

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1520 of 2013

=====

Ashutosh Kumar Das Son Of Late Jagdish Lal Das Resident Of Professors
Colony, Near Polytechnic Railway Crossing, Ward No. 16, P.S. And
District Saharsa

.... Petitioner/s

Versus

1. Ajit Kumar Das Son Of Late Shivanand Lal Das A Resident Of Flat No.
323, Vijaya Garden Apartment, Baoridih Jamshedpur, Jharkhand
2. Agit Kumar Das @ Kishor Son Of Late Shivanand Lal Das A Resident
Of Kayastha Tola, West Of Gudri Bazar, Supaul
3. Chanchala Das Teacher D/O Late Shivanand Lal Das And Wife Of Late
Arun Kumar Das A Resident Of Mahant Nagar, Katihar
4. Santosh Kumar Das Son Of Late Jagdish Lal Das C/O Vikas Anil, 122a,
Mahavir Regal, Baravan Nagar Hoodi, Circle, Near Gopalan
International School, White Field Road, Bangalore
5. Rekha Mukund Wife Of Anil Kumar Mukund 14/12, New Patliputra,
Near Boring Road Pani Tunki, Patna- 13
6. Sulekha Devi Wife Of Yogeshwar Lal Das Radha Krishna Nagar, North
Of Fauri-2, Gangjala, Saharsa
7. Kalpana Rani Das Wife Of Madan Kumar Verma Professors Colony,
Ward No. 16, Gaggjila, Saharsa

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anil Kumar Mukund
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 22-12-2015

Heard the learned counsel for the parties.

The petitioner in this application under Article 227 of
the Constitution of India is aggrieved by the impugned order
whereby the prayer of the petitioner for admitting certain

documents and the prayer for direction to the opposite party nos. 1 to 3 for depositing the money withdrawn by them have been rejected and the amendment prayed by the petitioner in the petition has been allowed after imposing cost of Rs. 10,000/-

At the out set, it is pertinent to mention that a petition for grant of succession certificate with regard to the state of the deceased Shailbala Devi has been filed by the petitioner. During the pendency of the proceeding, a petition dated 04.05.2011 was filed by the petitioner praying for admitting some documents on his behalf. Another petition on 28.02.2012 was filed by the petitioner for amendment in the petition still another petition dated 07.04.2012 was filed by the petitioner for direction to the opposite party nos. 1 to 3 to deposit the money which was withdrawn by them as nominee of the deceased Shailbala Devi. The learned court below by the impugned order has turned down the prayer as made in the petition dated 04.05.2011 for admitting certain documents on the ground that those documents are not relevant for determination of the issues in the proceeding. The learned court below has further allowed the prayer of the petitioner for amendment in the petition after imposing cost of Rs. 10,000/-. The learned court blow further by the impugned order has rejected the prayer of the petitioner for direction to the opposite party nos. 1 to

3 for deposit of the amount received by the as nominee of the deceased Shailbala Devi.

The learned counsel for the contesting-respondents has accepted that the amount of cost imposed upon the petitioner by the impugned order as condition precedent for allowing the prayer for amendment as excessive.

Considering the fact that the learned court below has come to the conclusion that the proposed amendment, as prayed by the petitioner, is necessary for the purpose of determining the real question in controversy between the parties and after considering the fair stand on behalf of the contesting-respondents, this Court holds that the imposition of cost of Rs. 10,000/- upon the petitioner for allowing the prayer for amendment cannot be sustained. The impugned order to that extent is, accordingly, quashed.

The learned counsel for the petitioner has strongly submitted that the amount of the deceased Shailbala Devi which was in depositing in the post office and the bank has admittedly been withdrawn by the contesting-respondents and in this view of the matter, when the question of succession is still under consideration, the learned court below ought to have issued direction to the contesting-respondents to deposit the said amount

in the court. It has further been canvassed that the petitioner in case of success would have to file series of litigation against the contesting-respondents for recovering the said amount.

The learned counsel for the contesting-respondents, however, has opposed the prayer and has submitted that the contesting-respondents as nominee of the deceased Shailbala Devi were legally entitled to withdraw the said amount from the post office and the bank and they cannot be a direction to deposit the said amount till the claim of the petitioner is finally determined.

After perusal of the impugned order and considering the submissions, it is manifest that the contesting-respondents have withdrawn the amount from the post office and the bank in the capacity of the nominee of the deceased Shailbala Devi. The Apex Court in the case of **Sarbatl Devi Vs. Usha Devi A.I.R., 1984 S.C. 346** has considered the right of nominee to receive the amount payable under the life insurance policy on the death of the assured and laid down that “the nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets the valid discharge of its liability under the policy”. The amount, however, can be claimed by the heirs of the assured in accordance with law of succession governing them. This Court in the case of **Suman Sinha Vs. Sumeet Ranjan,**

2000 (4) PLJR 122 has also taken into notice the decision in **Sarbati Devi** (supra) and has held that the nomination does not mean that the amount received by the nominee shall belong to him/her excluding the rights of other heirs to claim their share in the said amount in accordance with law of succession governing them.

In view of the aforesaid dictum, this Court finds that the learned court below has rightly held that the legal right of the petitioner to receive the amount of the deceased to the extent of his share shall not be affected by the fact that the contesting-respondents has received the said amount as nominee and on that basis has rightly turned down the prayer for direction to the contesting respondents to deposit the amount so received by them in the proceeding as prayed. This Court also does not find substance in the submission on behalf of the petitioner that in case of success in getting declaration as one of the heirs/legal representatives of the deceased Shailbala Devi, the petitioner shall have to face difficulties in releasing the amount from the contesting-respondents and, therefore, such direction be issued. Accordingly, the impugned order rejecting the prayer of the petitioner for direction to the contesting-respondents to deposit the amount in court is upheld and the present application to that extent

is dismissed. So far the prayer of the petitioner for admitting the certain documents as evident in the proceeding is concerned, it appears from the impugned order that those documents are medical certificate, prescription etc. of the deceased Shailbala Devi. The learned court below has rightly held that those documents are irrelevant for deciding the issue of succession. The impugned to that extent is also upheld and present application to that extent is dismissed.

In result, this application is allowed in part to the extent of imposing cost of Rs. 10,000/- upon the petitioner as a condition precedent for allowing prayer for amendment which is, accordingly, quashed. The application is dismissed with regard to the remaining part of the impugned order.

(V. Nath, J)

Devendra/-

U			
---	--	--	--