

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 21.12.2012

+ FAO 271/2009

ITSUKO FUJIMOTO NANDI Appellant
Through : Ms. Anu Mehta, Advocate.

versus

UOI & ANR Respondents
Through : Ms. Poonam Lau with Mr Ajay Sharma,
Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. Present is an appeal under Section 299 of the Indian Succession Act wherein challenge has been made to impugned judgment dated 29.05.2009 passed by the learned Addl. District Judge, Delhi whereby the petition filed by the appellant for grant of succession certificate in respect of estate left by deceased Dr. Parkash Kumar Nandi has been dismissed.

2. The appellant had filed a petition under Section 372 of the Indian Succession Act wherein she had stated that she was the widow of deceased Dr. Parkash Kumar Nandi who died on 19.06.1998 at New Delhi. The deceased was working as Joint Director with respondent no. 1. According to

her, she got married with Dr. Parkash Kumar Nandi i.e. deceased on 28.06.1983 at Calagary, Alberta, Canada. Their marriage was duly registered with the office of Registrar of Marriage, Canada. On 09.02.1987, the deceased who at the relevant time was working with Ministry of Information and Broadcasting, made the nomination of his death-cum-retiral benefits in her favour. The deceased had died intestate at Delhi. After his death, she had moved an application before respondent no. 1 for payment of pensionary benefits to her as the sole heir of deceased along with relevant documents i.e. marriage certificate, nomination and other relevant documents. However, the respondent no. 1 had asked her to obtain appropriate order as provided under the Indian Succession Act and accordingly she had filed a petition for the grant of succession certificate in her favour.

3. The respondent no. 1 had opposed the said petition by filing a written statement contending therein that the appellant had no locus standi to move the application as she never acquired the status of wife of deceased. It was further contended that as per service record, the deceased was survived by his wife, namely, Chandrima Nandi @ Sarbari Nandi and if at all there was any marriage with the appellant, it was nullity in the eyes of law being a marriage with a man having a living spouse. It was further alleged that as per office record, there was nothing to show that she was his wife nor any such declaration was made by the deceased during his life time.

4. In the said petition, an application under Order 1 Rule 10 was filed by Smt. Sarbari Nandi @ Chandrima Nandi. She had also filed objections

contending therein that she was the legally wedded wife of deceased and out of her wedlock there are two daughters, namely, Smt. Aditi Mukherjee and Ms. Sudakshana Nandi and after the death of deceased, respondent no. 2/objector and her daughters were entitled to the estate of the deceased. She had alleged that the second marriage during the life time of first wife was void-ab-initio. She had further alleged that her marriage was never dissolved by decree of divorce and as per Government Rules, after the death of an employee, all the benefits are to be given to the Class-I legal heirs and in the absence of same, it has to be paid to Class-II heirs and appellant was not the member of the family of deceased and she was not entitled to any of the properties left by the deceased.

5. The appellant had filed reply to the said objections and denied the allegations made therein. According to the appellant, the deceased was survived by his wife i.e. appellant and Ms. Sudakshana Nandi as his legal heirs and the aforesaid two legal heirs were entitled to the assets of deceased.

6. On the pleadings of the parties, the following issues were framed:-

“1. Whether the petitioner is entitled to the grant of Succession Certificate in respect of debts and securities of the deceased Dr. Prakash Kumar Nandi? OPP

2. Whether the petition is liable to be dismissed in view of the objections taken by the objector Smt. Chandrima @ Sarbari Nandi? OPOs.

3. Relief.”

7. Before the ld. ADJ, Delhi, the appellant no.1/petitioner examined seven witnesses i.e., Sh. B.R. Sarin, PW-1 who was Assistant Director in Song and Drama Division of Ministry of Information & Broadcasting, Govt. of India, New Delhi; the appellant examined herself as PW-2, Sh. V.V. Krishan Sharma, Stenographer from the office of Ministry of Information and Broadcasting was examined as PW-3; Ms. Sudakashana Nandi is the daughter of deceased and was examined as PW-4; Sh. Kuldeep Sangal, who is running a travel agency by the name of Sanbro Travel Consultants was examined as PW-5; Ms. Veena Gaiind PW-6 and Mrs. Indira Chaterjee was examined as PW-7.

