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(2008) 05 AHC CK 0048

In the Allahabad High Court

Smt. Naseem Begum alias Naseem Akthar — APPELLANT

Vs

Smt. Shaista and Others — RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

Citation : (2008) 4 AWC 3467 : (2008) 2 DMC 669

Hon'ble Judges : Shishir Kumar, J;Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—The contention of the appellant before this Court challenging the order dated 8.4.2008, passed in the application for grant of succession certificate by the Civil Judge (Sr. Div.), Bareilly, is that after divorcing the first wife, respondent No. 1 herein, the appellant married the person, who now deceased. In-spite of the same, not only a sum of Rs. 82,404 has been granted in favour of the first wife-respondent No. 1 but she is holding about Rs. 3,00,000 as nominee of the deceased, as per service record.

2. The appellant further contended that a suit has already been filed by her for the purpose of declaration that the appellant is legally married wife of the deceased.

3. According to us, the appellant has proceeded wrongly with the case herein. Under the order impugned, a sum of Rs. 3,89,772 was prayed but rejecting such claim on the basis of objection of the respondents, i.e., first wife and the others, a sum of Rs. 82,404 has been granted to them on such limited order.

4. The appellant contended before this Court that first wife of the deceased is divorcee but her name has wrongly been incorporated as nominee in the service record of the deceased.

5. We are of the view that firstly, whether the appellant is legally married wife or the respondent No. 1 is legally married wife, the same is to be determined by a

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civil court in an appropriate suit. Admittedly, a suit for declaration that the appellant is legally married wife is instituted.

6. The appellant wanted to say that approximately an amount of Rs. 4,36,750 has been received by the respondent No. 1, as nominee of the deceased. According to the appellant, she cannot be nominee at all.

7. According to us, service record is not yet corrected. In absence of such correction, the obligation of the authority is to pay the amount lies with the nominee. As soon as such payment is made, nominee will be the holder of the corpus. If she is bona fide claimant, she can be said to be both owner and nominee of such corpus. There would not be any dispute with regard to title of the corpus. But as soon as anybody disputes the right, title and interest of the nominee for holding such corpus, the same will be determined by the civil court at first and upon obtaining decree, the person concerned can recover the amount from the nominee. Thereby the nominee and owner of the corpus are different in the eye of law provided any such type of dispute arises. It is further significant to note that from whom the nominee will get any corpus are not supposed to know title of the holder, they will only go by the nomination. The appellant herein has rightly proceeded for declaration of her status first and as soon as the status is proved in her favour then only her right will arise to claim such amount. Therefore, in that way the remedy of the appellant is available.

8. Hence, the appeal cannot be admitted. Thus, it is dismissed without imposing any cost. However, passing of this order will in no way affect the right of the appellant to take steps in accordance with law, if she is advised.

Shishir Kumar, J.

9. I agree.

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