

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 96 of 2014**

1. Smt. Ahiliyabai, W/o Late Basant Kumar Chawhan Aged About 33 Years R/o Sarasmal, Post- Tadola, Thana And Tah. Pusur, Distt. Raigarh C.G.
2. Ku. Neetu Chawhan D/o Late Basant Kumar Chawhan Aged About 18 Years R/o Sarasmal, Post- Tadola, Thana And Tah. Pusur, Distt. Raigarh C.G. (Revisioners)

---- Petitioners**Versus**

1. Smt. Sila Chawhan, W/o Basant Kumar Aged About 50 Years R/o 777/1, Adersh Nagar, Charoda, B.M.Y. Charoda, P.S. Charoda, Distt. Durg C.G.
2. Anuradha W/o Nitesh Kumar Chawhan Aged About 25 Years R/o 777/1, Adersh Nagar, Charoda, B.M.Y. Charoda, P.S. Charoda, Distt. Durg C.G.
3. State Of Chhattisgarh Thru- Collector, Raigarh C.G.
4. Vikas Khand Adhikari (Tribal Vibhag) Vikas Khand - Gharghoda, Tah. Gharghoda, Distt. Raigarh C.G.
5. Nijesh Chawhan S/o Late Basant Kumar Chawhan Aged About 10 Years Minor, Thru- Mother Smt. Ahiliya Chawhan, R/o Sarasmal, Post- Tadola, Thana And Tah. Pusur, Distt. Raigarh C.G.

---- Respondents

For Petitioners	:	Shri Punit Ruparel, Advocate
For Respondents No.1	:	Shri Siddharth Rathod, Advocate
For Respondents No.3 & 4	:	Shri V.B.Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****27/01/2017**

1. This is a revision filed by the non-applicants – Smt. Ahiliyabai and Ku. Neetu Chawhan by questioning the order 07.04.2014 passed by the Additional District Judge (F.T.C.), Raigarh in Civil Appeal No.03/2013 whereby the appellate Court while affirming the order dated 30.03.2011 passed by the Civil Judge,

Class-1, Raigarh, has dismissed the appeal.

2. Briefly stated the facts of the case are that Smt. Sila Chawhan and her son Nitesh Kumar (Since deceased, through legal representative Smt. Anuradha Chawhan) have submitted an application as per the provisions prescribed under Section 372 of the Indian Succession Act, 1925, for grant of succession certificate with regard to the amount Rs. 3,48,628/-, which was deposited in the name of her husband, in the Block Development Office (Tribal Department), Gharghoda, Dist. Raigarh. It is pleaded in the application that the marriage of Smt. Sila Chawhan was performed with the deceased Basant Chawhan on 07.10.1982 and out of their wedlock Nitesh Chawhan was born. The said marriage was dissolved by virtue of decree of divorce passed on 27.04.1992, but after few months they again re-married on 11.11.1992 in presence of their family members. It is further stated that when she approached the authorities of respondent No.4, i.e., Vikas Khand Adhikari (Tribal Vibhag), Vikas Khand, Gharghoda, they have refused to provide the said amount deposited in the department, therefore, the applicants Smt. Sila Chawhan and Nitesh Chawhan have submitted the said application by submitting further that they have been declared as nominees by the said Basant Kumar Chawhan and are, therefore, entitled to get succession certificate in order to obtain the said amount of Rs.3,48,628/-.

3. The aforesaid application has been contested by the present applicants, namely, Smt. Ahiliya Bai and her daughter, in which, it has been stated that immediately after the dissolution of marriage of Smt. Sila Chawhan with Basant Kumar Chawhan, her marriage was solemnised with Basant Kumar Chawhan on 10.01.1994, and therefore, the applicants are not at all entitled to get succession certificate as claimed by them under Section 372 of the Indian Succession Act, 1925. They contested further on the ground that the competent Court has also granted her the amount of maintenance in a proceeding, which was initiated by her under Section 125 of the Code of Criminal Procedure, 1973 against her

husband Basant Kumar, which itself shows that she is the legally wedded wife of Basant Kumar Chawhan. It is contested further on the ground that the Additional Collector, Raigarh, has issued a succession certificate in their favour, therefore, the applicants are not entitled to get a succession certificate as claimed by them under Section 372 of the Indian Succession Act, 1925. With these averments, the non-applicants opposed the application by praying for dismissal of the application as filed by the applicants.