8. On behalf of the respondent no. 2/objector two witnesses were examined – Ms Chandrima Nandi as OW-1 and OW-2 Sh. Hiranmoy Mukherjee her son-in-law.

9. Ld. counsel for appellant/petitioner had argued before the ld. ADJ that appellant was legally wedded wife of the deceased and got married to him in the year 1983 at Canada and had also produced copy of marriage certificate Ex.P-1. It was contended that her marriage was a valid marriage as per provisions of Section 18 and 27 of the Foreign Marriage Act, 1969. It was also argued on behalf of the appellant/petitioner that respondent no. 2/objector had alleged that she was married to deceased in 1968. She had not produced any evidence of her valid marriage with the deceased and the marriage card Ex. RW-1/1 produced by her was fabricated. It was

contended that respondent no. 2 had failed to prove the ingredients of Section 7 of Hindu Marriage Act.

10. On the other hand, ld. counsel for respondent no. 2/objector had contended that there was valid marriage between them and had relied upon documents on record to prove that it was a valid marriage. However, after going through material on record, ld. Addl. District Judge was of the view that for the disposal of petition under Section 373 of the Act only prima facie case was to be seen and the question of law and fact which may be complicated were to be decided by the regular civil court. Accordingly, it was held that in view of the provisions of Section 373(3) of the Act it was not necessary to decide the validity of the marriage between the deceased and the petitioner or between the deceased and the objector and observed that same would be adjudicated upon by civil court. On the basis of evidence adduced, ld. ADJ took the view that the documents filed by respondent no. 2 give rise to a reasonable belief that respondent no. 2/objector was married to deceased on 11.06.1968. Accordingly, decided issue no. 1 and 2 in favour of the respondent no. 2/objector and dismissed the application under Section 373 of Indian Succession Act of the appellant/petitioner.

11. Aggrieved with the same, present appeal is filed.

12. Ld. counsel for the appellant has contended that the respondent no. 2/objector had filed a suit for declaration and injunction before the Civil Judge, Jr. Division, 2nd Court, Sealdah, South-24, Parganas i.e. Suit No. TS

74/99 titled as Smt.Sarbari Nandi @ Chandrima Nandi and Anr. vs. UOI and others. It is submitted that in the aforesaid suit, the appellant and Ms. Sudakshana Nandi were impleaded as defendant no.3 & 4 respectively. In the aforesaid suit one of the prayer was made for declaration to the effect that respondent no.2/objector was the legally married wife of Dr. Prakash Kumar Nandi and upon his death the respondent no. 2/objector as well as her two daughters that is Aditi Mukherjee and Sudakshana Nandi were entitled to the estate of the deceased.

13. It is submitted that the appellant had contested the said suit by filing written statement. Thereafter, issues were framed. One of the issues was whether the respondent no. 2/objector was the legally married wife of Dr. Prakash Kumar Nandi. It is submitted that the said suit was dismissed vide judgment dated 19.11.2010 passed by Civil Judge, 2nd Court, Sealdah, South-24, Parganas, wherein the said issue was decided against respondent no. 2/objector. It is contended that the aforesaid judgment of Civil Court has settled the issue as regards the legal status of the respondent no. 2/objector wherein her claim as the wife of the deceased has been rejected. It is contended that now it can't be said that marriage of appellant with deceased was in contravention of Section 5 of HMA as is observed by learned ADJ. It is further contended that even otherwise there is ample evidence on record to show that the appellant is the legally wedded wife of the respondent. It is contended that the learned trial court overlooked the material on record. It is contended that in the letter dated 27.09.1983 Ex. PW 2/D-1 admittedly written by respondent no. 2/objector, she had informed the deceased that she had married to his disciple on 25.09.1982 and had signed the said letter as

