

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 85 of 2015**

Smt. Krishna Bai Wd/o Shri Dilip Kumar Chouhan, aged about 48 Years R/o
Gram- Nayapara Distt - Baloda Bazar Chhattisgarh (Appellant)

---- Applicant

Versus

1. Saroj Kumar S/o Shri Dilip Kumar Chouhan Aged About 34 Years
2. Manoj Kumar S/o Shri Dilip Kumar Chouhan Aged About 31 Years
3. Sanjay Kumar S/o Shri Dilip Kumar Chouhan Aged About 29 Years
4. Smt. Rania Bai W/o Shri Ram Kumar Rathor Aged About 27 Years

All R/o Nayapara, Baloda Bazar Distt. - Baloda Bazar Chhattisgarh

5. General Public Through : The Collector Distt - Baloda Bazar Chhattisgarh
6. Municipal Council Through : The Chief Municipal Officer, Municipal Council :
Baloda Bazar, Distt. - Baloda Bazar, Bhatapara, Chhattisgarh

---- Non-applicants

For applicant	: Mr. Anurag Dayal Shrivastava, Adv.
For Respondent	: Not noticed.

Order On Board**28/08/2015**

1. This order shall govern disposal of Civil Revision No. 85/2015 filed under Section 388(3) of the Indian Succession Act, 1925 (in brevity 'Act of 1925') against the order dated 5-5-2015 passed by the District judge, Baloda Bazar in Misc. Civil Appeal No. H-132014 (Smt. Krishna Bai -v- Saroj Kumar and others) whereby learned District Judge held that under Section 384 of the Act of 1925 jurisdiction for hearing of appeal vests with the High Court and the court of District Judge does not have jurisdiction for hearing of miscellaneous civil appeal in question. Learned appellate court returned the appeal for filing before the competent court.
2. Learned counsel for the applicant submits that in view of the error of law apparent on the face of the record, the appeal be heard finally without notice to the respondents in the matter.
3. Heard on I.A. No. 1/15 under Section 5 of the Limitation Act for condonation of delay in filing the instant revision as the same is preferred after 8 days of its limitation.
4. On due consideration, for the reasons mentioned in the application, same is

allowed. Delay in filing the civil revision is hereby condoned.

5. Heard on admission. Instant civil revision is admitted for hearing.
6. Looking to the facts and circumstance of the case and material on record, this Court is of the considered views that there is no necessity of notice to the respondents and since purely a legal question is involved in the matter, the instant revision is being disposed of without notice to the respondents.
7. Heard finally.
8. Learned counsel for the applicant submits that the succession court i.e. 1st Civil Judge Class I, Baloda Bazar dismissed the Succession Suit No. 5/2011 (Krishna Bai Chauhan -v- Saroj Kumar and 5 others) preferred by the applicant under Section 372 of Act of 1925 vide order dated 22-4-2014. Against the said order the applicant preferred above mentioned misc. appeal which was returned vide impugned order dated 5-5-2015 by the District Judge holding that jurisdiction to hear the appeal under Section 384 of Act of 1925 is with the High Court. Therefore the applicant has preferred this revision before this Court.
9. Learned counsel for the applicant further submits that under the provisions of Section 388 of Act of 1925, civil judge class I of the State are empowered to exercise the functions of a district judge for issuance of succession certificate. Learned trial Court admitted the matter and after hearing disposed of the same under the authority vested on it under the provisions of sub-section (2) of Section 388 of Act of 1925. Learned counsel further submits that as provided in the proviso to sub-section (2) of Section 388 of Act of 1925, an appeal shall lie to the district judge, not to the High Court. Section 384 of the Act of 1925 provides for appeal and as per Section 388, the appeal in the present matter shall lie to the District Judge and not to the High Court. The order holding that jurisdiction for hearing of appeal vests with the High Court and return of appeal memo is illegal, perverse and against the provisions of Section 115 of the Code of Civil Procedure. Hence as the order passed by the appellate court is bad in law, perverse and illegal, same be corrected in exercise of revisional jurisdiction by this Court and learned District Judge be ordered to hear the appeal on its merit and dispose of the matter.
10. To appreciate the arguments advanced, the orders of court below and other material perused.
11. Section 384 and 388 of Act of 1925 are relevant and are reproduced below:

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.

Section 115 , CPC provides for revision and is also relevant and reproduced below:-

(1) The High Court may call for the record of any case which

has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.]

(3) A revision shall not operate as a stay of suit or other proceeding before the , Court except where such suit or other proceeding is stayed by the High Court.

Explanation.-In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.

12. From perusal of facts available on record, it is apparent that learned succession court tried the application made by the applicant under Section 372 of the Act of 1925 under the powers vested on 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 from 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.
13. In the considered view of this Court, in the light of above provisions of law discussed hereinabove, leaned District Judge, Baloda Bazar committed error of law and the order impugned is perverse and illegal. Learned appellate court failed to exercise a jurisdiction vested in it. It requires interference.
14. Consequently, the impugned order dated 5-5-2015 passed by the appellate court in Misc. Civil Appeal No. H-13/2014 is hereby set aside. Misc. Appeal No. H-13/2014 is restored to its original number. Learned appellate court is

directed to hear and decide the matter on its own merit in accordance with law.

15. The applicant/appellant is directed to remain present before the District Judge, Baloda Bazar on 28-10-2015 for further hearing in the matter. The applicant is further directed to present memo of appeal before the appellate court on the date fixed.
16. The Registrar General is directed to send a copy of this order to the then Presiding Officer working as District Judge, Baloda Bazar, CG on 5-5-2015 so that she may not commit the same error of law in future.
17. 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.
18. Revision is allowed. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge