

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7956 of 2015

Along with

Interlocutory Application No. 8885 of 2015

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Lalsa Devi W/O Late Devidayal Sharma, @ Devi Dayal Singh Resident of Village-Sarwan, Bhadsara, P.O.- Gorakhri, P.S.- Bikram, District- Patna.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary Education Department, Bihar, Patna.
2. Director Secondary Education, Bihar, Patna.
3. District Magistrate, Patna.
4. District Provident fund Officer, Patna.
5. The Head Master Bhuneshwary Dayal Higher Secondary School, Telpa, Bikram, Patna.
6. The Accountant General, Bihar, Patna.
7. The District Program Officer (Establishment), Patna
8. The District Education Officer, Patna.
9. Santosh Kumar, S/o Late Devi Dayal Sharma @ Devi Dayal Singh C/o Vill.- Sarwan Bhadsara, P.O.- Gorkhari, P.S.- Bikram, District- Patna.
10. Rijhu Kumari, W/O Ranjay Kumar, D/O Late Devi Dayal Sharma @ Devi Dayal Singh, resident of village-Khandol, P.O.-Phuladi, P.S.- Sandesh, District-Bhojpur (Arrah).
11. Mamta Devi, W/O Ranjit Kumar, D/O Late Devi Dayal Sharma @ Devi Dayal Singh, resident of village- Mudika, P.S. -Paliganj, District- Patna.
12. Ranjana Kumari, W/O Amit Kumar D/O Late Devi Dayal Sharma @ Devi Dayal Singh, resident of village- Madhopur, P.O.- Dhibra, P.S.- Janipur, District- Patna.

.... Respondents

With

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Civil Writ Jurisdiction Case No. 20480 of 2014

Along with

Interlocutory Application No. 9231 of 2014

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Santosh Kumar, Son of Late Devi Dayal Sharma, Resident of Village: - Sarva, Badsara, P.O.- Gorkhari, P.S.- Bikram, District: - Patna; At present:- 7, Air Force Hospital, Security Section, Kanpur Cant, Nathusingh Road, District : Kanpur, Pin - 208004.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, "Vikas Bhawan", Patna - 15.
2. The Director (Secondary Education), Education Department, Patna.
3. The Dy. Director (Secondary Education), Education Department, Patna.
4. The District Education Officer (in short D.E.O.), Education Department, Patna.
5. The Principal, Education Department, Buneshwari Dayal Higher Secondary

- School, Telpa, Bikram (Patna).
6. The District Provident Officer, Patna.
 7. The District Magistrate, Patna.
 8. The Circle Officer (i.e. C.O.), Bikram, Patna.
 9. The Accountant General (A & E), Virchand Patel Path, Bihar, Patna - 1.
 10. Lalsa Devi w/o Late Devi Dayal Sharma. R/O Village-Sarwan Bhadsara, P.O.-Gorkhari, P.S.-Bikram, District-Patna.

.... Respondents

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Appearance :

(In CWJC No. 7956 of 2015)

For the Petitioner/s :

For the Respondent/s :

(In CWJC No. 20480 of 2014)

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 05-11-2015

Heard learned counsel for the parties.

Re: Interlocutory Application No. 8885 of 2015.

The present Interlocutory Application has been filed in C.W.J.C. No. 7956 of 2015 by the intervener-applicants for being impleaded as respondents in the writ petition claiming to be the daughters of the deceased employee and claiming 1/6th share each in the lawful dues of their late father.

The fact of the intervener-applicants being the daughters of the deceased employee is not disputed by learned counsel appearing for the parties. Accordingly, the intervener-applicants are directed to be impleaded as respondents no. 10, 11 and 12 in C.W.J.C. No. 7956 of 2015.

Interlocutory Application No. 8885 of 2015 stands

disposed off.

Re: Interlocutory Application No.9231 of 2014

The present Interlocutory Application has been filed by the intervener-applicant in C.W.J.C. No. 20480 of 2014 seeking impleadment in the writ petition claiming to be the legally wedded wife of the late father of the petitioner.