wife of Shyamol Chatterjee. It is contended that said letter also establishes that there was no marriage between the deceased and respondent no. 2/objector and the said letter demolishes her stand that she was the wife of deceased. It is contended that there is ample evidence on record to show that the deceased was married to the appellant. There is clear evidence that she was cohabiting with deceased since 1983 and upto his death had lived with him as his wife and had performed his last rites. It is submitted that the appellant is entitled for the grant of succession certificate in respect of estate of the deceased including the pensionary benefits. Even in the nomination papers Ex.P-5, the deceased had given the name of the appellant. It is submitted that in view of above submissions made, the impugned order may be set aside and the succession certificate as prayed be issued in favour of the appellant.

14. On the other hand, the learned counsel for respondent no. 2 has contended that there are number of documents on record i.e. marriage invitation card Ex.RW1/1, photographs Ex.RW1/2 & 3 and RW 1/15-22 showing that respondent no.2/objector was legally wedded wife of deceased, copy of her passport Ex.RW1/8 showing the name of husband as Prakash Kumar Nandi, the nomination forms for the year 1971 Ex. RW1/3 wherein the deceased had nominated the respondent no. 2 as his wife. The LIC policy, the passport of the respondent no. 2 Ex.RW 1/9, service book are also placed on record which clearly bear the name of husband as Prakash Kumar Nandi i.e., the deceased. It is submitted that the evidence on record led by respondent no.2/objector clearly prove that respondent no. 2 was legally married wife of deceased and the Id. Addl. District Judge has rightly

dismissed the petition of the appellant for grant of succession certificate in her favour.

15. I have considered the submissions made and perused the material on record.

16. Perusal of the impugned judgment shows that before the learned Addl. District Judge, Delhi the stand of the appellant was that her marriage with deceased Dr. Parkash Kumar Nandi was legal and valid whereas the stand of the respondent no. 2/objector was that she was the legally wedded wife of deceased Dr. Parkash Kumar Nandi and her marriage was solemnized on 11.6.1968. Both the parties had filed relevant documents in support of their respective stands which have been stated above. Learned Addl. District Judge has observed that under the provisions of sub-section (3) of section 373 of the Act, it was not necessary to decide the validity of marriage between the deceased and the appellant or between the deceased and the respondent no. 2/objector as the same would be adjudicated upon by the Civil Court. However, taking prima facie view of the matter, the learned Addl. District Judge has observed that documents of objector prima facie shows that respondent no. 2/objector was married to deceased in the year 1968. Accordingly, the learned Addl. District Judge decided issue nos.1 and 2 in favour of the respondent no. 2/objector and against the appellant and dismissed the petition.

17. As noted above, the respondent no. 2/objector and her daughter Smt. Aditi Mukherjee had filed a suit being Suit No.74/1999 for declaration and

injunction before the Civil Judge (Junior Division) 2nd Court Sealdah Distt South Parganas wherein they had prayed for declaration that respondent no. 2 was the legally married wife of Dr. Parkash Kumar Nandi and upon his death was being the widow and her daughters i.e., Smt. Aditi Mukherjee and i.e. Ms. Sudakshana Nandi, respondent no.3 were entitled for the estate of deceased including death-cum-retirement benefits. The appellant had contested the said suit and had filed a written statement. Issues were framed. Ultimately the said suit has been dismissed vide judgment dated 19.11.2010 as is stated above. The learned Civil Judge, has given a finding that the evidence led in the case in respect of alleged marriage of respondent no.2/objector with the deceased is not believable for want of cogent reasons and the issue as to whether objector was the legally wedded wife of Dr. Parkash Kumar Nandi since deceased, was decided against her. Learned counsel appearing for her has not denied the said judgment. There is nothing on record to show if the aforesaid judgment has been challenged in any higher forum. During the pendency of present appeal respondent no. 2/objector had also died. Her married daughter Aditi Mukherjee was substituted as her legal representative. Ld. counsel appearing for her has failed to place on record any material to show that aforesaid judgment is challenged in the higher forum. Now more than two years have elapsed.

