

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No. 32 of 2015**

Smt. Suman Lata W/o Late Sampatlal Sahu Aged About 23 Years R/o Village- Girra, Tahsil & P.S.- Palari, Civil & Revenue Distt.- Balodabazar-Bhatapara, Chhattisgarh.

---- Appellant

Versus

1. Smt. Rekha Sahu W/o Late Sampatlal Sahu R/o Village- Sasha, Tahsil & P.S. - Palari, Distt.- Balodabazar-Bhatapara, Chhattisgarh
2. Aam Janta
3. Ku. Ruchi @ Rukhmani D/o Sampatlal Aged About 6 Years Minor Natural Guardian Mother Rekha Sahu W/o Late Sampatlal Sahu, R/o Village- Girra, Tahsil & P.S. - Palari, Distt. Balodabazar- Bhatapara, Chhattisgarh

---- Respondents

For Appellant	:	Shri A.S. Rajput, Advocate.
For Respondents No.1 and 3	:	Shri A.D. Kuldeep, Advocate.
For Respondent No.2	:	Common Public.

Order On Board

09/10/2015

1. This order shall govern disposal of instant Misc. Appeal No. 32 of 2015 filed under Section 384 of the Indian Succession Act, 1925 (for short 'Act of 1925') against the order dated 20.12.2013 passed by the Civil Judge, Class-I, Baloda Bazar, District Baloda Bazar, Bhatapara, Chhattisgarh in Succession Suit No. 6 of 2012 (Smt. Suman Lata versus Smt. Rekha Sahu and two Others) filed by the Appellant under Section 372 of Act of 1925 for grant of succession certificate claiming that she is the Legal Representative of her husband Late Sampatlal Sahu son of Feraram Sahu. Learned Civil Judge after considering the entire material dismissed the application holding that the Applicant is not the legally wedded wife of Sampatlal Sahu and Respondents/ Non-applicants No.1 and 3 are the legal heirs of deceased

Sampatlal Sahu as the Appellant has not proved her case under Section 372 of Act of 1925. Against the said order, the Appellant preferred an appeal under Section 384 of Act of 1925 before the Learned District Judge, Baloda Bazar, Chhattisgarh. Learned District Judge on 10.2.2015 held that the Court of District Judge does not have the jurisdiction for hearing of miscellaneous appeal in question and returned the original appeal for filing the same before the competent Appellate Court. Thereafter, the Appellant preferred the instant miscellaneous appeal for adjudication as per the law.

2. The instant miscellaneous appeal has been preferred after 349 days of its limitation. The period of limitation has been calculated from the date of the trial court order dated 20.12.2013. I.A. No. 1 of 2015 has been filed to condone the delay in filing the instant miscellaneous appeal.

3. On due consideration, for the reasons mentioned in the application and as the question of maintainability of the instant M.A. is the core issue, the application is allowed. The delay in filing the appeal is hereby condoned.

4. Heard both the parties regarding the maintainability of the instant Miscellaneous Appeal.

5. Learned counsel for the Appellant submits that the Successions Court i.e. Civil Judge Class-I, Baloda Bazar dismissed the Succession Suit No.06 of 2012 preferred by the Appellant under Section 372 of the Act 1925 vide order dated 20.12.2013. Against the said order, the Appellant preferred an appeal before the Court of District Judge, Baloda Bazar, Chhattisgarh. The appeal was presented on 7.1.2014, which was returned in original on 10.2.2015 for filing before the competent Appellate Court. Therefore, the Appellant has no option but to file the instant M.A. before this Court for appreciation on its merit according to law.

6. Learned counsel for Respondents No.1 and 3 submits that the instant M.A. is not maintainable as per the provisions of sub-section (2) of Section 388 of Act of 1925. Hence, the appeal be returned and held that it is not maintainable for hearing by this Court.

7. To appreciate the point of law involved regarding maintainability of the instant M.A, provisions of Sections 384 and 388 of the Act of 1925 are relevant and are reproduced as under:

384. Appeal.-(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908. (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, (5 of 1908.) as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

388. Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.-(1) The State Government may by notification in the Official Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the

District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge:

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, (5 of 1908.) as applied by section 141 of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Part from an inferior Court, and may either himself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a Court inferior in grade to a District Judge.

8. From perusal of facts available on record, it is apparent that learned Succession Court tried the application made by the Appellant under Section 372 of the Act of 1925 under the powers vested in it as provided in Section 388 (1) of the Act of 1925. As per proviso to sub-section (2) of Section 388 of the Act of 1925, an appeal from any order of an inferior court as mentioned in sub-section (1) of Section 384 of the Act of 1925 shall lie to the District judge and not to the High Court. In the light of above provision, it is clear that in the present case, appeal against the order passed by trial Court shall lie to the court of District Judge and not to the High Court. As Section 384 of the Act of 1925 is an enabling section of appeal, it was not required for the appellant to mention Section 388 sub-section (2) in the appeal. Even other wise it is purely a question of law. Learned trial court is expected to be aware about their jurisdiction and to pass order under the law.

9. In the considered view of this Court, in the light of above provisions of law discussed hereinabove, learned District Judge, Baloda Bazar committed an error of law and the order impugned is perverse and illegal. Learned appellate court failed to exercise jurisdiction vested in it. It requires interference because as per the provisions of Sub-section(2) of Section 388 of the Act of 1925, the appeal is maintainable before the Court of District Judge only.

10. Consequently, the order dated 10.2.2015 passed by the Appellate Court i.e. District Baloda Bazar, Chhattisgarh in the appeal filed by the Appellant (on perusal of the impugned order in the back of memo of appeal

it is not clear that the said appeal was registered as appeal under Section 384 of the Act of 1925 or not) is hereby set aside.

11. The Appellant is directed to remain present before the District Judge, Baloda Bazar on 15.12.2015 in person or through her counsel and further directed to resubmit the original memo of appeal which was duly returned by the District Judge, Baloda Bazar, Chhattisgarh vide order dated 10.2.2015. Respondents are also directed to remain present on 15.12.2015 either in person or through their counsel to participate in the proceedings. Learned Appellate Court is directed to register the instant appeal as per provisions of Section 384 read with proviso of Sub-section (2) of Section 388 of the Act of 1925 after completion of entire formalities required under the rule of law. The presentation of such appeal shall be deemed as it is filed earlier i.e. on 7.1.2014. Learned Appellate Court is further directed to proceed further to hear and decide the matter on its own merit in accordance with law.

12. The Registrar General is directed to send a copy of this order to the then Presiding Officer working as District Judge, Baloda Bazar, Chhattisgarh on 10.2.2015 so that she may not commit the same error of law in future.

13. The Registrar General is further directed to put the matter before the appropriate authority and after obtaining necessary permission, circulate copy of this order to the judicial officers of the State.

14. The instant M.A. is disposed of. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge