

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.357 of 2013

- =====
1. Chandra Shekhar Singh @ Sardar Singh S/O Late Shiv Bhajan Singh Resident of Mohalla Bahadurpur, Near Shiv Mandir, P.S. Sultanganj, Now Bahadurpur, District Patna.
 2. Binay Singh @ Binay Kumar Singh S/O Late Shiv Bhajan Singh Resident of Mohalla Bahadurpur, Near Shiv Mandir, P.S. Sultanganj, Now Bahadurpur, District Patna.
 3. Ajay Singh S/O Late Shiv Bhajan Singh Resident of Mohalla Bahadurpur, Near Shiv Mandir, P.S. Sultanganj, Now Bahadurpur, District Patna.
 4. Arun Singh S/O Late Shiv Bhajan Singh Resident of Mohalla Bahadurpur, Near Shiv Mandir, P.S. Sultanganj, Now Bahadurpur, District Patna.
- Appellants.

Versus

Bina Devi W/O Late Ashok Kumar Singh Resident of Mohalla Bahadurpur, Near Shiv Mandir, P.S. Sultanganj, Now Bahadurpur, District Patna.

.... Respondent.

WITH

=====

Miscellaneous Appeal No. 614 of 2013

=====

Bina Devi Wife of Late Ashok Kumar Singh Resident of Village-Bahadurpur, near Shiv Mandir, Police Station-Sultanganj, District-Patna at present residing at Mohalla-Padari Ki Haveli near Electricity Office, Police Station-Khajakalan, Patna City, District-Patna. Appellant.

Versus

1. Estate of Late Ashok Kumar Singh
 2. Chandra Shakhhar Singh
 3. Binay Singh
 4. Ajay Singh
 5. Arun Singh
- All Sons of Late Shivbhajan Singh, all residents of Mohalla-Bahadurpur, P.S. Sultanganj, District Patna. Respondents.

=====

Appearance :

For the Appellant/s : Mr. Sanjeev Kumar, Adv.

For the Respondent/s : Mr. Kumar Uday Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 24-11-2017

M.A. No.357 of 2013

Heard learned counsel for the appellants and learned counsel for the respondent on this miscellaneous appeal.

This miscellaneous appeal has been filed against the order



dated 13.02.2013 passed by the Additional District Judge-XI, Patna in Succession Case No.126 of 2003, whereby the learned lower Court directed to issue succession certificate in favour of petitioner Bina Devi in respect of 50% share of the estate of deceased Ashok Kumar Singh including retiral benefit.

The factual matrix of the case is that Bina Devi claiming herself to be legally wedded wife of Late Ashok Kumar Singh filed Succession Case No.126 of 2003 for granting succession certificate in her favour regarding estate of deceased Ashok Kumar Singh including the retiral benefit with the case in succinct that the said Ashok Kumar Singh was posted at Bagaha as a Compiler under the District Statistical Officer, Bettiah, West Champaran, who died in harness on 10.07.2002 leaving behind the petitioner-Bina Devi as his legally wedded wife. Parents of the deceased Ashok Kumar Singh, namely, Shiv Bhajan Singh, Parvati Devi and his brothers put their appearance in the case and filed rejoinder against the said petition. Both the parties also adduced ocular and documentary evidence in buttress of their case.

After hearing the parties and perusing the record, the learned lower Court passed the aforesaid order.

Being aggrieved and dissatisfied with the aforesaid order the appellants claiming themselves to be the brothers of the deceased



Ashok Kumar Singh have filed the present appeal.

It is submitted by learned counsel for the appellants that the learned lower Court has found Bina Devi entitled to only half share in the estate of deceased and Parvati Devi, who happens to be the mother of the deceased, entitled to another half share in the estate of the deceased. Said Parvati Devi has died leaving behind the appellants as her heirs and the appellants happen to be the brothers of the deceased Ashok Kumar Singh and are his class-II heirs. Hence, they are also entitled to get 50% of the share in the estate of the deceased.

It is submitted by learned counsel for the respondent that no relief can be granted to them in this appeal. They ought to have filed succession case for granting succession certificate in respect of half share in the estate of the deceased Ashok Kumar Singh.

From perusal of the record, it appears that the learned lower Court has found respondent-Bina Devi legally wedded wife of deceased Ashok Kumar Singh and admittedly Parvati Devi happens to be the mother of the deceased and his another class-I heir. Hence, Bina Devi and Parvati Devi each are entitled to 50% share in the estate of the deceased including his retiral benefit. Considering the aforesaid fact, the learned lower Court directed to issue succession certificate only regarding 50% share of the estate of the deceased including his retiral benefit in favour of Bina Devi.



During course of argument, it is submitted by learned counsel for the appellants that the said Parvati Devi also died leaving behind the appellants as her heirs and legal representatives, who happen to be the brothers of the deceased Ashok Kumar Singh and his class-II heirs. The said Ashok Kumar Singh died issueless.

As the appellants have not filed any petition for granting succession certificate after payment of stamp etc. on it, they are not entitled to get any succession certificate regarding 50% share in the estate of deceased Ashok Kumar Singh. However, they may file petition for granting succession certificate in respect of 50% share in the estate of deceased Ashok Kumar Singh including his retiral benefit, if so advised and in case of filing the same it will be disposed of in light of the observation made hereinabove by this Court.

Accordingly, this appeal stands disposed of.

M.A. No.614 of 2013

Learned counsel for the appellant of the said appeal does not want to press this appeal.

Accordingly, this appeal is dismissed as not pressed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2017
Transmission Date	28.11.2017

