

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.390 of 2016

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Rita Devi w/o late Kapildeo Chauhan, Village+ P.O.+P.S- Raghunathpur,
District- Siwan.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Kant

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

6 04-05-2017 Cause title and party name in order no.5, dated

27.04.2017 have been wrongly typed as Miscellaneous

Jurisdiction Case No. 390 of 2016 in C.R.No. 1316 of 2009 and

party names have been typed as Ganesh Prasad Jayaswal & ors. –

v- Shambhu Prasad Jayaswal & ors. Similarly Advocate's name

has also wrongly been typed .

2. Therefore, in the aforesaid circumstances in order

no.5, dated 27.04.2017 in place of Miscellaneous Jurisdiction Case

No. 390 of 2016 in C.R.No. 1316 of 2009 be read as

“Miscellaneous Appeal No. 390 of 2016” and party name be read

as “ Rita Devi-v- The State of Bihar & ors.” and the name of

learned counsel for the appellant be read as “ Mr. Chandra Kant”.

3. Accordingly, order no.5, dated 27.04.2017 stands

modified to the extent, as indicated above.



4. Heard learned counsel for the appellant. In my view, this appeal may be disposed of at the admission stage itself.

5. The appellant has challenged the order dated 01.04.2016 passed by Sub Judge-1, Siwan in Succession Case no. 27 of 2012 by which the learned Sub-Judge-1, Siwan has dismissed the aforesaid Succession Case No. 27 of 2012 on the ground that the civil death of the husband of the appellant has not been declared by a competent Civil Court and therefore Succession Certificate cannot be issued to the appellant.

6. The appellant filed a petition under Section 370 of Indian Succession Act, 1975 for grant of Succession Certificate in respect of pensionary and other benefits of her husband before Sub Judge-1, Siwan on the ground that her husband was missing since 2001. In course of evidence, the appellant got examined some witnesses, who have stated that they have never heard about the appellant's husband for last seven years. The learned Sub-Judge-1, Siwan considering the materials available on record passed impugned order, against which this miscellaneous appeal has been preferred.

7. Learned counsel for the appellant submits that the husband of the appellant was in Armed Force and posted at Shrinagar. The husband of the appellant took Casual Leave from



25.07.2001 to 11.08.2001 but since then he was found missing. learned counsel for the appellant has further submitted that the Succession Case was filed in the year 2012 i.e. after more than seven years of missing of the appellant's husband but even then the learned Sub-Judge-1, Siwan refused to treat civil death of appellant's husband. He submitted that under Section 108 of the Evidence Act there is specific provision that if the question arises whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

8. Learned counsel for the appellant submits that the aforesaid Section 108 of the Indian Evidence Act, 1872 clearly says that if a person is not heard of for seven years, his civil death shall be presumed unless the aforesaid presumption is rebutted.

9. Having heard the contentions of the learned counsel for the appellant I went through the records. It is evident from perusal of the impugned order dated 01.04.2016 that no objection was filed by any person in grant of succession to the appellant but her petition under Section 370 of the Indian Succession Act was rejected only on the ground that the civil death of the husband of the appellant has not been declared by a



competent Civil Court.

10. Section 372 of the Indian Succession Act, 1925 deals with the disclosure and documents annexed with the application for grant of succession certificate filed under Section 370 of the Indian Succession Act, 1925. The aforesaid Section says that for grant of Succession Certificate, the applicant should satisfy- the time of the death of the deceased, the ordinary residence of the deceased, the family or other near relative of the deceased etc.

11. Therefore, the requirement of Section 372 of the Indian Succession Act, 1925 is that the applicant of Succession Certificate must disclose the time of death of the deceased.

12. In the present case, the applicant has come with a specific case that her husband was missing since 2001 and admittedly Succession Case was filed in the year 2012 i.e. after more than seven years and no one has challenged the aforesaid averment of the applicant, therefore, the learned Sub Judge-I, Siwan was duty bound to presume the civil death of the appellant's husband under Section 108 of the Evidence Act because Section 372 of the Indian Succession Act does not say that before grant of Succession Certificate, the applicant should get an order of competent court regarding the declaration of civil



death of her husband.

13. Therefore, on the basis of the aforesaid discussion, this appeal is allowed and the impugned order dated 01.04.2016 passed by learned Sub-Judge-I, Siwan in Succession Case No. 27 of 2012 is hereby quashed. The matter is remitted back to the learned Sub-Judge-I, Siwan, to pass a fresh order in Succession Case No. 27 of 2012, in accordance with law.

(Hemant Kumar Srivastava, J)

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