

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15263 of 2012

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1. SMT. KIRAN JHA, WIFE OF LATE SHIVA NATH JHA @ BIPIN JHA
RESIDENT OF VILLAGE : PIPARaulIA, P.S. : ASHOK PAPER MILL,
DISTRICT : DARBHANGA

.... Petitioner/s

Versus

1. BAIDYANATH JHA, S/O LATE SHREE NARAYAN JHA RESIDENT OF
VILLAGE : PIPARaulIA, P.S. : ASHOK PAPER MILL, DISTRICT :
DARBHANGA

2. UGRANATH JHA, S/O LATE SHREE NARAYAN JHA RESIDENT OF
VILLAGE : PIPARaulIA, P.S. : ASHOK PAPER MILL, DISTRICT :
DARBHANGA

3. PRIYANKA JHA, DAUGHTER OF LATE SHIVA NATH JHA @ BIPIN JHA
RESIDENT OF VILLAGE : PIPARaulIA, P.S. : ASHOK PAPER MILL,
DISTRICT : DARBHANGA

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sameer Ranjan-Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 22 -12-2015

Petitioner has challenged the order dated 28.11.2011 passed by the District Judge, Darbhanga in Succession Case No.16 of 2010 rejecting the prayer of the petitioner to grant succession certificate relating to the securities and dues detailed under Schedule-I of the petition concerning Shiva Nath Jha @ Bipin Jha.

2. Petitioner had averred in the petition that she happens to be wife of Shiva Nath Jha @ Bipin Jha, son of Narayan Jha, who was a driver and at the relevant time was engaged by Sachchidanand Jha, cousin brother of her husband.



3. It has further been pleaded that on 29.04.2002 while he, Shiva Nath Jha @ Bipin Jha along with Sachchidanand Jha proceeded on SUMO Vehicle bearing Registration No.MP-26-EA-2003 for marriage negotiation of daughter of Sachchidanand Jha towards Patna, met with Dayanand Jha, another brother of Sachchidanand Jha, who offered adulterated cold drink after consuming of the same, they all became senseless and were kidnapped in that condition. Because of the fact that since 29.04.2002, no trace of Shiva Nath Jha @ Bipin Jha has been found, on account thereof, petitioner presumed that he might had been murdered. Furthermore, disclosing the legal heirs left by Shiva Nath Jha @ Bipin Jha also disclosed the detailed of securities under Schedule-1 of the petition regarding which she claimed succession certificate, which has been rejected by the learned lower Court, hence this petition.

4. The learned counsel for the petitioner submitted that the order passed by the learned lower Court happens to be bad in law as well as on facts. It has further been submitted that instead of rejecting the prayer, the learned lower Court should have allowed the same in the background of the fact that instant petition has been filed in the year 2010 while the time since disappearance counting from 2002 has crossed the legal requirement under Section 108 of the Evidence Act. Therefore, the learned lower Court should have

presumed regarding civil death of Shiva Nath Jha @ Bipin Jha and that being so, instead of rejecting the petition should have allowed. So, submitted that the order impugned is fit to be set aside.

5. Section 372 of the Indian Succession Act deals with the requirement to be furnished whenever there happens to be an application for grant of certificate. For better appreciation Section 372 is quoted below:-

“372. Application for certificate-(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:-

- (a) the time of the death of the deceased;*
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;*
- (c) the family or other near relatives of the deceased and their respective residences;*
- (d) the right in which the petitioner claims;*
- (e) the absence of any impediment under section*

370 or under any other provision of this Act or any other enactment to the grant of the certificate or to the validity thereof if it were granted; and

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under Section 198 of the Indian Penal Code.

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof”.

6. As per Sub-Section-(a) of Section 372, the time of the death of the deceased is to be furnished. That means to say, before filing of petition, there should be positive evidence regarding the persons relating to securities and debt, the Succession Certificate is sought for. And that being so, complicated question of death, is to be found out of consideration as the Court is not found competent enough to adjudicate over the same as, the requirement as seems, keep the controversial point out of adjudication. In the present case, as the petitioner had not disclosed the death of the deceased rather she had pleaded that on account of kidnapping on 29.04.2002 and further,

having untraceable since then, should be viewed as the time of the death in pursuance of Section 108 of the Evidence Act on account of expiry of seven years which, is found untenable in the eye of law because of the fact that in a summary proceeding whereunder succession cases are being dealt with, the presumption of Section 108 of the Evidence Act is not found attractable as, presumption always happens to be rebuttable. Moreover, the Court while dealing with the issue of grant of succession certificate is not competent enough to delve into complicated question of law regarding presumption of death of deceased, unless and until, there happens to be such kind of declaration by a competent Court. As, no such exercise has been conducted by the petitioner on account thereof, instant petition is found misconceived and is rejected.

7. However, it is open to the petitioner to pray independently after having such declaration by a competent Civil Court.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-22.12.2015
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