
(2008) 07 CHH CK 0009
In the Chhattisgarh High Court

Smt. Pushpa Bai and Others

APPELLANT

Vs

Aasbati Laleshwar Naag and Another

RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Hindu Succession Act, 1956 — Section 10, 8

Citation : AIR 2008 Chh 53

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dilip Raosaheb Deshmukh, J.—This civil revision arises out of an order dated 13-2-2007 passed by the District Judge, Ranker in Miscellaneous Civil Appeal No.6/2006. The learned District Judge has affirmed the order dated 29-4-2006 passed by the Civil Judge Class-I, Ranker in Succession Case No. 7/2004 granting succession certificate in favour of the non-applicant No. 1, Aasbati, the widow of late Laleshwar Naag. Although the learned District Judge held that Smt. Prem Bai, the mother of the deceased was not entitled to a succession certificate it was directed that the applicant No. 2, Smt. Prem Bai, the mother of Laleshwar Naag would be entitled to her share.

2. Admittedly, Laleshwar Naag appointed as Assistant Teacher in Higher Secondary School, Village Parsoda, Tahsil Charama died intestate at Raipur on 28-3-2004. Non-Applicant No. 1, Aasbati is his legally married wife. Laleshwar Naag had nominated his mother Smt. Prem Bai, applicant No. 2 for receiving the amount of General Provident Fund and Group Insurance Scheme. Laleshwar Naag had married applicant No. 1, Pushpa Bai during the subsistence of his marriage with non-applicant No. 1, Aasbati. Applicants No. 3, 4 and 5 are the minor children of Laleshwar Naag through Smt. Pushpa Bai.

3. The sole ground urged by Shri Parag Kotecha, learned Counsel for the applicants in this revision is that both the Courts below have committed an

illegality in not granting succession certificate in favour of the minor children of late Laleshwar Naag. Reliance was placed on Vidyadhari and Others Vs. Sukhrana Bai and Others, . In the case law cited the deceased had made nomination in favour of the second de facto wife. It was held that in view of the fact that the second wife was nominated by the deceased for collecting the provident fund, life cover scheme, pension, life insurance and other dues and as many as four children were borne by her through the deceased, she was, while balancing the equities, obviously preferable for issuance of a succession certificate, as she had stayed with the deceased as his wife and had claimed the succession certificate to the exclusion of the legal heirs of the deceased. It was held that merely being the legally wedded wife of the deceased by itself did not entitle her to a succession certificate in comparison to the second de facto wife, who all through had stayed as the wife of the deceased and had also borne his four children. Placing reliance on Rameshwari Devi Vs. State of Bihar and others, , it was held that even if a government servant had contracted second marriage during the subsistence of his first marriage, children borne out of such second marriage would still be legitimate though the second marriage itself would be void. It was held that such children would be entitled to the amount of pension. In the present case, it is an undisputed fact that the applicant No. 1, Smt. Pushpa Bai, i.e., the de facto second wife was not nominated by the deceased for receiving his death benefits. In this view of the matter, the only point urged by Shri Parag Kotecha, learned Counsel for the applicants in this revision is that both the Courts below committed an illegality in not awarding a succession certificate in favour of the legitimate minor children of the deceased, though born out of a second marriage, which was void. No other point was canvassed before me.

4. Shri Anand Shukla, learned Counsel for the caveator/non-applicant No. 1 argued in support of the impugned order.

5. Having considered the rival submissions, I have perused the record. In Rameshwari Devi Vs. State of Bihar and others, , the Supreme Court has held that even if a government servant has contracted a second marriage during the subsistence of his first marriage, children borne out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children, but not the second wife, would be entitled to the pension. In the present case, since the deceased nominated the applicant No. 2, Smt. Prem Bai, i.e., his mother and not the de facto second wife, i.e. Smt. Pushpa Bai, the applicant No. 1 for receiving the death benefits the case law of Vidyadhari and Others Vs. Sukhrana Bai and Others, is distinguishable. However, since applicants No. 3 to 5 are admittedly legitimate children of the deceased and Smt. Prem Bai, i.e. the mother of the deceased are the Class I heirs u/s 8(a) and Rule 2 of Section 10 of the Hindu Succession Act and Smt. Prem Bai is the nominee of the deceased, both the Courts below have acted illegally in refusing to grant a succession certificate in their favour. The direction given by the learned District Judge that Smt. Prem Bai was entitled only to receive her share is also completely vague in nature.

6. For the reasons aforesaid, this revision is allowed. It is ordered that besides the non-applicant No. 1, Aasbati the applicant No. 2, Smt. Prem Bai and applicants No. 3, 4 and 5, i.e. Revatiram, Rishi Param Naag and Poornima respectively are also entitled to 1/5th share each in the death benefits of the deceased, i.e. the amount of General Provident Fund, Group Insurance Scheme, Pension, D.C.R.G. and Leave Encashment. The share of minor applicants No. 3, 4 and 5 shall be kept under deposit in a nationalized bank as special fixed deposit till they attain majority.