

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11.11.2016
Pronounced on 02.12.2016

CR No. 76 of 2016

1. Aabda Begam W/o W/o Shamsuddin Kuraishi Aged About 56 Years R/o Masanganj, Bilaspur, (Chhattisgarh)
2. Hasan Mohd. S/o S/o Late Din Mohd. Aged About 53 Years R/o Opposite Tarbahar Masjid, Tarbahar Bilaspur, District Bilaspur (Chhattisgarh) (Originally Non Applicants No.3 and 4)

---- Applicants

Versus

1. Sheikh Asalam S/o S/o Late Sheikh Jamil Aged About 32 Years R/o Near Tarbahar Masjid, Tarbahar Bilaspur (Chhattisgarh) (Original Applicant)
2. General Public ... Non-Applicant No.1
3. Additional Chief Karmik Officer, Electrical Constriction Department South East Central Railway, Bilaspur (Chhattisgarh) ... Non-Applicant No.2
4. Jubaida Begam, Wd/o Sheikh Jamil Aged About 58 Years R/o Near Tarbahar Masjid, Tarbahar Bilaspur, District Bilaspur (Chhattisgarh) ... Non-Applicant No.5

---- Respondents

For Applicants	:Shri Pravin Kumar Tulsyan, Advocate
For Respondents 1, 2 & 4	:None appears.
For Respondent No.3	:Shri H.S.Ahluwalia, Advocate

Hon'ble Shri Justice Sanjay Agrawal

CAV Order / Judgment

1. This is the revision filed by the applicants (non-applicants 3 & 4 in the original application) namely Aabda Begam and Hasan Mohd. while exercising the powers enumerated under Section 384 (3) of the Indian Succession Act, 1925 (for short, 'the Act of 1925') against the order dated 11.05.2016 passed by the first

Uppar (Additional) District Judge, Bilaspur in M.C.A.No.10/2016, whereby the appellate Court while setting aside the order of the trial Court dated 20.01.2016, has granted the succession certificate to the non-applicant No.1 – Sheikh Aslam (original applicant in the original application).

2. Brief facts of the case are that the original applicant – Sheikh Aslam (original applicant) has moved an application under Section 372 of the Act of 1925 for grant of succession certificate with regard to the amount mentioned in schedule – 'A' of the application by submitting, inter alia, that his maternal uncle, namely, Hussain Mohammed was a senior clerk in South Eastern Central Railway and had appointed him as a nominee. Therefore, a certificate be granted to him by authorising him to obtain the amount, which was deposited by his maternal uncle in the Railway Department.

3. The non-applicants No. 3 & 4 (applicants herein) have submitted their reply denying the fact that the deceased Hussain Mohammed had appointed the applicant (Sheikh Aslam) as his nominee and stated further that in fact they are entitled to obtain the succession certificate.

4. In support of the claim, the original applicant – Sheikh Aslam has examined himself and other witnesses, while the non-applicant No.2 – the Railway Department has produced its witness, namely, Janardhan Singh Mundri, who has produced the document, known as, "Railway Provident Fund Nomination Form" (Ex.D.1). However, non-applicants No. 3 & 4 (applicants herein) have produced as many as two of their witnesses.

5. Upon hearing the parties, the trial Court, vide its order dated 20.01.2016 has rejected the application filed by the original applicant – Sheikh Aslam for grant of succession certificate by holding at para – 16 of its order that Janardhan Singh Mundri has deposed a contradictory statement which creates a doubt with regard to the authenticity of the alleged document (Ex.D.1) and with these observations,

the application filed by him has been rejected.

6. Being dissatisfied with the aforesaid order, the original applicant – Sheikh Aslam preferred a Miscellaneous Appeal under Section 384 of the Act of 1925 registered as M.C.A.No.10/2016 on the ground that the trial Court has erred in disbelieving the said document Ex.D.1 and that of the statement of said Janardhan Singh Mundri, and thereby erred further in holding that the alleged nomination form (Ex.D.1) is a suspicious one. The order as passed by the trial Court, therefore, deserves to be set aside.

7. Upon hearing the parties, the appellate Court while relying upon the said document (Ex.D.1) has come to the conclusion that the original applicant – Sheikh Aslam had been declared and/or appointed as a nominee by the deceased Hussain Mohammed and with this observation has granted a succession certificate authorizing him (original applicant – Sheikh Aslam) to receive the amount deposited by the deceased Hussain Mohammed in the Railway Department.