Learned counsel for the intervener-applicant submits that upon the death of his first wife in the year 1989, the petitioner was married to Late Devi Dayal Sharma @ Devi Dayal Singh in the year 1992 and since then lived with him as wife and even brought up the children, that is, the petitioner and four other sisters and had also participated in their marriage performing the rituals as the mother. Learned counsel thus submits that upon the death of the father, suddenly the petitioner, with *mala fide* intention, has taken the stand that she is not the second wife of his father. It is submitted that in any view of the matter, as the petitioner has also claimed her share in the death cum retiral benefits of the late employee and also family pension, she is a necessary party in the proceeding.

Learned counsel for the petitioner submits that as she has claimed part of the benefits due to his late father, she may be impleaded without admitting that she is the second wife. Accordingly, let the intervener-applicant be impleaded as respondent no. 10 in

C.W.J.C. No. 20480 of 2015.

Interlocutory Application No. 9231 of 2014 stands disposed off.

Re: Civil Writ Jurisdiction Case No. 7956 of 2015 and Civil Writ Jurisdiction Case No. 20480 of 2014.

The petitioner in C.W.J.C. No. 7956 of 2015 has moved before the Court for a direction to the respondents to grant death cum retiral benefits including family pension to her, claiming to be the second wife of deceased Devi Dayal Sharma @ Devi Dayal Singh, who died in harness while posted as Assistant Teacher at Bhuneshwari Dayal High School, Telpa, Bikram in the District of Patna.

The petitioner of C.W.J.C. No. 20480 of 2014 claims to be the son of the deceased employee and has moved the Court for the same relief.

Though the petitioner of C.W.J.C. No. 7956 of 2015 has accepted that the petitioner of 20480 of 2014 is the son of her late husband, by an earlier wife, who died in the year 1989 prior to the marriage of the petitioner in the year 1992, but the petitioner of C.W.J.C. No. 20480 of 2014 claims that the petitioner is not the legally wedded wife of his father and at best had moved into the house upon the death of his mother merely as a care taker.



Learned counsel for the petitioner of C.W.J.C. No. 7956 of 2015 submits that the first wife of late Devi Dayal Sharma @ Devi Dayal Singh namely Urmila Devi died in the year 1989 when their children were of tender age and thus late Devi Dayal Sharma married the petitioner in the year 1992. In support of such marriage, learned counsel has referred to Annexure-2, which is a certificate given by the priest of Sri Gauri Shankar Dham Temple at Baikathpur, Patna dated 06.05.1992. He has also relied on the Family List Certificate issued by the Anhcal Adhikari, Bikram, Patna dated 05.12.2014 in which the petitioner is shown to be the second wife. Learned counsel further refers to Annexure-4, which is copy of the petitioner's Voter Identity Card issued by the Election Commission of India showing her to be the wife of late Devi Dayal Singh with the same address. Learned counsel also refers to Annexure-5, which is the declaration of assets and liability submitted by the late employee in the year 2014 in which the name of the spouse has been stated as Lalsa Devi i.e., the petitioner and regarding her immovable assets, agricultural land of 21¼ decimals has been shown. Learned counsel submits that the land indicated in the declaration has been bought in favour of the petitioner by a registered sale deed in the year 1998. Learned counsel has also referred to Annexure-6, which is copy of receipt of the Life Insurance Corporation of India in the name of the petitioner of the year 2007 in



which the petitioner has been shown as wife of Devi Dayal Sharma. Learned counsel has also referred to Annexure-7, which is an application filed by the petitioner, pursuant to the death of her late husband indicating that she has handed over the original copy of the Service Book of her late husband for completing the formalities relating to grant of death cum retiral benefits. Learned counsel has also drawn the attention of this Court to various photographs annexed in the supplementary affidavit filed on behalf of the petitioner, which shows that she participated in the marriage of the petitioner of C.W.J.C. No. 20480 of 2014 in the capacity of being mother alongside the father and also photographs to indicate that she performed the role of the wife at various religious functions and festivals also. Copy of the Voter List for the Assembly Election, 2015 also shows her name and photograph at Serial No. 99 for the Bikram seat. Copy of the sale deed in her favour of the year 1998 has also been brought on record. Copies of Land revenue receipts for the said land have been made Annexures-13 and 13/1 as well as photocopy of the Photo Identity Card issued by the Election Commission of India to her late husband have also been annexed as Annexure- 14 in which his name has been shown as Devi Dayal Singh. Learned counsel submits that even in the account opened in the name of her husband with the Punjab National Bank, her name has been shown as the



