

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.79 of 2014**

1. Smt.Gulshan Begum W/o Shri Shiekh Hussain, aged 37 yrs
 2. Saini Afrin d/o Shri Shiekh Hussain, aged 20 yrs
- Both r/o Gram – Tikarakala Tah-Pendra Road Distt-Bilaspur (CG)

---- Applicants**Versus**

1. Muskan Ali S/o Shri Shiekh Hussain, aged 24 yrs, represented through Legal Guardian Shri Shiekh Vazir, S/o Shri Shiekh Zumman aged 35 yrs
2. Imran Ali S/o Shri Shiekh Hussain, aged 22 yrs
Both r/o Bangla Yard Railway Colony, Bilaspur, Distt.Bilaspur (CG)
3. The Senior Divisional Commercial Officer South East Central Railway, Bilaspur, Distt-Bilaspur (CG)

---- Non-applicants

For Applicants	: Mr.Anurag Dayal Shrivastava, Advocate
For Non-applicants No.1&2	: Mr.Ali Asgar, Advocates
For Non-applicant No.3	: Mr.R.S.Patel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****21/07/2016**

1. The applicants have preferred this civil revision under Section 388 (3) of the Succession Act, 1925 (hereinafter called as 'the Act of 1925') against the order dated 26.4.2014 passed by learned District Judge, Bilaspur, in Misc.Civil Appeal No.9/13, by which the order passed by the Succession Court (First Civil Judge

Class-I, Bilaspur) in Succession Case No.09/08 revoking the succession certificate granted to non-applicants No.1 and 2 herein-Muskan Ali and Imran Ali dated 3.2.2005, has been set aside.

2. Aforesaid challenge to the impugned order has been made on the following backdrop:-

2.1 Shri Sheikh Hussain (since deceased), father of non-applicants No.1 & 2 Muskan Ali & Imran Ali and husband of applicant No.1-Smt.Gulshan Begum, who was working in the South East Central Railway on the post of Technician, died in harness on 4.7.2004. Non-applicants No.1 and 2 herein-Muskan Ali and Imran Ali through brother of the deceased filed an application under Section 372 of the Act of 1925 on 24.11.2004 seeking succession certificate in their favour for claiming service benefits of Sheikh Hussain from SECR. That application was allowed by order dated 3.2.2005 by the Succession Court and succession certificate was issued in favour of non-applicants No.1 and 2.

2.2 On coming to know of such grant, present applicant No.1-Smt.Gulshan Begum and her daughter filed an application under Section 383 of the Act of 1925 for revocation of succession certificate granted to non-applicants No.1 and 2 on the ground that it has been obtained by playing fraud and by

non-impleading them as party respondents in that succession case. The said application was allowed by the Succession Court on 26.8.2010 and succession certificate granted earlier was revoked by that Court. Appeal preferred there against was dismissed by the Appellate Court on 29.10.2011. Against that, Civil Revision No.130 of 2011 was filed by applicants Muskan Ali, Imran Ali and his brother. In Civil Revision No.130 of 2011, this Court vide order dated 14.12.2012 set aside the order of the trial Court and the First Appellate Court and remanded the matter to the Succession Court to decide the application afresh after granting liberty of hearing to both the parties. Thereafter, by order dated 27.7.2013, the Succession Court considered the application as directed and again revoked the succession certificate granted to non-applicants No.1 and 2 on 3.2.2005 holding that factum of divorce has not been proved between deceased Sheikh Hussain and applicant No.1 Smt.Gulshan Begum.

2.3 Feeling aggrieved against the order of the Succession Court, Misc.Appeal was preferred and by the impugned order the Appellate Court has allowed the appeal and set aside the order of the Succession Court revoking the succession certificate.

2.4 The present applicants questioning the order of the

District Judge in appeal have preferred this revision under Section 388 (3) of the Act of 1925.

3. Mr.Anurag Dayal Shrivastava, learned counsel appearing for the applicants, would submit that learned District Judge is absolutely unjustified in setting aside the order of the Succession Court revoking the succession certificate granted in faovur of non-applicants No.1 and 2. He would further submit that the fact of divorce between deceased Sheikh Hussain and applicant No.1 Smt.Gulshan Begum is not established as divorce deed (talaknama) filed by non-applicants No.1 and 2 herein was neither exhibited nor it was proved, whereas the applicants have proved the fact that there is no divorce between deceased Sheikh Hussain and applicant No.1, which is apparent by order of the Judicial Magistrate First Class, Pendra Road dated 29.3.2003 (Ex.P/2), in which it has clearly been recorded that the present applicant No.1 is wife of deceased Sheikh Hussain. He would also submit that the succession certificate was obtained by non-applicants No.1 and 2 behind their back, the applicants were necessary parties and they were not impleaded deliberately as party respondents in succession case. Therefore, the impugned order of learned District Judge deserves to be set aside.

