
(1999) 11 AHC CK 0049
In the Allahabad High Court
Case No : Writ Petition No. 2301 (M/S) of 1999

Smt. Shobha Rani

APPELLANT

Vs

IVth Additional District Judge, Faizabad and others

RESPONDENT

Date of Decision : 30-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, Order 22 Rule 3(1), Order 22 Rule 4(1), 2(11), 50

Citation : (2000) 2 AWC 1174

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : H.S. Sahai, for the Appellant; S.K. Mehrotra and I.D. Shukla, for the Respondent

Judgement

1. M. Quddusi, J.—The question for determination in this writ petition is that whether a person who intermeddles with the estate of the deceased even without representing the estate without law, may also be a legal representative besides the person who in law represents the estate of the deceased or the word "legal" confined to legal heir only within the definition of legal representative given in Section 2(11) of the Code of Civil Procedure.

2. I have heard learned counsel for the petitioner Sri H. S. Sahai and learned counsel for respondent No. 5 Sri S. K. Mehrotra.

3. The brief facts of the case are that a regular Stiff Wo. 44 of 1974, Parmeshwar Nath v. Ram Ghulam, was filed for permanent injunction in respect of a piece of land which was claimed to be sehan of the plaintiff. The suit was decreed by the trial court against which, an appeal was filed by Ram Ghulam and others before the District Judge, Faizabad. Ram Ghulam and Munna Lal died. When Munna Lal died on 14.2.1988, then applications for substitution were filed in the appeal without there being a dispute that Ram Ghulam as pre-deceased Munna Lal. The petitioner Smt. Shobha Rani also moved an application alleging therein that she was widow of Munna Lal, deceased and legal representative and heir of Munna

Lal. The objection of respondent No. 5, Smt. Savitri Devi was that she was widow of Munna Lal and Smt. Shobha Rani, petitioner was not his widow. On this, learned District Judge sent reference to the trial court for the purpose of recording evidence. Learned trial court (Civil Judge, Junior Division, Faizabad) has not given his finding vide order dated 4.7.1996 holding that Smt. Shobha Rani, petitioner as well as Savitri Devi both were married to Munna Lal, but since Smt. Savitri Devi, opposite party No. 5 was married first, the subsequent marriage with petitioner Smt. Shobha Rani being void, cannot be declared as legal heir of deceased Munna Lal.

4. Although, respondent No. 5, Smt. Savitri Devi was married earlier with the deceased Munna Lal, but Munna Lal had nominated the petitioner Smt. Shobha Rani as his wife to get pensionary and post retiral benefits and also for group insurance scheme. The name of the petitioner was also impleaded in place of Ram Ghulam (father of the petitioner). The Family Register relating to the family of Ram Ghulam also shows that Smt. Shobha Rani was recorded as wife of Munna Lal therein. The consolidation operation has also started in the village where the agricultural land ties and the petitioner Shobha Rani is recorded in C.H. Form No. 5 as widow of Munna Lal deceased. She has also been shown as permanent resident of village Mahdauna, district Faizabad, in the certificate issued by the Tehsildar which was counter-signed by the Additional Collector. The learned IVth Additional District Judge vide his judgment and order dated 13.8.99 passed on the application filed in the Civil Appeal No. 76 of 1980 rejected the objections of the petitioner Smt. Shobha Rani and rejected the application for substitution of the petitioner Smt. Shobha Rani and allowed the application for substitution of Smt. Savitri Devi, respondent No. 5 as legal representative of deceased Munna Lal. Being aggrieved, the petitioner Smt. Shobha Rani has filed the present writ petition.

5. Since the matter of substitution of legal representatives of the deceased Munna Lal is in dispute and there are only two claimants, namely, Smt. Shobha Rani petitioner and opposite party No. 5, Smt. Savitri Devi, no notice was required to be sent to other respondents as they have no concern with the matter in question merely sending notices may cause unnecessary delay in the proceedings.

6. Learned counsel for the petitioner Sri H. S. Sahai has submitted that the suit for permanent injunction was filed in respect of abadi land and if the marriage was void, the same could only be determined by family court and no other Court had any jurisdiction to hold that the marriage of the petitioner with Munna Lal deceased was void. Learned counsel has placed reliance on the case of Chiranji Lal Goenka v. Jasjit Singh and others (1998) 2 SCC 507. In which Hon'ble Supreme Court has held as under :

"In the Official Liquidator v. Parthasarathi Sinha, this Court considered whether the legal representative would be bound by the liability for misfeasance proceeding against the deceased. While considering the question u/s 50, C.P.C.

this Court held that the legal representative, of course, would not be liable for any sum beyond the value of the estate of the deceased in his hands. Mulla on C.P.C., 14th Edn., Vol. 1 at p. 27 stated that a person on whom the estate of the deceased devolves would be his legal representative even if he is not in actual possession of the estate. It includes heirs and also persons who without title either as executors, administrators were in possession of the estate of the deceased. It is, therefore, clear that the term legal representative is wide and inclusive of not only the heirs but also Intermeddlers of the estate of the deceased as well as a person who in law represents the estate of the deceased. It is not necessarily confined to heirs alone. The executor, administrators, assigns or persons acquiring interest by devolution under Order XXII. Rule 10 or legatee under a Will, are legal representatives."