nominee and the name of her husband as Devi Dayal Singh. Learned counsel submits that even the survey conducted to locate the above or below Poverty Line families, in the draft statement of the Bihar Government, copy of which has been downloaded from the internet and brought on record as Annexure-16, shows the name of deceased Devi Dayal Singh and the petitioner as his wife. Learned counsel submits that on the same day 21¼ decimals of land were purchased in the name of the petitioner and another 14 decimals of another plot in the name of Pushpa Sharma, wife of Din Dayal Sharma, who is full brother of the husband of the petitioner and with regard to both the lands Title Suit No. 104 of 1998 was filed by Bhuneshwar Singh, who is uncle of the husband of the petitioner. In the said suit, her husband, her father-in-law i.e., father of her husband and Pushpa Sharma have deposed before the Court that the petitioner was the wife of Devi Dayal Sharma. Thus, it is submitted that in view of the overwhelming documentary evidence in favour of the petitioner, who is widow of late Devi Dayal Sharma @ Devi Dayal Singh and she being issueless without any support, the authorities cannot justify denying payment of family pension and her share in other retiral benefits of her late husband.

Learned counsel appearing for the respondents no. 10, 11 and 12 submits that they are the three daughters of late Devi Dayal



Sharma from the first wife and are agreeable to give up their share from the benefits due to their late father in favour of the writ petitioner of C.W.J.C. No. 7956 of 2015, whom they accept to be their step mother and second wife of their father. However, in the alternative prayer is that if their brother, who is petitioner of C.W.J.C. No. 20480 of 2014, is allowed his share, then they should also be given their 1/6th share from such payable dues.

Learned counsel appearing for the respondent no. 9 i.e., the petitioner of C.W.J.C. No. 20480 of 2014, submits that the petitioner is not the legally wedded wife of his father and even if she was living with the family, it was only as a care taker, as the petitioner being five years of age and four other minor sisters when his mother died, the petitioner of C.W.J.C. No. 7956 of 2015 was brought into the household and introduced by the father as a care taker. It is further his stand that she is in fact married to one Muller Singh as has been stated in paragraph 5 of the counter affidavit filed on his behalf and thus the contention is that in view of the first marriage subsisting, the claim of the petitioner to be the second wife of his father is not sustainable in the eyes of law and thus no relief can be granted to her. For such proposition, learned counsel has relied upon decisions of the Himachal Pradesh High Court in the case of *Santosh Kumar v. Surjit Singh* reported in *A.I.R. 1990 Himachal Pradesh 77* as well as that of



the Karnatka High Court in the case of *Nimbamma v. Rathnamma* reported in *A.I.R. 1999 Karnatka 226*. Learned counsel submits that the said categorical averment of the petitioner has not been specifically denied by the petitioner in his third supplementary affidavit filed in reply to the counter affidavit of the respondent no. 9 in which at paragraph 7, it has been stated that the submission made by the respondent no. 9 at paragraph 9, are most abusive. Learned counsel submits that in view of there being no specific denial to such stand of the petitioner, the fact of the petitioner being a legally wedded wife of the father of the respondent no. 9 is a disputed fact and this Court in its writ jurisdiction may not go into the issue. In this context, learned counsel has relied upon Order 8, Rules 3 to 5 of the Code of Civil Procedure, stipulating that denial has to be specific.

