

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.261 of 2005

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Most. Srimati Devi @ Nurjahan, wife of Late Md. Shamid, resident of Mohalla-Barahpura, P.S.-Kotwali, District-Bhagalpur at pesetn Mohalla-Mundichak, Old Sadar Hospital Campus, Bhagalpur.

.... Applicant.... Appellant

Versus

1. Md.Raj Ali @ Md.Raza claims to be son of Md. Shamid (to which the appellant is objection), resident of Mohalla-Barahpura, P.S. Kotwali, District-Bhagalpur, at present Mohalla-Mundichak, Old Sadar Hospital Campus, Bhagalpur.
2. Md. Mazid@Mangal died and his heirs are:-
 - (i) Bibi Mala wife of Late Md. Mazid
 - (ii) Md. Rinku
 - (iii) Md. Tinku
 - (iv) Md. Pinku
 - (v) Md. Sintu
3. All are sons of Late Md. Mazid (respondent No. 2), resident of Mohalla-Barahpura, P.S. Kotwali, District-Bhagalpur, at present Mohalla-Mundichak, Old Sadar Hospital Campus, Bhagalpur.
4. Bibi Batulan (died),wife of Late Md. Hamid, and her legal heir and representative is already on records as respondent No. 1.

.... Opposite 1st party Respondent/s

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Appearance :

For the Appellant/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Ram Bilas Roy Raman
For the Respondent No. 1	:	Gajendra Kumar Jha Mr. Surya Kant Mishra
For the Respondent No. 2	:	Mr. Pravin Kumar

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 18-09-2018

1. The present Appeal has been preferred by the appellants Most. Srimati Devi @ Noor Jahan seeking to set aside the judgment and order dated 02.05.2005 passed in Succession Case No. 20 of 2002 by which the petition filed by the present appellant for grant of succession certificate has been rejected by Shri N.K. Pandey, learned 7th Additional District Judge, Bhagalpur.



2. The facts of the case which occasioned the filing of the Succession Case before the Court, is that one deceased Md. Samid, was married with one Anjum Ara on 21.04.1981. After the death of his wife Anjum Ara, Md. Samid solemnized second marriage with the petitioner who was a Hindu before her marriage with the deceased. She has averred in her petition that before her marriage, she converted her religion and adopted Islam religion, whereafter she solemnized marriage with late Md. Samid on 20.12.1985. It was stated by the applicant that Md. Samid lost his life on 04.03.2002 and since he was a Class IV employee in the Jawahar Lal Nehru Medical College and Hospital, Bhagalpur, the retiral benefits ought to be paid to the petitioner, for which a Succession case had been filed by her. It was further stated by the applicant that Md. Raza Ali (respondent No. 1), is a fictitious son of late Md. Samid, as he had died issueless and Md. Raza Ali wrongly claimed himself to be the son of Md. Samid from his first wife Anjum Ara. It was also pointed out that the Succession application filed by herself, was in the capacity of being the widow of late Md. Samid and she herself was also a Class IV employee in the same hospital, where late Md. Samid was working.

3. In the Succession application, though no amount of claim had been initially disclosed, an amendment application dated 12th of June, 2002 was filed for amendment of the plaint and the entire



amount of claim to the tune of Rs.1,47,271/- (One lac forty seven thousand and two hundred seventy one) was introduced, which according to the applicant, was towards the amount calculated under the heading Group Insurance, G.P.F., salary of one month, Gratuity and House Rent.

4. The Opposite Party No. 1 (Md. Raza Ali) claimed to be the son of late Md. Samid and Bibi Anjum Ara, who was the first wife of the deceased. His case has been supported by O.P. No. 2, the brother of the deceased and O.P. No. 3, the mother of the deceased. O.P. No. 2 and O.P. No. 3 appeared but did not file any written statement whereas Md. Raza Ali (O.P. No. 1) filed his written statement in opposition to the claims made by the Succession petitioner.

