

**THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

**CIVIL REVISION PETITION No.3984 of 2016**

**ORDER:**

The present revision is filed under Article 227 of the Constitution of India, challenging the order, dated 18.01.2016, in O.S.No.83 of 2012 on the file of the Junior Civil Judge at Bodhan, whereby and whereunder the plaint filed in the said O.S was returned.

2. The revision petitioners are the plaintiffs in the said suit, while the respondents herein are the defendants.

3. The revision petitioners, as plaintiffs, filed the aforementioned suit to declare them that they are the legal heirs of the deceased, Mahender Singh, on the ground that plaintiff No.1 is the wife of the deceased and plaintiff Nos.2 to 4 are their daughters and while the said Mahender Singh was working in defendant No.1 – Company, in the lottery held on 25.02.2009, he was allotted a plot bearing No.133, admeasuring 200 sq. yards, covered by Sy.Nos.689 to 705 situated at Achanpally Village, Bodhan Mandal, Nizamabad District, as per Circular No.NS/SKNR/PER/517, dated 25.06.1999, on payment of Rs.1,935/- towards the cost of the plot, but unfortunately, he expired on 10.03.2008, and, therefore, the revision petitioners sought the relief aforementioned. In other words, they are seeking Succession Certificate in the form of a declaratory decree.

4. It appears, defendant No.1 remained *ex parte* and, as regards defendant No.2 shown as “To whom so ever it may concern”, a publication was taken out for receiving objections and, since no objections were filed, the Court below proceeded with recording the evidence of P.W.1 and marking Ex.A1, which is a ration card.

5. The Court below, however, holding that instead of resorting to obtaining the Succession Certificate, the plaintiffs sought a declaratory decree and, referring to Section 34 of the Specific Relief Act and by extracting the same and also observing that there should be denial of the title by some persons, which was completely absent, returned the plaint by the order, dated 18.01.2016, to enable the plaintiffs to file the same before the proper Court.

6. The said order has been under challenge in the present revision petition.

7. Learned counsel for the revision petitioners has placed reliance on two decisions. The first decision, on which reliance is placed, was rendered by a Single Judge of the Hon’ble Orissa High Court in **Indramani Bedbagis v. Hema Dibya and others**<sup>1</sup>, but the said decision is not applicable to the present case, for the reason that, in the said decision, the Hon’ble Orissa High Court has held that an order granting Succession Certificate can be challenged by a regular suit without filing an appeal under Section 384 of the Act. It was also held that a suit for

---

<sup>1</sup> AIR 1977 Orissa 88 (1)

declaring plaintiffs as legal heirs without prayer for cancellation of Succession Certificate is maintainable.

8. The second decision relied on by learned counsel for the revision petitioners was rendered by a Single Judge of this Court in **M.Seetha Rama Rao v. S. Venkata Ramudu and others**<sup>2</sup>, touching the procedure requiring to frame the relevant issues and decide the same and, then only to return the plaint, if really demands. In the instant case, there is no procedural irregularity.

9. Admittedly, defendant No.1 has not chosen to file any written statement and no objections were received. The Court below, having recorded the evidence of P.W.1 and marked Ex.A1, examined the matter in the light of the purport of Section 34 of the Specific Relief Act and, having found that there is no denial of the title, returned the plaint to present it before the proper Court for issue of Succession Certificate.

10. In the material papers, communication regarding intimation of provisional allotment of the land as per Circular, dated 25.06.199, has been filed by the revision petitioners, though, it was not marked before the Court below. Clause (3) of the terms and conditions of the said intimation clearly indicates the allotment made is provisional subject to completion of legal and other formalities and identification of legal heirs, and clause (6) shows that the plot will be registered in favour of the legal heirs on production of succession certificate from the

---

<sup>2</sup> 2015 (1) ALD 345

competent court and on payment of registration charges within six months from the date of final allotment. In the presence of such a clause, it is not known why the revision petitioners were resorting to obtain declaratory decree and to equate it with Succession Certificate. Be that as it may, there is no legal infirmity in the order passed by the Court below warranting interference of this Court.

11. Accordingly, the revision petition is dismissed, giving liberty to the revision petitioners to move the competent Court for obtaining Succession Certificate. No order as to costs.

12. As a sequel, pending miscellaneous applications, if any, in this revision shall stand closed.

07.09.2016  
v v

**JUSTICE A.SHANKAR NARAYANA**