8. Being aggrieved, the non-applicants No. 3 & 4 (applicants herein) have preferred this revision under Section 384(3) of the Act of 1925 on the ground that the appellate Court has erred in holding that the original applicant – Sheikh Aslam has been declared as a nominee by the deceased Hussain Mohammed. It assailed further on the ground that even otherwise no beneficial interest would create or confer upon the nominee.

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. The only question which emerges for determination of this Court is that whether the original applicant – Sheikh Aslam was a nominee of deceased Hussain Mohammed and entitled to a succession certificate as per the provisions prescribed under Section 372 of the Act of 1925 and/or, whether it would create the

beneficial interest upon him.

11. From a bare perusal of the document (Ex.D.1), i.e., "Railway Provident Fund Nomination Form" coupled with the evidence of Janardhan Singh Mundri, the Superintendent of South Eastern Central Railway, examined as witness of the Railway Department, it is clear that the original applicant – Sheikh Aslam has been appointed as a nominee by deceased Hussain Mohammed. Therefore, the opinion of this Court is that the appellate Court has rightly come to the conclusion that the original applicant - Sheikh Aslam is the nominee of the deceased Hussain Mohammed, and therefore, entitled to get a succession certificate under Section 372 of the Act of 1925. Since this is the only document (Ex.D.1) in which the original applicant has been shown as a nominee of deceased – Hussain Mohammed entitling him to receive the Provident Fund amount, therefore, he is entitled to get the amount of Rs.38,000/- only deposited in this regard as evidenced in Schedule – 'A' of the application.

12. It is made clear that the original applicant – Sheikh Aslam is only authorized to receive the said amount which was deposited in the Railway Department by the deceased Hussain Mohammed as his nominee. However, the amount so deposited towards Provident Fund in the Railway Department can be claimed by the heirs of the deceased Hussain Mohammed in accordance with law of succession governing them, as held in the case of **Smt. Sarbati Devi and Another vs. Smt. Usha Devi** reported in (1984) 1 SCC 424 wherein it has been laid down by the Apex Court that a mere nomination does not have the effect of conferring to the nominee any beneficial interest in the amount payable under the life insurance policy, on the death of the assured. The nomination only indicates the hand which is authorized to receive the amount. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession.

13. In the above mentioned judgment, the question came up for consideration before the Supreme Court whether a nominee under Section 39 of the Insurance Act, 1938 gets an absolute right to the amount due under a life insurance policy on the death of the assured, in which their Lordship of the Supreme Court after considering all the decisions on issue have clearly held that nominee of life insurance policy does not get absolute right to the amount due. The nomination only authorizes the nominee to receive the amount from the insurer and the amount can be claimed by the heirs of the assured in accordance with law of succession governing them. Paragraph 12 of the report states as under:-

“12. on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets a 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.”

14. The aforesaid statement of law rendered by the Supreme Court in the matter of **Smt. Sarbati** (supra) has been reiterated and followed with approval in the matter of **Shipra Sengupta v. Mridul Sengupta and others** reported in **(2009) 10 SCC 680**, in which it has been clearly held by their Lordship of the Supreme Court that amount under any head can be received by the nominee, but amount can be claimed by heirs of the deceased in accordance with law of succession governing them and it has been held in paragraph 18 of the report as under:-

“18. In view of the clear legal position, it is made abundantly clear that the amount under any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case the amounts so received are to be distributed according to the Hindu Succession Act, 1956.”

15. Thus, in view of the above settled principles of law, it is clear that the nominee is only entitled to receive the amount based upon that nomination, however, that does not confer or create any beneficial interest on the nominee and

the said amount can be claimed by legal heirs of the deceased in accordance with law of succession governing them. Therefore, the original applicant – Sheikh Aslam is authorized to receive the said amount of Rs.38,000/- only deposited towards Provident Fund in the Railway Department by the deceased Hussain Mohammed as his nominee, however, no beneficial interest would confer upon him and the amount so deposited by the deceased Hussain Mohammed in the Department can be claimed by the legal heirs of the deceased in accordance with the law of succession governing them. Parties, however, may approach the competent Civil Court having jurisdiction to decide their interest/share whatsoever with regard to the amount/estate left by the deceased Hussain Mohammed, so that, the heirs of the deceased Hussain Mohammed could obtain the amount / property in accordance with their interest / share.

16. In view of the foregoing discussions, the revision is hereby disposed of with the above mentioned directions. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge