

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 117 of 2015

- Premlal Devangan S/o Late Shri Tapsilal Devangan, Aged about 44 Years, R/o Kasturba Nagar, Bilaspur, P.S. Civil Line Bilaspur Tahsil, Civil & Revenue District Bilaspur (Chhattisgarh)(Non-Applicant)

---- Applicant

Versus

1. Santosh Rao Bhosale, S/o Late Shri Manikrao Bhosale, Aged about 43 Years;
2. Chintaman Rao Bhosale @ Ashok Rao Bhosale S/o Late Shri Manikrao Bhosale, Aged about 41 Years;
- 3A.Mahendra Rao Hadage, Aged about 44 Years;
- 3B.Yogeshvar Rao Hadage, Aged about 11 Years; S/o Mahendra Rao Hadage, Minor Through Father Mahendra Rao Hadage,
4. Sharada Bhosale D/o Late Shri Manik Rao Bhosale, Aged About 36 Years;

All R/o Kasturba Nagar, Bilaspur P.S. Civil Line, Bilaspur Tahsil, Civil & Revenue District Bilaspur (Chhattisgarh)

5. General Public, To Whom soever apprehend to be related
(Applicants)

---- Non-applicants

For Applicant	:	Shri Suresh Kumar Pandey, Advocate
For Non-applicants	:	Shri Ravindra Agrawal & H.S. Ahluwalia, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

21/07/2016

1. Invoking revisional jurisdiction of this Court under Section 388 (3) of the Indian Succession Act, 1925 (hereinafter referred to as the 'Act,1925') read with Section 115 of the Code of Civil Procedure (hereinafter referred to as 'the CPC'), the applicant herein has filed this revision calling in question the impugned order by which the Appellate Court has dismissed the appeal affirming the order of the trial Court dated 12-02-2013 granting succession certificate in favour of the non-applicants herein.

2. The aforesaid challenge has been made on the following factual back-drop:

3. Manikrao Bhosale who was working in the District Court on the post of Process Server, died in harness and his wife Smt. Shyam Bai was granted compassionate appointment who also died on 19-01-2008. The successor and Legal Representative of Shyam Bai filed an application under Section 372 of the Act, 1925 for grant of succession certificate in their favour in which the present applicant – Premlal Devangan was made a party and he was also noticed. Upon notice being served, the present applicant appeared before the Succession Court and made a counter claim holding that he is the only son of Shyam Bai from her first husband and, therefore, he being the only son and the legal representative of the deceased, is entitled for succession certificate in his favour.

4. The succession Court by its order dated 12-02-2013 allowed the application and granted succession certificate in favour of Santoshrao Bhosale and others, the non-applicants herein, and further held that Premlal Devangan – applicant herein is not the successor or the legal representative of deceased Shyam Bai.

5. Feeling aggrieved against the order of the succession Court granting succession certificate in favour of non-applicants No.1 to 4, applicant herein preferred Misc. Appeal before the Appellate Court. The

appellate Court by its order affirmed the finding of the trial Court and rejected the appeal filed by the applicant herein finding no merit in the same. Questioning the legality, validity and correctness of order, this revision petition has been preferred by the applicant herein.

6. Shri Suresh Kumar Pandey, learned counsel appearing for the applicant would submit that concurrent finding recorded by the two Courts below holding that non-applicants No.1 to 4 are entitled for succession certificate, is perverse and contrary to the record. He further submits that deceased Shyam Bai has not only executed a will in his favour but also made nomination in his favour under the LIC policy and the Bank and also submitted nomination before the employer/competent authority and as such concurrent findings are perverse to the record which is liable to be set aside.

7. Shri Ravindra Agrawal, learned counsel appearing for non-applicants, while opposing submission made by learned counsel for the applicant would submit that concurrent findings recorded by the two courts below holding that non-applicants No.1 to 4 are entitled for succession certificate and, therefore, granting certificate is a concurrent finding based on evidence available on record and interference is called for in revisional jurisdiction under Section 388(3) of the Act, 1925.

8. I have heard learned counsel for the parties and perused the judgement of the court below.

9. Admittedly, both the Courts have concurrently held that non-applicants No.1 to 4 are the legal representatives and successors of deceased Shyam Bai and entitled for succession certificate and both the Courts below have further held that Premlal Devangan, present applicant is not the son of Late Smt. Shyam Bai. Concurrent finding recorded by two Courts below, in the considered opinion of this Court is a finding of fact based on evidence available on record. The revisional Court cannot interfere in the concurrent findings of the two courts below, particularly when there is no perversity in the finding so recorded.

10. It is pertinent to note that procedure for making enquiry for granting succession certificate is prescribed in Section 373 of the Act, 1925. Sub-section (3) of Section 373 provides as under:

“If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.”

Thus, it appears that the enquiry under Section 373 (3) of the Act, 1925 is summary in nature and proceeding for grant of succession certificate is summary proceeding.

11. Section 387 of the Act, 1925 provides for effect of decisions under this Act, and liability of holder of certificate thereunder which provides as under:

“387. No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.”

Thus, according to Section 387 of the Act, 1925, decision of Succession Court in the matter of succession certificate is no way final or binding between the parties and subsequent suit or any other proceeding raising the same question, is not barred.

12. The Madhya Pradesh High Court in the matter of **Ashish Kumar & another vs. Smt. Leela Bai & others**¹ has held, relying upon the judgment of **Indramani Vs Hema Dibya**², that a separate suit is maintainable for challenging succession certificate by virtue of Section 387 of the Act, 1925 which enables unsuccessful party to file such a suit and also relied upon the earlier decision of the Madhya Pradesh High Court in the matter of **Savitri Devi Vs. Smt. Manorama Bai**³. The

¹AIR 2002 Madhya Pradesh 150

²AIR 1977 Orissa 88

³AIR 1998 MP 114

Division Bench of the M.P. High Court in Savitri Bai (supra) held as under:

“It is true that a separate suit is maintainable for challenging the succession certificate. Section 387 of the Indian Succession Act enables the party to file such a suit. But the choice is with the party. He may elect to challenge it in appeal or in a separate suit.”

13. In view of the aforesaid legal position, I do not find any jurisdictional error in the impugned order. Accordingly, the revision is liable to be and is hereby dismissed. However, the applicant shall have liberty to file declaratory suit challenging succession certificate, if occasion so arises.

14. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE