

(2012) 01 CHH CK 0080
In the Chhattisgarh High Court
Case No : Civil Revision No. 08 of 2009

Smt. Salma Begum and Another	Vs	APPELLANT
Smt. Aamna Bee and Others		RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Succession Act, 1925 — Section 256, 372, 373, 387

Citation : (2012) 2 MPHT 60

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Ashok Soni, for the Appellant; Malay Kumar Bhaduri, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Agarwal, J.—Legality and propriety of the order dated 15-12-2008 passed by Addl. District Judge, Pendra Road, in Misc. Civil Appeal No. 01/08, is under assail in the instant revision. Petitioners preferred an application u/s 372 of the Indian Succession Act claiming right over the amount left by deceased Sarif Ahmed, who was Driver under Divisional Forest Officer, Forest Division Marvahi, Tehsil Pendra Road, Distt. Bilaspur. The respondent Nos. 1 to 5 also preferred counter claim claiming right over the above amount. Indisputably, the respondent No. 1 is mother, respondent Nos. 2 and 3 are brothers and respondent Nos. 4 and 5 are sisters of late Sarif Ahmed who died on 24-11-2003.

2. According to the petitioners, petitioner No. 1 was Panika by caste and Ram Prasad Panika was her previous husband. Three children born out of their wedlock. Petitioner No. 1, after taking divorce (Chhorchhutti) according to her customs from Ram Prasad, professed Muslim religion and entered into marriage with Sarif Ahmed according to Muslim religion and customs on 31-12-2001. Petitioner No. 2 is her daughter from late Sarif Ahmed and therefore, they are entitled for grant of succession certificate with respect to retiral dues of late Sarif

Ahmed lying deposit with the respondent No. 6 and also entitled for pension.

3. Prayer was opposed by the respondents inter alia on the ground: deceased was unmarried; deceased nominated respondent No. 1 to get his retiral dues after his death and certificates be granted in her name.

4. Petitioners have examined herself and one Abdullah (A.W. 2).

5. The Trial Court, although held petitioner could not prove her divorce with her earlier husband Ram Prasad; on the basis of Nikah Nama (Exh. P-1) held petitioner No. 1 is wife of deceased Sarif Ahmed and petitioner No. 2 is his daughter and respondent No. 1 is his mother, and granted succession certificate in favour of petitioners and respondent No. 1 declaring them each entitled for 1/3rd share.

6. Respondents preferred an appeal. The Appellate Court allowed the appeal finding inter alia: petitioner failed to prove divorce with her earlier husband Ram Prasad and to prove marriage with Sarif Ahmed according to Muslim religion and right and Nikah Nama (Exh. P-1) as inadmissible, granted succession certificate in favour of respondent No. 1. Hence this Revision.

7. Shri Ashok Soni, learned Counsel appearing for the petitioner contended: the First Appellate Court has reversed the order of Trial Court holding petitioner could not prove her divorce with her earlier husband and also could not prove her marriage with Sarif Ahmed. The above finding, on the face is perverse, the marriage of petitioner No. 1 with Sarif Ahmed is evident from Nikah Nama (Exh. P-1) and ignoring the above fact the Appellate Court has reversed the order of Trial Court, therefore, the same deserves to be set aside and order of Trial Court deserves to be restored.

8. On the other hand, Shri Malay Kumar Bhaduri, learned Counsel appearing for the respondents contended: respondent No. 1 is nominee of deceased Sarif Ahmed; First Appellate Court, on appreciation of evidence and material available on record, has rightly held petitioner could not prove her divorce with her earlier husband and marriage with Sarif Ahmed. There is no perversity in the above finding and the revision is liable to be dismissed.

9. I have heard the Counsel appearing for the parties and perused the order impugned including records of both the Courts below.

10. Both the Courts below have held that petitioner could not prove her divorce with her earlier husband Ram Prasad.

11. A careful reading of statement of Abdullah (A.W. 2) who issued Nikah Nama (Exh. P-1) would reveal he has issued the Nikah Nama on the basis of Court marriage certificate. According to him, the marriage cannot be solemnized between the non-muslim woman and muslim man. However, if marriage took place between them through Court then Nikah Nama can be issued. No such Court marriage certificate has been filed. He has further stated without divorce

marriage cannot take place. He was unaware about any divorce between the petitioner No. 1 and Ram Prasad. He also admits record of Nikah is maintained in the Nikah Panji, but, in the instant case, there is no entry in the Nikah Panji about Nikah of petitioner No. 1 and Sarif Ahmed. In Para 4, he also admits Nikah Nama has been obtained by playing fraud upon him and it was not in his notice that petitioner No. 1 is Hindu otherwise he would not have issued Nikah Nama.

12. In the light of above evidence, in my opinion, the First Appellate Court has not committed any illegality in rejecting the claim of the petitioners for grant of succession certificate.

13. As per Section 256 of Mulla's Principles of Mahomedan Law (19th Edn.) it is not lawful for the Mahomedan women to have more than one husband at the same time. A marriage with a woman, who has her husband alive and who has not been divorced by him, is void (Batil) and not irregular (Fasid).

14. Further, the Supreme Court in case of Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, while dealing with exceptional power of High Court, has held: the High Court cannot while exercising its jurisdiction u/s 115 of CPC, correct errors of fact, however, gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the Subordinate Court has exercised as jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked.

15. The Supreme Court in case of D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, , has held in Para 8 of its judgment as under:--

8. The position thus seems to be firmly established that while exercising the jurisdiction u/s 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of

law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power u/s 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision u/s 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.

16. The Supreme Court in case of *The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway*, has held in Para 5 of its judgment as under:--

5. In our opinion the High Court had no jurisdiction to interfere with the order of the First Appellate Court. It is not the conclusion of the High Court that the First Appellate Court had no jurisdiction to make the order that it made. The order of the First Appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the First Appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the Civil Procedure Code: See the decisions of this Court in *Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav*, *DLF Housing and Construction Company Private Ltd. Vs. Sarup Singh*.

17. Moreover, summary proceedings for grant of Succession Certificate are dealt with under Sections 372, 373 and 387 and Successions Act, 1925. The proceedings for grant of Succession Certificate are summary proceedings. In view of Section 387 any decision in such proceedings in respect of the rights do not preclude the parties to litigate the same in a regular suit. A decision in a proceeding for grant of Succession Certificate is not conclusive and the same question may be tried in any other suit or proceeding between the same parties.

18. For the foregoing, I do not find any jurisdictional illegality in the order impugned warranting interference of this Court in exercise of its revisional jurisdiction. Accordingly, the revision fails and is accordingly dismissed. No order as to costs.