterated that the marriage was solemnized in the house of the father of the bride at Tirur village.

6. Savitri Devi was the Pradhan of Tirur Gram Panchayat. She, also, deposed as the petitioner's witness No. 4. She stated that the marriage between Pashupati and Lalita was solemnized according to the Hindu rites and customs in her presence. She stated in the cross-examination that on May 13, 2001 she went to the house of the father of the appellant to attend the marriage ceremony of Lalita.

7. Puspa Dolly was a ward member of the said Gram Panchayat. She stated as the petitioner's witness No. 5 that she had witnessed the marriage on May 13, 2001 between Pashupati and Lalita.

8. Pathiti Sardar, objector No. 1, deposed as the defendants' witness No. 1. He

stated that there was no marriage between his brother Pashupati and Lalita, but, Lalita was the mistress or concubine of his deceased brother. However, in cross-examination he admitted, Lalita Mondal occasionally used to come to their house.

9. One V. John, a neighbour of the objectors, stated as the defendants' witness No. 2 that Lalita was the concubine of Pashupati. In cross-examination he admitted that Lalita used to come to the house of Pashupati.

10. In substance, the objectors stated that Lalita was not the wife of Pashupati, but, she was the concubine or mistress of Pashupati.

11. The former Gram Panchayat Pradhan, namely, Savitri Devi, and the former ward member of the Gram Panchayat, namely, Puspa Dolly, deposed in support of the marriage. There was no suggestion that these two persons had any animosity with the objectors or were deposing in favour of the appellant to acquire unlawful gain. There was no reason to disbelieve them. The objectors stated that the appellant was a concubine and/or mistress of the deceased. There was no suggestion to the former Pradhan of the Gram Panchayat or to the former ward member of the Gram panchayat that Lalita was a concubine or mistress of the said Pashupati.

12. On the contrary, we find clinching evidence that the marriage between Pashupati and Lalita was solemnized according to the Hindu rites and customs on May 13, 2001 in presence of villagers. The ceremony was conducted by one Haradhan Chakraborty, a priest. The father of the appellant was a poor person. Therefore, he could not arrange for printing of wedding invitation cards nor he could arrange for photography to record ceremonies of the marriage.

13. The learned District Judge, as we have noted herein above, rejected the application for grant of succession certificate holding, inter alia, that there was no iota of evidence before him that the appellant was the wife of Pashupati. The learned District Judge took exception as to why the priest was not examined. He was erroneously proceeding on the basis that in the absence of the priest the proof of performance of the marriage could not be established. Learned judge observed that the appellant remained silent regarding her presence in the funeral ceremony of her husband. It was not suggested either to the appellant or to any of her witness that after the death of Pashupati, Lalita did not participate in the funeral ceremony of Pashupati. On the contrary, we find, she categorically stated that she was driven out from the house of Pashupati after few days of death of Pashupati. There was no cross-examination by the objectors. The learned judge took exception as to why wedding cards were not printed although he was conscious that wedding card was not must for any marriage ceremony. The learned judge observed that after marriage the couple should have taken a joint photograph and there should be steps for obtaining voter identity card by appellant describing her as the wife of the deceased. The learned judge failed to take into account the background of the families and their financial conditions.

14. In our view, the appellant had discharged her burden to establish that she

was the widow of deceased Pashupati; she, also, established that there was a valid Hindu marriage. Learned District Judge took exception as to why Pashupati did not insert the name of his wife in his service records. The learned Judge missed that Pashupati died only after nine days of the marriage.

15. The objectors did not say that Pashupati did not know Lalita. They stated that Lalita was the concubine or the mistress of Pashupati. It was for them to prove that Lalita was concubine or mistress of Pashupati. No iota of evidence could be led by the objectors to sustain their allegation that Lalita was a concubine or mistress of Pashupati. It seems to us that to grab the properties of their deceased brother the objectors had concocted a story that Lalita was a concubine or mistress of their deceased brother taking advantage of the fact that the deceased brother died only after nine days of the marriage. However, the objectors admitted that there was some sort of relation between Pashupati and Lalita. It is well established that when a marriage has been performed due performance of necessary ceremonies of the marriage will be presumed and one who challenges the marriage will have to rebut the presumption inasmuch as the burden is on the person who denies the marriage to prove that it did not take place. Lalita discharged her burden that she is the wife of Pashupati; onus shifts to the objectors to establish that there was no marriage and that Lalita was the concubine of Pashupati. The objectors have miserably failed to establish that Lalita was the concubine or mistress of Pashupati.

16. Therefore, the order impugned stands set aside. The application filed by Lalita u/s 372 of the Indian Succession act, 1925 is allowed. We grant succession certificate in favour of the appellant, Lalita Mondal, in respect of the debts and securities of the deceased, namely, Pashupati Sardar, as mentioned in the schedule to the application for grant of succession certificate.

17. The appeal is, thus, allowed.

18. However, we direct the parties to bear their respective costs in this appeal.

Dipankar Datta, J.

19. I agree