5. The case of the O.P. No. 1 (Md. Raza Ali) is that the present application is not maintainable as Md. Samid, was married to his mother Anjum Ara on 21.04.2081. The said Md. Samid, father of the O.P. No. 1, lived as husband and wife with Anjum Ara and out of the wedlock of Md. Samid and Anjum Ara, the O.P. No. 1 (Md. Raza Ali) was born on 15.02.1987. He denied the statement of the petitioner that he was a fictitious son and stated that the story of the petitioner is entirely false, as Bibi Anjum Ara did not die issueless, rather the opposite party No. 1 (Md. Raza Ali) is the sole heir of the



deceased, being born to his mother and father and is entitled to the entire retrial benefit left by his father.

6. The further case of the O.P. No. 1 (Md. Raza Ali) is that even if it was accepted (but not conceded) that the petitioner had really married Md. Samid, at best, she could be entitled to the extent of 1/8th of the share of the property including the salary, gratuity and other retiral benefits. She, under the Muslim Law could not be the owner of the entire property of Md. Samid.

7. The Appellant/Succession petitioner in support of her claim examined five witnesses whereas Respondent/O.P. No. 1 got examined 7 witnesses to prove the case.

8. P.W.-1 is the claimant (appellant herself) who states that she converted herself from Hindu and embraced Muslim religion. Thereafter she solemnized marriage with late Md. Samid on 20.12.1985. She admitted that late Md. Samid has solemnized his first marriage with one Anjum Ara but stated that Anjum Ara died issueless. On cross-examination, the applicant further stated, that prior to her marriage with Md. Samid, she had solemnized her first marriage with one Sahdeo Das. She also stated that she had no paper indicating divorce from her first husband. In paragraph No. 6 of her cross-examination, she stated that she was unaware of the fact that Md. Samid has begotten a son.



9. P.W.-2 (Md. Irfan) who is a peon in the same department where the applicant was working has stated that the Nikah of Md. Samid and the applicant has not been performed in his presence nor was he aware that Md. Raza Ali is the son of Md. Samid.

10. P.W.-3.- is a peon in the Christ Church School, Bhagalpur. He also submitted that he did not know that Srimati Devi had solemnized two marriages prior to her marriage with Md. Samid. He did not know that prior to her marriage with Md. Samid she had solemnized marriage with Shankar and Sukhdeo Harijan and he also failed to state the date and year of conversion of Srimati Devi.

11. P.W.-4 is one Arun Kumar who also stated that he did not know that Srimati Devi had already solemnized her marriage prior to the marriage with Md. Samid but he also submitted that he was not aware that Md. Raza Ali is the son of Md. Samid.

12. P.W.-5- Prakash Mandal who has stated that Md. Samid used to reside in a quarter of the Hospital, but he did not state that the applicant and the deceased were husband and wife. He also declined familiarity with prior marriage of the petitioner in his cross-examination before the Court.

13. So far as the Respondent/opposite party is concerned, O.P. No. 1 has produced seven witnesses for examination.

14. O.P. witness No. 1- is one Ghulam Kadir who stated



that Md. Samid was married with Anjum Ara and a son was begotten on 15.02.1987 from wedlock of Anjum Ara and Md. Samid. Late Md. Samid did not solemnise any second marriage.

15. O.P. witness No. 2- is Md. Reham Ahmad who has also endorsed the same as O.P. witness No. 1 and stated that Md. Samid did not marry the petitioner.

16. O.P. witness No. 3- is Md. Sahwaj Akhtar who submitted that Md. Samid was married with Anjum Ara who was the daughter of Sekhawat and Md. Raza Ali was born out of the said wedlock of Md. Samid and Anjum Ara. He further submitted that Md. Samid did not solemnised second marriage with the petitioner.

17. O.P. witness No. 4- is Md. Yunush who has also supported the case of O.P. No. 1 and stated that Md. Samid never married the petitioner.