4. The trial Court, after considering the evidence led by both the parties and that by entertaining the issues No. 1 & 2, has come to the conclusion that though the marriage of Smt. Sila Chawhan was dissolved by a decree of divorce on 27.04.1992, but immediately thereafter they again got re-married. The trial Court in this aspect has relied upon the statement of priest, who has stated very specifically that he had performed their re-marriage in presence of their parents. In consequence, it held that Smt. Sila Chawhan was the only legally wedded wife of said Basant Kumar Chawhan and the marriage of non-applicant – Smt. Ahiliya Bai was not solemnised with Basant Kumar Chawhan. As far as the certificate granted by the Additional Collector, Raigarh is concerned, the same is not binding upon the Court. Consequently, the trial Court has granted the succession certificate authorising the applicants to obtain the amount of Rs.3,48,628/- from the Block Development Office (Tribal Department), Gharghoda, Dist. Raigarh.

5. Being aggrieved by the aforesaid order, the present applicants have preferred an appeal as per the provisions prescribed under Section 384 of the Indian Succession Act, 1925. The said appeal was registered as Civil Appeal No. 03/2013.

6. Upon due consideration of the submissions of the respective parties, the appellate Court has affirmed the findings given by the trial Court by holding that Smt. Sila Chawhan is the legally wedded wife of said Basant Kumar Chawhan,

and therefore, the succession certificate as granted by the trial Court vide its order dated 30.03.2011 is proper and, in consequence the appeal preferred by the applicants was dismissed vide impugned order dated 07.04.2014.

7. Being aggrieved by aforesaid order, the non-applicants Ahiliya Bai and her daughter Ku. Neetu Chawhan have preferred this revision under Section 384 (3) of the Indian Succession Act, 1925, by submitting, inter alia, that Smt. Sila Chawhan has failed to establish the fact that after the dissolution of her marriage she got re-married with the said Basant Kumar Chawhan, and therefore, both the Courts below have erred to come to a conclusion that Smt. Sila Chawhan was the only wedded wife of the said Basant Kumar Chawhan.

8. Shri Punit Ruparel, learned counsel for the applicants has argued that both the Courts below have erred in upholding that the marriage of Smt. Ahiliya Bai was not performed with Basant Kumar Chawhan. He argued further that since the Additional Collector has already granted a succession certificate in their favour, therefore, no succession certificate is required to be granted.

9. On the other hand, Shri Siddharth Rathod, learned counsel for the respondent No.1 while supporting the order impugned argued that both the Courts below, upon examination of the evidence led by the parties, have concurrently held that Smt. Sila Chawhan was the legally wedded wife of Basant Kumar Chawhan though her marriage was dissolved by a decree of divorce, but immediately after few months they again got re-married. It was argued further that since this finding was based upon proper appreciation of the evidence, and therefore, it does not require to be interfered. He argued further that the succession certificate could be granted by the Court under Section 372 of the Indian Succession Act, 1925 and the Additional Collector has no such power to issue a certificate.

10. Shri Vijay Bahadur Singh, learned Panel Lawyer for the State has also

supported the order impugned.

11. I have heard learned counsel for the respective parties and perused the record of the Courts below carefully.

12. From perusal of the record, it is clear that upon the evidence led by both the parties, the Courts below, on proper appreciation of the evidence, have rightly come to the conclusion that Smt. Sila Chawhan was the legally wedded wife of the said Basant Kumar Chawhan. Though her first marriage was dissolved by a decree of divorce on 27.04.1992, but immediately after few months, they got re-married on 11.11.1992. This finding by the Courts below was completely based upon the due and proper appreciation of the evidence led by both the parties. The Courts below have also come to the conclusion that Smt. Ahiliya Bai has failed completely to establish the fact that she was ever married with Basant Kumar Chawhan. The above findings recorded by both the Courts below are purely a finding of fact, and therefore, the order as passed by both the Courts below is not required to be interfered, and therefore, the same are hereby affirmed.

13. As far as the grant of succession certificate is concerned, the same could be granted by the court having jurisdiction as per the provisions prescribed under Section 372 of the Indian Succession Act, 1925 and the Additional Collector, Raigarh has no such authority whatsoever to issue a certificate, like Ex.D.3 & D.4, therefore, these certificates are not binding upon the Court. It is also gathered from the record that the applicants (Smt. Sila Chawhan and Smt. Anuradha Chawhan) are the nominees of said Basant Kumar, and therefore, as such also they are entitled to receive the said amount from the respondent / Department.

14. It is, however, made clear that as far as the children born from Smt. Ahiliya Bai and Basant Kumar Chawhan are concerned, their rights would be decided only by filing a duly constituted suit before the competent Court having jurisdiction

to entertain the same. The applicants – Smt. Sila Chawhan and Smt. Anuradha Chawhan are entitled only to get the amount deposited in the respondent / Department on the basis of the succession certificate, but the rights/shares of the heirs of the deceased – Basant Kumar Chawhan would be determined only in a suit, if instituted, before the Court having jurisdiction to decide the same, as per the law of succession prevailing to them.

15. With the aforesaid observation, the revision is hereby dismissed.

16. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge

Anjani