

(1995) 10 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 116 of 1994

Tahir Khan

APPELLANT

Vs

Basarat Khan and Another

RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 7
Succession Act, 1925 — Section 384

Citation : (1996) JLI 71

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : S.P. Sinha, for the Appellant; A. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.—This is an appeal u/s 384 of the Indian Succession Act against the order dated 12.10.93 passed by Shri R.S. Trivedi, First Additional District Judge, Murwara-Katni to the Court of District Judge, Jabalpur in Succession Case No. 16/89. The Appellant has filed Anr. appeal M (F) A No. 115/94 which is linked with this case. It arises against the order dated 12.10.1993 passed by the same Court in Succession Case No. 14/93. The disposal of this appeal shall also govern M (F) A. No. 115/94 because the subject matter of the case is the same and it is between the same parties.

2. The Respondent No. 1 filed an application for grant of succession certificate in respect of Rs. 27,447/- kept in deposit at Post Office Badgaon, Tehsil Murwara, District Jabalpur in name of Gafooran Bi. Gafooran Bi was the widow of Bhure Khan. She expired on 21.10.1989.

3. In his application, the Respondent No. 1 stated that the following family tree would give his relation ship with the deceased.

Maulvi (dead) | ----- | |
Kadhora (dead) Nanha (dead) Bhure Khan - Gafooran Bi Rahman Khan (dead)

(dead) (died on 21.10.89) Basarat Khan Respd. No. 1

Gafooran Bi alias Gappu Bai was widow of Bhure Khan son of Kadhora. Kadhora was the brother of Nanha. Nanha's son Rahman Khan and Bhure Khan were first cousin. The Respondent No. 1 was thus nearest relative being son of first cousin of husband of Gafooran Bi. It was claimed that late Gafooran Bi alias Gappu Bai had brought up the Respondent No. 1. Thus, by then the conduct of the Respondent No. 1 was acknowledged as nearest relative of late Gafooran Bi.

4. The application filed by the Respondent No. 1 was resisted by the Appellant who claimed that he was son of the real brother of Gafooran Bi. He also claimed that Gafooran Bi had executed a will in his favour.

5. It appears that the Appellant was required to file the original will. But he remained ex parte and did not file the will. His application under Order 9 Rule 7 CPC was rejected. He seems to have produced the will at late. When remained ex parte the evidence of the Respondent No. 1 was recorded and the Appellant was not allowed to lead any further evidence. Therefore, he participated in the proceedings from the date of his appearance and claimed that he was entitled to succession certificate.

6. Before the trial Court the Appellant had not led any evidence. It, therefore, relied on the evidence of Respondent No. 1 who proved his relationship to the deceased through her husband. He stated that Gafooran Bi was his Badi Ma and he lived with her. The trial Court in absence of any evidence in favour of the Appellant granted succession certificate to the Respondent No. 1. However, he guarded the interest of the Appellant by granting the succession certificate subject to a bond and furnishing suitable surety in case the Appellant established his rights in civil Court.

7. In appeal, Shri S.P. Sinha, learned Counsel for the Appellant has urged that the Respondent No. 1 was not the natural heir of Gafooran Bi alias Gappu Bai, because he was related to her through her husband. Muslim Law did not recognise any heir through husband because such an heir is not blood relation of the deceased.

8. The contention of the learned Counsel for the Appellant appears to be attractive one because the Respondent No. 1 is not covered by any of the better known categories of heirs under Muslim Law, i.e., (i) sharers, (ii) Residuaries, and (iii) Distant Kindred. A study of these categories of heirs reveals that these are blood relations.

9. However, in the absence of aforesaid heirs the Mohammadan Law recognises Anr. category Acknowledged kinsman.

10. Acknowledged kinsman have been defined by D.F. Mulla in his book of Mohammadan Law Nineteenth Edition at page 80:

Section 81 - Acknowledged kinsman - Next in succession is the "Acknowledged

Kinsman," that is, a person of unknown descent in whose favour the deceased has made an acknowledgement of kinship, not through himself, but through Anr. .

Such an acknowledgement confers upon the "Acknowledged Kinsman" the right of succession to the property of the deceased, subject to bequests to the extent of the bequeathable third, but it does not invest the person acknowledged with all the rights of an actual kinsman.

B.R. Verma in his Vth Edition of Mohammadan Law says:

Section 158 - Acknowledged Kinsman (a) - In default of blood relations and spouse a person in whose favour the deceased has made an acknowledgement of kinship conditionally or unconditionally otherwise then through himself will succeed to the property.

Provided that the acknowledgment is not retracted and it cannot be established that the person in whose favour the acknowledgement was made, belongs to a different family (b).

11. Thus, it would be clear that Respondent No. 1 has pleaded and proved that he is an heir of this category. The trial Court has found that Respondent was the son of Rahman Khan and was living with Gafooran Bi alias Gappu Bai who was his Badi Ma. He was brought up by her. Thus, he was acknowledged as a kinsman. The acknowledgment is not through herself in the sense that she claimed the Respondent No. 1 to be her son. She acknowledged him as Rahman Khan's son who was the first cousin of her husband. In the capacity of Badi Ma she took him in her home and treated him as if he was her own son. In view of the fact that the Appellant remained ex parte and there was no evidence in his favour, the Court below had no option but to grant succession certificate to Respondent No. 1.

12. In view of the finding recorded by this Court, the contention of the Appellant has no merit. The appeal therefore, fails and is hereby dismissed. The parties shall bear their own costs.