Learned counsel for the petitioner of C.W.J.C. No. 7956 of 2015, by way of reply submits, that though the language used in para 7 of the third supplementary affidavit in reply to the statement made on behalf of respondent no. 9 in counter affidavit regarding Muller Singh to be the husband of the petitioner, along with the statements made by him in paragraphs 6 and 7, were abusive inasmuch as the name of another person has been taken as being the husband of the petitioner. It is further submitted that in the same paragraph, the petitioner has stated that she is the legally wedded

second wife of deceased employee and has also relied upon the said fact having been admitted by the three daughters of late Devi Dayal Sharma who are also sisters of respondent no. 9 and have intervened in the present writ application.

Learned counsel for the State submits that there being conflicting and rival claims, the authorities being unsure of who were the rightful claimants and in what proportion, had asked all concerned to furnish Succession Certificate.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds force in the submissions of learned counsel for the petitioner of C.W.J.C. No. 7956 of 2015. From the materials brought on record by way of Annexures, which are copies of various documents/official records, the same not having been rebutted or denied, do indicate that the petitioner was the wife of late Devi Dayal Sharma @ Devi Dayal Singh. However, regarding respondent no. 9 raising a technical objection before the Court that the petitioner was already married to another person before marrying the father of the petitioner, this Court is of the view that even such statement made on behalf of respondent no. 9 cannot be given undue importance for the reason that it has not been stated as to when Muller Singh had married the petitioner. Moreover, the lone statement in the counter affidavit is not supported



by any documentary or corroborative material and the fact that in favour of the petitioner there are numerous official documents of various departments and also registered sale deed coupled with the most important fact that the three sisters of respondent no. 9, who have intervened in the present writ application and Rijhu Kumari being elder to respondent no. 9 and all of them stating on oath before this Court that the petitioner was the second wife of their late father, this Court does not feel it necessary to go into the technical aspect as to whether the petitioner was legally competent to marry late Devi Dayal Sharma since no one has come up before any of the authorities or the Court to claim that the petitioner is his wife and also that even the respondent no. 9 admits that the petitioner was living in the house uninterruptedly since he was 5 years old. The objection of learned counsel appearing on behalf of the respondent no. 9 with regard to the denial in the pleadings to be specific, this Court is of the opinion that the statement made by the petitioner at paragraph 7 in his third supplementary affidavit, which is also reply to the statement of respondent no. 9 at paragraph 5 of his counter affidavit, can be considered to be a denial since an objection has been taken that it is abusive and that the petitioner is legally wedded second wife. Thus, the Court does not find much substance in the technical objection raised by learned counsel for respondent no. 9 that the denial not

being specific, the fact that she was married to Muller Singh is admitted.

Accordingly, the Court after considering the overall picture which has emerged and for the purposes of doing justice, takes the view that the petitioner is entitled to family pension and her share in all the death cum retiral benefits of late Devi Dayal Sharma @ Devi Dayal Singh moreso in view of the fact that Lalsa Devi being the childless widow having lived with the father of the petitioner for the entire period after 1992 cannot be shown the door at this stage of her life and is also in need of money for survival as she has no other source of income and from the overwhelming materials in her favour, as has been discussed in the foregoing paragraphs, she does not deserve to be asked to fight out a Succession Case and in the meantime remain succourless. It is also pertinent to note here that as far as family pension being paid to the petitioner of C.W.J.C. No. 7956 of 2015 is concerned, it does not have the effect of causing any prejudice to the interest of the respondent no. 9. The State respondents shall ensure that the petitioner of C.W.J.C. No. 7956 of 2015 is paid all her dues in terms of this order within two months from the date of production of a copy of this order before the respondents no. 4, 6 and 7 of C.W.J.C. No. 7956 of 2015.

The Court would like to clarify that the present order

accepting the petitioner of C.W.J.C. No. 7956 of 2015 to be the legally wedded wife of late Devi Dayal Sharma @ Devi Dayal Singh is only restricted for the purposes of grant of family pension and death cum retiral benefits of the said late employee and any finding/observation shall have no effect on any other proceeding, either pending or in future, between the parties.

The writ applications stand disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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