
(2004) 04 MP CK 0007

In the Madhya Pradesh High Court

Case No : Civil Revision No. 1160 of 2003

Smt. Sushela Sen

APPELLANT

Vs

Smt. Geeta Shrivastava and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (2005) 2 MPHT 68

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Pranay Gupta, for the Appellant; A.P. Shrotri, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Pande, J.—This revision u/s 115 of CPC is directed against the order dated 1-9-2003 passed by District Judge, Bhopal in M.A. No. 26/2003 affirming the order dated 28-2-2003 passed by the third Civil Judge Class-I, Bhopal in MJC No. 47/2002 granting succession certificate to respondents Smt. Geeta Shrivastava and Harshit Shrivastava.

2. Late Mahesh Kumar Shrivastava was an employee of the State Government and died on 28-3-2002. The dues from the State government accordingly ought to be realized. Respondents Smt. Geeta Shrivastava and Harshit Shrivastava filed application u/s 372 of Succession Act before the 3rd Civil Judge Class-I, Bhopal stating- inter alia that respondent Smt. Geeta Shrivastava was married to late Mahesh Kumar on 20-2-77 and from the wedlock, respondent Harshit Shrivastava was born on 6-1-84. Petitioner Sushila Sen is widow of late Balaram Sen. The petitioner since was working at the residence of Mahesh Kumar Shrivastava as maid servant, has been projected by the respondents by Babulal, Ramesh, Om Prakash, Dilip Shrivastava, Narendra as the widow of Mahesh Kumar to grab the amount and seek employment to respondent Narendra on compassionate ground,. Respondents Smt. Geeta Shrivastava and Harshit Shrivastava accordingly requested for issuance of succession certificate in their favour to collect the dues from the department

concerned of late Mahesh Kumar. The application aforesaid has been resisted by the respondents Babulal, Ramesh, Omprakash, Dilip, Narendra and petitioner Smt. Sushila stating inter alia that respondent Geeta Shrivastava after marriage lived only for few days with late Mahesh Kumar. Respondent Harshit Shrivastava is not the son of late Mahesh Kumar Shrivastava. Late Mahesh Kumar Shrivastava during the employment was living at Bhopal and married the petitioner Sushila Sen by Natra. She was accordingly, living as wife of late Mahesh Kumar. She has been nominated by late Mahesh Kumar in the official record for collection of dues from the department.

The Civil Judge vide order dated 28-2-2003 held that respondent Geeta Shrivastava was legally married wife to late Mahesh Kumar and respondent Harshit Shrivastava the son, was born from the aforesaid wedlock. At no point of time late Mahesh Kumar ever contacted second marriage with the petitioner Smt. Sushila Sen and on the basis of nomination petitioner Smt. Sushila Sen can not be said to be entitled to collect the dues from the department concerned. Accordingly, allowing the application directed issuance of succession certificate in favour of respondents Smt. Geeta Shrivastava and Harshit Shrivastava. Being aggrieved, the petitioner preferred M.A. No. 26/2003 before District Judge. The Court below affirming the order aforesaid passed by the Civil Judge in MJC No. 47/2002 dismissed the appeal vide impugned order dated 1-9-2003.

3. It is admitted that respondent Smt. Geeta Shrivastava was married to late Mahesh Kumar Shrivastava on 20-2-77. There had been no divorce between the parties and on the date of death of late Mahesh Kumar Shrivastava, marriage between him and respondent Smt. Geeta Shrivastava was subsisting. The case of the petitioner Smt. Sushila Sen, widow of Balaram is that she was married to late Mahesh Kumar by Natra and lived with him as his wife. The second marriage, during subsistence of marriage between Mahesh Kumar and Smt. Geeta Shrivastava, was accordingly not valid. It has also not been proved by the petitioner that in fact the marriage took place. Babulal (D.W. 1), father of late Mahesh Kumar Shrivastava has stated that petitioner Sushila Sen was a widow and was living with late Mahesh Kumar Shrivastava. From the aforesaid statement the Court below rightly held that in any case Sushila (D.W. 3) can not be said to be a legal married wife of late Mahesh Kumar. Smt. Geeta Shrivastava (P.W. 1) has stated that she is also an employee of State Government and is posted at Vidisha where she lived with her husband late Mahesh Kumar. Harshit (P.W. 7) was born from the aforesaid wedlock. Harshit (P.W. 7) has also stated that late Mahesh Kumar Shrivastava was his father and died on 18-3-2002. The aforesaid statements of Geeta Shrivastava (P.W. 1), Harshit Shrivastava (P.W. 7) have been supported by Bhaiyalal (P.W. 2), Rakesh (P.W. 3), Archana (P.W. 4), Smt. Akhilesh Shrivastava (P.W. 5), Mamta (P.W. 6) and Santosh Shrivastava (P.W. 8). These witnesses have stated that late Mahesh Kumar was living with Smt. Geeta Shrivastava (P.W. 1) at Vidisha. Subsequently, a house was allotted to him at Bhopal where also he lived. The statement of Smt. Geeta Shrivastava (P.W. 1) is that Smt. Sushila Sen (D.W. 2) widow of Balaram was working as maid servant at the residence of late Mahesh Kumar Shrivastava and on his death the

family members respondents Babulal, Ramesh, Omprakash, Dilip, Narendra projected her to be the widow for the purpose of claiming disbursement of amount from the department and seeking employment to respondent Narendra on compassionate ground.

4. Sushila Sen (D.W. 2) has stated that on the basis of nomination ex-gratia payment was made to her. The said nomination was made by late Mahesh Kumar only one month prior to his death in the Hamidiya Hospital, Bhopal. Under what circumstances, the nomination was obtained from late Mahesh Kumar, has not been explained by Smt. Sushila Sen (D.W. 2). On the basis of nomination, the Civil Judge declined to grant succession certificate in her favour.

5. The Apex Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , held that the nomination, if any only indicates the hand which is authorized to receive the amount, on the payment of which the person making payment gets valid discharge of its liability. The amount, however, can be claimed claimed by heirs of the deceased in accordance with law of succession governing them. Thus on the basis of nomination alone, no right shall accrue in favour of person concerned as against the successors of the deceased.

Only members of family are entitled to be nominated and any nomination other than members of family shall be invalid. In such a case ignoring nomination grant of succession certificate in favour of widow and son of the deceased can not be said to be improper. The Courts below with reference to Hemant Kulshrestha Vs. Smt. Pushpa Kulshrestha and others, rightly held the respondents Smt. Geeta Shrivastava and Harshit Shrivastava to be entitled to seek succession certificate in respect of dues to be collected from the department concerned of late Mahesh Kumar Shrivastava. The orders aforesaid are neither perverse nor illegal and do not suffer from any material irregularity.

6. Consequently, revision fails and is dismissed. Petitioner shall bear her cost and pay the cost of respondent Nos. 1 and 2. Remaining respondents to bear their own cost. Counsel fees as per rules or certificate (whichever is less).