7. Sri Sahai has also relied upon another case law in Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, , in which, it has been held as under :

"Legal representative" as defined in CPC means a person who in law represents the estate of a deceased person, and Includes any person who intermeddles with the estate of the deceased and where a party sues or is sued tn a representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition Is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It Includes heirs as well as persons who represent the estate even without title either as executors or administrators In possession of the estate of the deceased. All such persons would be covered by the expression "legal representative".

8. On the other hand. Sri S. K. Mehrotra appearing for respondent No. 5 has submitted that since the marriage of the petitioner was void as no Hindu, already married male can marry a female and it Is the finding of the Court below that the petitioner had performed marriage subsequent to the performance of marriage of respondent No. 5, hence no notice could be taken by the Court below to the fact that the petitioner was married to deceased Munna Lal. He has placed reliance on the case of Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another, in which. It has been held that it is not essential to obtain In advance such a formal declaration from a Court in a proceeding specifically commenced for the purpose when the marriage was performed having a living spouse.

9. Sri Mehrotra has further submitted that use of the word "legal" in the term "legal representative" connotes that the intermeddler with the estate of the deceased, as defined in Section 2(11) of the Code of Civil Procedure. 1908, is one who enjoys a legal status as such and not one who claims to intermeddle with his estate without any legal status being conferred under law upon him. His submission is that only such persons upon whom the estate of deceased devolve under the law of inheritance or who intermeddles with the estate of the deceased

either as executors or administrators can only be termed as "legal representatives".

10. In the above regard, first of all. the definition of "legal representative" as given in Section 2(11), C.P.C. is liable to be perused, according to which "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

11. The provisions of Order XXII, Rules 3 (1) and 4 (1). C.P.C. are also liable to be quoted herein below :

Order XXII, Rule 3 (1) :

"Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit."

Order XXII, Rule 4 (1) :

"Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit."

From the perusal of provisions of Section 2(11). C.P.C., it appears that if any person intermeddles with the estate of the deceased, he has also been Included in the definition of "legal representative". Hence, it was to be decided by the learned Court below whether the revisionist-appellant intermeddles with the estate of the deceased or not.

12. In the case of Abdul Rahim v. Syed Abdul Rahaman 1987 (1) RCJ 458, it has been held that where a person has been residing in a premises after the death of its tenant, it can be concluded that such person is legal representative of the deceased-tenant.

13. Under Order XXII, Rules 3 (1) and 4 (1). C.P.C., it has been provided that the legal representative of the deceased plaintiff or the defendant as the case may be, to be made a party on an application made in that behalf. Hence, it is not necessary that the legal heir is alone entitled to be brought on record. Any person who is covered within the definition of "legal representative" can be brought on record in case, an application Is made in that behalf and if no such application is made, then it is not necessary to bring the legal representative of the deceased on record.

14. In the case of Sudama Devi and Others Vs. Jogendra Choudhary and

Others, , it has been held as under :

"It is plain from Section 2(11) that the definition of word "legal representative" is wide and inclusive one and conceives of two distinct categories. Firstly the heirs or persons ; who in law represent the estate of the deceased person. However, at par with them and in a class by itself is any person who intermeddles with the estate of the deceased. Such a person is equally a legal representative. The phrase intermeddler with the estate has come to be a term of art and has been construed as one of the widest amplitude. This apart, even the dictionary meaning of the word is one of the considerable width.

15. In view of the above mentioned facts and circumstances, it was not appropriate for the Civil Judge (Junior Division), Haveli, Faizabad, to declare Smt. Savitri Devi as legal representative of the deceased Munna Lal vide order dated 4.7.1996 passed in Suit Wo. 44 of 1974, Parmeshwar v. Ram Ghulam. He should have recorded findings and should have referred the matter to the appellate court wherefrom the matter was referred for recording the finding of fact. The finding of fact came into light that the petitioner Smt. Shobha Rani was accepted as wife by Munna Lal, although, Munna Lal deceased was already a married person and the second marriage was void in law. The petitioner could not be recognised as legally wedded wife of Munna Lal, deceased, but as she was living with Munna Lal since a long time and Munna Lal, deceased had also nominated her for receiving his dues after hts death including the amount of group insurance L.I.C., etc. and she was living with Munna Lal in the premises in question, the learned lower appellate court should have seen as to who was in actual possession in the property in question and if it would have been found that the petitioner Shobha Rani was in the actual possession and still in possession of the property in dispute, then certainly she was entitled to be impleaded as legal representative of the deceased besides the legally wedded wife, i.e., Smt. Savitri Devi respondent No. 5. It is not necessary that a title holder of a property can only be a legal representative as discussed above. Hence, the proper course would have been that both the petitioner as well as respondent No. 5 should have been impleaded as legal representative of the deceased.

16. In the result, the writ petition is allowed. The conclusion drawn by learned Civil Judge (Junior Division], Haveli, Faizabad, in the impugned order dated 4.7.1996 in O.S. No. 44 of 1974 on the applications 145-Ka, 149-Ka and objections thereon i.e., 146-Ga and 152-Ga respectively as well as the order dated 13.8.1999 passed in Civil Appeal No. 76 of 1980, Ram Ghulam v. Parmeshwar and others, by IVth Addl. District Judge, Faizabad, are quashed and the matter is remanded back for fresh decision to the lower appellate court i.e., IVth Addl District Judge, Faizabad, and he is directed to decide the matter of impleadment of legal representatives of the deceased Munna Lal afresh in the light of the observations made above.