

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.231 of 2008

% Judgment reserved on: 6th October, 2009

Judgment delivered on: 22nd October, 2009

Shri. Raj Nath,
S/o. Late Shri. Babu Ram,
R/o. H. No.249, Sun Light Colony-I,
New Delhi-110014.

....Appellant

Through: Mr. M.S. Negi, Adv.

Versus

1. State
Govt. of NCT of Delhi.
2. Shri Krishan Kumar,
S/o. Late Shri Babu Ram,
R/o. H. No.249, Sun Light Colony-I,
New Delhi-110014.
3. Ms. Raj Kumari,
D/o. Late Shri Babu Ram,
W/o. Shri Om Prakash,
R/o. H. No.2/230, Dakshin Puri Extn.,
New Delhi-110062.
4. Ms. Geeta,
D/o. Late Shri Babu Ram,
W/o. Late Ram Kishan Hastoria,
R/o. H. No. 6/371, Trilok Puri,
Delhi-110091.
5. Ms. Usha,
D/o. Late Shri Babu Ram,

W/o. Shri Chandan,
R/o. H. No.496/1, Mahavir Block,
Bhola Nath Nagar, Shahdara,
Delhi-110032.

6. Principal & Account Officer,
Meera Bai Polytechnic,
Maharani Bagh, New Delhi.

7. Smt. Rajendra Kumari (Wife of Deceased),
W/o. Late Raj Kumar

8. Km. Meena (Minor) (Daughter of Deceased),
D/o. Late Raj Kumar,
Through her mother,
Smt. Rajendra Kumari,

Both R/o. H. No.249, Sun Light Colony-I,
New Delhi-110014. ...Respondents

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Present appeal has been filed by appellant under
Section 384 of the Indian Succession Act against

judgment dated 11th April, 2008 passed by Administrative Civil Judge in the Succession case. Vide impugned judgment, petition filed by appellant was dismissed.

2. Appellant filed the petition seeking debts and securities of deceased Raj Kumar, who is stated to have expired on 7th July, 2001. It is stated that deceased left behind two brothers including appellant and three sisters, who are respondents No.2 to 5.

3. The securities of deceased which are being claimed in Succession, are his service dues from Meerabai Polytechnic, Maharani Bagh, New Delhi, where deceased was working as a sweeper.

4. Publication regarding filing of petition was effected in the newspaper but none appeared from general public to contest the case. Respondents No.2 to 5, filed 'No Objections' in favour of appellant.

5. Trial court issued notice of the petition to the Institute where deceased was employed. The said

Institute informed the court in writing that as per office record of deceased, he has nominated his wife Smt. Rajender Kumari and daughter Kumari Meena. The department also furnished attested copy of the nomination form which was filed by deceased in the office, under his signatures in which Rajender Kumari is shown as his wife and Kumari Meena is shown as his daughter. This nomination had been filed by deceased in July, 1989.

6. Afterwards, appellant impleaded wife and daughter of deceased, as a party in this case and their service was effected by publication in the newspaper, but none appeared on their behalf and as such they were proceeded ex-parte.

7. Notice of this appeal was issued to all the respondents. Respondents No.2 to 5, who are the brothers and sisters of the appellant appeared and sought time to engage a counsel but later on none appeared on their behalf.

8. Respondents No.7 and 8, who are the wife and daughter of deceased, were served by publication in the newspaper but they also did not appear. Vide order dated 6th October, 2009, all the respondents were proceeded ex-parte.

9. It is contended by learned counsel for appellant that appellant has made statement on oath that deceased was unmarried and had no issue. There is no rebuttal to the statement. It is also contended that nomination form of deceased was not countersigned by the principal. Thus, nomination form was neither authenticated nor countersigned and as such it creates suspicion. Moreover, if deceased was married, till date the said LRs have not approached the employer for their legal dues nor have approached the court for any succession certificate.

10. Since there is no class 'I' Legal Representative of the deceased, appellant being class 'II' Legal Representative and other Legal Representatives have

no objection in his favour, appellant is entitled to receive dues lying with the Government.

11. In entire petition for grant of succession certificate, appellant nowhere stated that deceased was unmarried. In cross-examination, he stated that he cannot admit or deny that deceased has nominated namely Rajender Kumari as wife and Kumari Meena as daughter and he also cannot admit and deny document mark 'A' which is nomination form.

12. Respondent-Government Department in its written statement has stated that wife and daughter of deceased Raj Kumar are only Legal Representative, as per records available in the Department. The deceased has nominated his wife and daughter in the GPF form as available in the Department. Copy of the nomination has been annexed with reply which has been marked as 'A'. It is further stated that nomination form of GPF has been duly signed by the deceased.

13. In rejoinder filed by appellant, he nowhere controverted these averments made by the Department, that Rajender Kumari and Kumari Meena are not the wife and daughter of the deceased. Rejoinder is also silent about marital status of the deceased.

14. Only plea taken by appellant is that nomination is not authenticated, since it is not countersigned by the principal. There is no rebuttal to this fact, that nomination mark 'A' is not signed by deceased Raj Kumar. There is no law according to which nomination form is required to be countersigned.

15. As per form of nomination, mark 'A', Rajender Kumari has been shown as wife of the deceased whereas, Kumari Meena has been shown as daughter. This nomination form was executed in the year 1989. There could be no purpose for the Government Department to fabricate this nomination form as they have got no personal interest in this case. Admittedly,

appellant is class 'II' Legal Representative as per the Succession Act.

16. Section 9 of Hindu Succession Act, 1956, which is relevant for disposal of this case reads as under;

“9. Order of succession among heirs in the Schedule- Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.”

17. Trial court in this regard observed;

“As discussed above, it is apparently clear that the deceased in his office disclosed that he was married to Smt. Rajender Kumari and that he had a daughter namely Kumari Meena. The deceased made them nominee in his office.

Sec.8 & 9 of Indian Succession Act provides that the assets of a male hindu who dies intestate shall devolve upon class-I legal heirs as mentioned in schedule of Hindu Succession Act. It further provides that class-I legal heir takes simultaneously and to the exclusion of other legal heirs in lower

category as mentioned in the Hindu Succession Act.

Admittedly, petitioner and respondent No.2 to 5 are brothers and sisters of deceased and they do not fall in class-I category. Till the time class-I heirs are alive, class-II heirs cannot claim any succession. Although, in this case wife and daughter of deceased are ex-parte, but till the time class-I legal heirs are alive only they are entitled to the succession of deceased exclusively. Although they are ex-parte but it cannot give rise to a presumption that class-I legal heirs have No Objection to the grant of succession in favour of the petitioner. These two class-I legal heirs could not be served in absence of their latest address. They have been served by way of publication as substituted service. It is not the case of the petitioner that they are not alive. Till the time class-I legal heirs are alive, petitioner falling in class-II category cannot claim any succession.”

18. The nomination form Mark ‘A’ is a sufficient proof to show that deceased did have a wife and daughter and the said nomination form has been duly signed by the deceased, as early as in the year 189. There is no allegation on behalf of appellant that this nomination form is forged or fabricated.

19. In view of the clear and legal factual position, the appellant is only class-II Legal Representative. Since class-I Legal Representatives of the deceased, namely his wife and daughter are there, appellant is not entitled to inherit the estate of deceased. Thus, no ambiguity can be found in the impugned judgment passed by the trial court. The present appeal is not maintainable and same is hereby dismissed.

20. No order as to costs.

21. Trial court record be sent back.

22nd October, 2009
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V.B.GUPTA, J.