4. Mr.Ali Asgar, learned counsel appearing for non-applicants No.1 and 2, would submit that learned District Judge is

absolutely justified in setting aside the order of the Succession Court revoking succession certificate granted in their favour as applicant No.1, having divorced the deceased is residing separately since 1991 and even not caring non-applicant No.1, who is mentally retarded son of deceased Sheikh Hussain and as such, there is sufficient evidence to hold that applicant No.1 is divorced wife of deceased Sheikh Hussain and therefore, the order impugned has rightly been set aside by learned District Judge.

5. Mr.R.S.Patel, learned counsel appearing for non-applicant No.3/SECR, would support the impugned order.

6. I have heard learned counsel appearing for the parties, considered the rival submissions made therein, perused the order impugned and records of the Courts below with utmost circumspection.

7. The Succession Court revoked the succession certificate granted in favour of non-applicants No.1 and 2 on the ground that the present applicants were not impleaded in the application filed under Section 372 of the Act of 1925 before the Succession Court and succession certificate was granted in favour of non-applicants No.1 and 2 and further rejected the defence of non-applicants No.1 and 2 herein about factum of divorce holding that original divorce (talaknama) has not been placed and proved by calling the persons from Jamat Committee Luthra Sarif and on the basis of

letter Ex.D/2 'C' filed by the SECR dated 26.2.91, no inference of divorce can be drawn. The trial Court has taken into consideration Ex.P/2 which is the copy of order passed by the Judicial Magistrate First Class, Pendra Road in a proceeding initiated by the applicants against her husband Sheikh Hussain (now deceased) dated 29.3.2003, in which that Court has clearly recorded the fact that marriage and relationship between deceased Sheikh Hussain and present applicant No.1 is not in dispute and she is wife of Sheikh Hussain.

7. On appeal being preferred, the District Judge did not consider the finding of the trial Court in proper prospective particularly with regard to the fact of divorce by which it has been held by the Succession Court that fact of divorce has not been established and set aside the order of the Succession Court.

8. It is the fact that divorce deed (talaknama) was produced before the Succession Court, but it was neither exhibited nor proved by calling the person from the Committee where the alleged divorce is said to have been taken place between deceased Sheikh Hussain and applicant No.1. Likewise, learned District Judge also failed to take into account the order Ex.P/2 i.e. the order of the Judicial Magistrate First Class, Pendra Road in maintenance proceeding in which learned Judicial Magistrate has clearly recorded a finding that applicant No.1 is wife of deceased

Sheikh Hussain and that is not in dispute. Ex.D/2C was submitted before SECR on 26.2.91 while order was passed by Judicial Magistrate First Class, Pendra Road on dated 29.3.2003 i.e. much after submission of Ex.D/2 "C" before the Railway Authority and Shri Hussain died on 4.7.2004. Therefore, in view of clear-cut evidence of clinching nature, learned District Judge could not have set aside the finding of the Succession Court and come to different conclusion as there is no evidence that deceased Sheikh Hussain had divorced his wife applicant No.1 Smt.Gulshan Begum and therefore, the order of learned District Judge in appeal deserves to be set aside.

9. There is an additional reason for not upholding the order of learned District Judge, though present applicant No.1 is wife of deceased Sheikh Hussain, but yet she was not impleaded as a party respondent in the application filed under Section 372 of the Act of 1925.

10. At this stage, it would be appropriate to notice Section 372 (1) of the Act of 1925 which reads as under:-

"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 (5 of 1908) for the signing and verification of a plaint by or on behalf of 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.”

11. Section 383 of the Act of 1925 reads as under:-

“383. **Revocation of certificate.**-A certificate granted under this Part may be revoked for any of the following causes, namely:-

- (a) that the proceedings to obtain the certificate were defective in substance;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- (d) that the certificate has become useless and inoperative through circumstances;
- (e) that a decree or other made by the competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.”

12. The effect of Sections 372, 373 and 383 of the Act of 1925 has been considered by the Andhra Pradesh High Court in

the matter of **K.P.Narayan Reddy Vs. Alla Nagi Reddy**¹ in which it has been held as under:-

“7. From the reading of both the sections 372 and 373 of the Act, it is clear that the conditions provided under Section 372 of the Act are made mandatory. For non-compliance of the conditions under Section 372, Section 383 of the Act provides for revocation. When non-compliance of the conditions results in revocation of the certificate itself then the only interference that is possible in that the conditions imposed by Section 372 are mandatory and not directory.....”

