

(2011) 07 CHH CK 0068
In the Chhattisgarh High Court
Case No : Civil Revision No. 113 of 2010

Usha Shukla and others

APPELLANT

Vs

Smt. Tarini Shukla and others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Succession Act, 1925 — Section 372, 384(3)

Citation : (2011) 4 CGLJ 368 : (2011) 4 MPHT 99

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Mr. N.K. Agarwal, J.—The instant revision filed u/s 384(3) of the Indian Succession Act, 1925. (for short "the Act") is directed against the order dated 11-10-2010 passed by Additional District Judge (FTC), Rajnandgaon in Misc. Civil Appeal No, 9/2009 arising out of the order dated 2-8-2008 passed by Civil Judge, Class I, Ambagarh Chowki, Distt. Rajnandgaon in Succession Case No. 02/2008.

2. Brief facts of the case are that :-- Jagdish Prasad Shukla died on 18-6-2008 due to cardiac arrest. The applicant No. 1 Smt. Usha Bai is the second wife of Late Jagdish Prasad Shukla, who was working as Asstt. Grade-II at Community Health Centre, Ambagarh Chowki, District Rajnandgaon and the applicant Nos. 2 and 3 are her children from deceased Jagdish Prasad Shukla. Non-applicant No. 1 Smt. Tarini Shukla is the first wife of Jagdish Prasad Shukla and non-applicant Nos. 2 and 3 are her children from Jagdish Prasad Shukla. The applicants filed an application u/s 372 of the Act for grant of succession certificate in their favour to receive post retrial benefits of the deceased late Jagdish Prasad Shukla.

3. The Civil Judge, Class I, Ambagarh Chowki allowed the applicants application holding : applicants and the non-applicants both are entitled for half of the share each in the amount of post retrial dues, i.e., Rs. 6,90,627/-. The appeal preferred there-against by the non-applicants was partly allowed, vide, order

impugned holding : applicant No. 1 is not entitled for grant of succession certificate; out of total post retrial dues, i.e., Rs. 6,90,627/-, Rs. 3,98,860/- has already been paid to non-applicant No. 1 Tarini Shukla; she alone is entitled for monthly family pension; and applicant Nos. 2 and 3 along with non-applicants are entitled to 1/5th share each in the balance amount of post retrial dues, i.e., Rs. 3,16,381/-. Hence this revision.

4. Shri Anup Majumdar, learned Counsel appearing for the applicants would submit : the learned Appellate Court has committed an illegality in not granting succession certificate with regard to pension amount in favour of applicant Nos. 3 and 3 and in not granting succession certificate for the 1/5th share of entire amount of retrial dues in favour of applicant Nos. 2 and 3 and the non-applicants.

5. On the other hand, Shri Manoj Paranjpe, learned Counsel appearing for the respondent Nos. 1 to 3 would submit : applicant Nos. 2 and 3 are being illegitimate children of deceased Jagdish Prasad Shukla are not included in the list of heirs of Class I in Schedule to the Hindu Succession Act, 1956 and in fact no succession certificate can be granted in their favour.

6. The Supreme Court in case of Rameshwari Devi Vs. State of Bihar and others, , has held that even if a Government servant has contracted a second marriage during the subsistence of his first marriage, children borne out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children, but not the second wife, would be entitled to the pension.

7. The Single Bench of this High Court in case of Smt. Pushpa Bai and Others Vs. Aasbati Laleswar Naag and Another, , have also taken the same view.

8. In view of above, in the considered opinion of this Court, children borne out of second wife of the deceased would still be legitimate and would be entitled to the pension.

9. For the reasons mentioned hereinabove, this revision is allowed. It is ordered that the applicant Nos. 2 and 3 along with non-applicants are entitled to 1/5th share each in the post retrial benefits of deceased Jagdish Prasad Shukla, i.e., Rs. 6,90,627/- and pension. Amount which was already disbursed to the non-applicants shall be adjusted in their share. The share of minor applicant No. 3 shall be kept under deposit in a nationalized bank as a special fixed deposit till she attain majority.

10. No order as to costs.