18. Further before the Ld. Addl. District Judge, the appellant has proved copy of the marriage registration certificate as Ex.P1 wherein her husband's name is recorded as Prakash Kumar Nandi. The other documents proved are Ex.P3, the copy of passport of deceased Dr. Parkash Kumar Nandi. Ex.P-4 is the copy of letter written by deceased Dr. Parkash Kumar

Nandi to the Department enclosing duly signed forms in respect of GPF, CGEIS, DCRG, Pension & form of nomination. Ex.P-5 is the copy of nomination in respect of Death-cum-Retirement Gratuity made by deceased Dr. Parkash Kumar Nandi nominating appellant as beneficiary. Ex.P-6 is the copy of nomination in respect of Central Government Employees' Insurance Scheme made by deceased Dr. Parkash Kumar Nandi nominating appellant and Sukaskhana (Kaju) Nandi as beneficiaries. Ex.P-7 is the copy of nomination in respect of Family Pension made by deceased Dr. Parkash Kumar Nandi nominating appellant and Sukaskhina (Kaju) Nandi as beneficiaries. Ex.P-8 is the copy of nomination in respect of General Provident Fund made by deceased Dr. Parkash Kumar Nandi nominating appellant as beneficiary. Ex.P-9 to P-11/A are Obituary circulars. Ex.P-12 is the copy of letter written by the appellant to the Director, Directorate of Estates requesting for retention of Government accommodation in case of death of allottee i.e., Dr. Prakash Kumar Nandi. Further Shri V.V.Krishan Sharma, PW-3, a Stenographer from the Ministry of Information and Broadcasting, has proved on record letter dated 09.02.1987 i.e. Ex. PW 3/1 regarding nomination forms Ex. PW3/2 duly signed by deceased Dr. Parkash Kumar Nandi relating to GPF, CGEIS, DCRG, Pension in favour of appellant and his daughter.

19. Ms.Sudakashana Nandi, PW-4 is the daughter of deceased Dr. Parkash Kumar Nandi who has deposed that she is the unmarried daughter of late Dr. Parkash Kumar Nandi who died on 19.6.1998 in AIIMS and served the Government of India (Song and Drama Division) for 16 years. She has further deposed that she is working in the same Department from

the year 1999, a year after death of her father. She has deposed having done the last rites of her deceased father. She has further deposed that appellant and deceased Dr.Prem Kumar Nandi lived happily before his death and that appellant used to take good care of her and deceased Dr. Parkash Kumar Nandi.

20. The other witnesses produced by the appellant before the learned trial court are Kuldeep Sangal P.W-5, Ms. Veena Gaiind PW-6 and Mrs. Indira Chatterjee PW-7 who have supported the case of the appellant. The evidence led by the appellant proves that she was married to deceased Dr. Parkash Kumar Nandi.

21. The evidence of respondent no.2/objector RW-1 and her son-in-law Hiranmay Mukherjee has also been considered. The documents produced by respondent no.2/objector have already been stated above. However, in view of the finding of the Ld. Civil Judge, Jr. Division, 2nd Court, Sealdah, South-24, Parganas, as is referred above, the same are of no help to her. In view of aforesaid judgment now there is no dispute of marriage of appellant with deceased. Further it is also not in dispute that the appellant has also brought up Ms. Sudakashana Nandi, PW-3, daughter of deceased. Even in reply to objections of respondent no.2, the appellant has stated that the deceased has left only two legal heirs, i.e. appellant and Ms Sudakashana Nandi and both are entitled to receive the retiral benefits.

22. In view of above discussion, the appeal stands allowed. The impugned judgment is set aside. It will be open for the appellant and Ms.

Sudakshana Nandi i.e., respondent no.3 to approach the respondent no.1 for giving the details of amount of pensionary/retiral benefits etc. of the deceased and upon receipt of such request the respondent no.1 shall disclose the same as per norms within six weeks. Thereafter upon completion of necessary formalities, the succession certificate will be granted in their favour. There is no order as to costs.

VEENA BIRBAL, J

DECEMBER 21, 2012
kks/ssb