“8.....But from reading of both Sections 263 and 383 of the Act, the intendment of the Legislature appears to be quite apparent that if non-furnishing of particulars regarding near relatives is fatal and, thus, such condition is mandatory. Therefore, for obtaining Succession Certificate under Section 372 of the Act, the petitioner who has applied for such certificate shall necessarily disclose the near relatives in terms of Section 372 (1) (c) of the Act and this is mandatory condition. ”

13. Section 263 of the Act of 1925 regarding revocation of grant of probate is akin to the provision of Section 383 of the Act of 1925. The Madras High Court while dealing with Section 263 of the Act of 1925 in the matter of **Ganeshammal and others vs. Arunachalam**² held as under:-

“13. In Banga Chandra De vs. Smt.Menaka Sundari De, AIR 1933 Calcutta 74 it was held that failure to mention the existence of the relatives who had claimed in the estate and to have them represented and cited is defect sufficient to revoke the Probate.

14. In Narendra Nath vs. Sm Fakirmani Dassi, AIR 1952 Cal 20 where the party entitled to

1 AIR 1996 AP 198

2 AIR 2002 Mad 417

citation was not cited and he was not aware of the pendency of the proceedings also, it was held that Letter of Administration granted were liable to be revoked on the application of the party.

14. Similarly in the matter of **Sivagamasundari and others vs. Arunachalam**³, the Madras High Court observed as under:-

“13. For the said submissions made on either side, the judgment reported in 1955 2 LW 852, S. Panchanathan vs. Ellappan (died) and 5 others/South India Vaniga Vaisya Sangam (Repd) by its Secretary, gives a fitting answer, wherein it has been clearly held that failure to specify in Form 58 the close relations of deceased, who would normally be entitled to claim heirship in the absence of a testament, is sufficient to revoke the grant of Letter of Administration. In the instant case, the applicants are the blood relatives of the testatrix, Prema. Therefore, in my considered opinion, they ought to have been shown as respondents in the OP proceedings. With regard to this, a reference could also be placed which was relied upon by the learned counsel appearing for the applicants reported in (2008) 10 Supreme Court Cases 489; G. Gopal vs. C. Baskar and others wherein it has been held that the slightest interest in the estate of the testator is entitled to file caveat and contest grant of probate.”

15. In the matter of **Smt.Putuli Begum & Others vs. Rehana Begum**⁴, the Gauhati High Court has held as under:-

“18. The material evidence on record would amply demonstrate that the appellant have obtained the succession certificate fraudulently by making of a false suggestion and/or by the concealment from the court of something material to the case and further the conduct of the appellants would show that the Succession Certificate No.138/99 was obtained by means of an allegation of a fact

3 AIR 2014 Madras 97

4 AIR 2012 Gauhati 124

essential in point of law not to justify the grant thereof and grounds as specified under Section 383 of the Act has been proved and accordingly revoked the Succession Certificate granted in favour of the appellants, which, thus, in the opinion of the Court do not require to be interfered with.

19. It may be pertinent to mention that Chapter X of the Indian Succession Act 1925 empowers the court to grant Succession Certificate which is summery in nature. In the instant case, while obtaining the succession certificate, the appellants did not make the respondent as party in the application and the respondent had to invoke the power under section 383 of the Act which has been fully established that the appellants has obtained the Succession Certificate fraudulently and thus the impugned order do not require to be interfered with in facts and circumstances of the case. The Court is aware that while dealing with an application for grant of the certificate and the revocation thereof, the court should not enter into the determination of intricate questions of law or fact but issue the certificate in favour of a person or revoke the same considering the facts and circumstances of the case.”

16. In the case in hand, no such particulars of the applicants as required under Section 372 (1) (c) of the Act of 1925 were furnished by non-applicants No.1 and 2 in their application filed under Section 372 of the Act of 1925 except that divorce has taken place between deceased Sheikh Hussain and applicant No.1 Smt.Gulshan Begum and whereabouts of applicant No.1 is not known for last 12 years. In the considered opinion of this Court, the applicants were necessary party and without impleading them as party respondent in the application, who were apparently necessary party in the succession proceedings and without

furnishing correct fact about them, therefore, the Succession Court could not have granted succession certificate to non-applicants No.1 and 2 and therefore, their succession certificate has rightly been revoked by the Succession Court in exercise of power conferred under Section 383 of the Act of 1925. The First Appellate Court is absolutely unjustified in reversing the well reasoned finding of the Succession Court, which is liable to be set aside.

16. As a fallout and consequence of the aforesaid discussion, the civil revision is allowed, order impugned dated 26.4.2014 passed by the District Judge, Bilaspur, in Misc.Civil Appeal No.9/13 is hereby set aside and order dated 27.7.2013 passed by the First Civil Judge Class-I, Bilaspur, in Succession Case No.09/08 is hereby restored leaving the parties to bear their own cost(s). However, the parties are at liberty to avail the remedy available under the law.

Sd/-

(Sanjay K Agrawal)
Judge

B/-