(2019) 09 CHH CK 0109

In the Chhattisgarh High Court

Case No : First Appeal No. 194 Of 2015

Snehlata Chaturvedi APPELLANT

Vs

Kamala Chaturvedi And Ors RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Code Of Civil Procedure 1908 — Section 96
Limitation Act, 1963 — Section 12, 14
Hindu Succession Act, 1956 — Section 8, 372, 373

Citation : (2019) 09 CHH CK 0109

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Rajeev Bharat, S.D. Singh, Raghavendra Verma

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 8-7-2015 passed by the 2nd

Additional District Judge, Ambikapur, (CG) in Civil Suit No. 17-A/2012 wherein the said court decreed that respondent No.1 who is mother of the

deceased Anil Chaturvedi is entitled for half of the amount deposited in her son's name and will also get half share deposited in any office in the name

of Anil Chaturvedi. The said court further directed that if the appellant has received the entire amount to the tune of Rs.3,23,447/- the respondent

No.1 may recover half of the amount from the appellant.

2. Respondent No.1 /plaintiff filed a suit before the trial court on the ground that she is mother of late Anil Chaturvedi who died on 23-8-1997 at

Ambikapur while serving as Constable in the Excise Department. The appellant

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applied for grant of succession certificate before the competent court

and the order was passed in her favour. The suit was filed on the ground that respondent No.1 being mother of late Anil Chaturvedi is a Class-1 heir

under Hindu Succession Act, 1956, therefore, she is entitled to receive half of the amount which was decreed by the trial court.

3. Learned counsel for the appellant submits as under.

i) Being wife of the deceased Anil Chaturvedi, she alone is entitled to receive the amount deposited by the subscriber in his Provident Fund account.

ii) As per Rule 2(c) of the M.P. General Provident Fund Rules and as per the definition of family provided in the rules the expression ""family' does not

include the mother of the subscriber, therefore, respondent No.1 was not entitled to receive the departmental dues of late Anil Chaturvedi.

iii) The suit filed by respondent No.1 was apparently time barred because cause of action arose on 23-8-1997 while suit was filed on 23-4-2012. No

application was filed under Section 14 of the Limitation Act, 1963, therefore, decree passed by the trial court is not sustainable.

iv) This court granted liberty to respondent No.1 in civil revision No. 138 of 2007 to file an application for exclusion of time which was required to be

decided on its own merits by the trial court, therefore, finding of the trial court is liable to be reversed.

4. On the other hand, learned counsel appearing for the respondent would submit that the finding of the trial court is based on proper marshaling of the

evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether the suit filed by respondent No.1 was time barred. From the record it is clear that the

application for succession certificate was filed by the appellant in case No.4 of 2000 before the Civil Judge, Class-1 Ambikapur and succession

certificate was issued on 20-2- 2004. Against the order of succession certificate respondent No.1 filed an appeal before the District Judge, Ambikapur

which was dismissed. Again, respondent No.1 filed a civil revision before this court which was dismissed on 21-6-2005, thereafter respondent No.1

filed an application before Civil Judge, Class -1 Ambikapur for succession

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certificate which was registered as Case No. 8 of 2005 and that proceeding

was terminated vide order dated 3-11-2011 passed by this court in Civil Revision No. 138 of 2007 and in that civil revision this court directed that

respondent No.1 has all the right to file civil suit. After order dated 3-11-2011 passed by this court, the suit was filed on 23-4-2012 i.e., within three

years of the order passed by this court declaring that respondent No.1 has right to file suit, therefore, time upto 3-11-2011 is excluded which is time in

legal proceeding as per Section 12 of the Limitation Act, 1963. In view of the above, the suit filed by respondent No.1 is within limitation.

7. The second question for consideration of this court is whether Provident Fund Rules or other rules can debar respondent No.1 from claiming her

share over the amount in question. Hindu Succession Act, 1956 is applicable to the parties and according to Section 8 of the Act, 1956, property of son

shall devolve upon heir is specified in Section 8 and Class 1 of Schedule-1. In Schedule 1 mother has been kept at par with wife. A nominee is

permitted to receive the amount and his position is like trustee. Nominee does not confer any legal right to inherit property by succession. Sections 372

to 373 of the Indian Succession Act, 1956 empowers the court to determine the dispute summarily and grant the succession certificate to person

having prima facie title. Succession certificate granted in favour of the appellant is not conferred any right but respondent No.1 being mother and legal

heir of Class 1 has all the right to obtain her share from the appellant, therefore, her right cannot be extinguished.

8. The trial court has discussed the entire issue and recorded a finding that respondent No.1 is entitled half share of the amount which was deposited

in the name of her son anywhere. After reassessing the evidence and legal aspect of the matter, this court has no reason to take a contrary view.

Argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

10. Accordingly, decree is passed in favour of respondent No.1 and against the appellant as under:

i) The appeal is dismissed with cost.

ii) Appellant to bear the cost of respondent No.1 through out.

iii) Pleader's fee, if certified, be calculated as per schedule or as per certificate, whichever is less.

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iv) A decree be drawn up accordingly.

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