18. O.P. witness No. 5-is Nayeem who has categorically stated that Md. Samid has solemnized only one marriage.

19. O.P. witness No. 6- is Md. Yusuf has stated that Md. Samid has solemnized marriage with his sister Anjum Ara and Md. Raza Ali is the son of Md. Samid and Anjum Ara. He denied the suggestion that Md. Samid had solemnized a second marriage with Srimati Devi @ Noorjahan.

20. O.P. witness No. 7- is Md. Raza Ali himself who



stated that his father Md. Samid was a Class IV employee in Jawahar Lal Nehru Medical College and Hospital, Bhagalpur, and lost his life in an accident. His father has solemnized marriage with his mother Anjum Ara and his parents had no issue other than himself. His father died when he was one or two years old and his father did not solemnize any second marriage. In support of his parentage he has produced certain documents/certificates which have been marked as Exhibits.

21. Thus, considering the depositions of the parties, the Court below proceeded to determine the sole issue as to whether the applicant had succeeded to establish her case with regard to her marriage with Md. Samid.

22. Learned Court after consideration of the entire evidences on record and after perusal of the exhibits which had been produced before the Court which were documentary evidence adduced by O.P. No. 1 (Md. Raza Ali) in the shape of certain educational certificates being exhibits 'A to G' and also upon consideration of the fact that the petitioner had failed to produce any evidence to show that she had divorced her previous husband and also that she has embraced Islam by way of a Qubulait, Court came to the conclusion that the Succession applicant had failed to prove her case that she was a legally married wife of late Md. Samid and the entire documentary



and oral evidences establish that Md. Raza Ali (O.P. No. 1) is the only son of Md. Samid and as such he is on 'better footing' than the petitioner. It was under such circumstances that the application made by the present applicant for grant of Succession Certificate was dismissed.

23. Mr. D.K. Sinha, learned Senior Counsel appearing on behalf of the appellant has submitted that the entire judgment is erroneous and based on no evidence as entire case of the succession applicant has been negated, even though no cogent evidence was available before the Court. It was submitted by learned Senior Counsel that evidences which had come on record on behalf of the petitioner clearly demonstrated that the petitioner was living as husband and wife along with the late Md. Samid who was a Class IV employee of the Jawahar Lal Nehru Medical College and Hospital, Bhagalpur, and they were living together in the Staff quarters. It was further submitted that she had married late Md. Samid on 20.12.1985 after converting to Muslim faith and also after changing her name to Noorjahan. Both were employees of the Jawahar Lal Nehru Medical College and Hospital, Bhagalpur and in view of the fact that she was the only legal heir, she has applied for succession certificate. The story of the Respondent as being the other living heir as is being contested by the opposite party No. 1 is wholly misconceived and his



case is fit to be dismissed. He, thus, submits that the judgment and decree is fit to be set aside and the appeal be allowed. Learned Senior Counsel appearing on behalf of the petitioner has further submitted that whatever case had been made out by the opposite party that he was the son of late Md. Samid, does not stand supported by documentary evidence and the documentary evidences purported to have been filed in the Court below, are all documents which were not proved and, therefore, the learned Court below has seriously erred in depending on such documents while deciding and negating the claim of the present applicant.

24. The main ground taken by the learned counsel for the appellant is that the appellant Srimati Devi had placed on record certain documents before the Court in the Succession Case but the same were not considered by it and a bare perusal of the judgment reveals that there is no discussion with regard to the same. Thus, non-consideration of such documents which includes the marriage certificate dated 24.03.1985, renders the judgment defective and is fit to be set aside. Learned Senior has also submitted that the witnesses produced by the opposite party are not witnesses who have been summoned by the Court, but all have been produced at the instance of the opposite party and should not be permitted to form the basis of the entire order by which the case of the petitioner has been rejected.



25. The opposite party No. 1 (Md. Raza Ali) has appeared in this Court and resisted the present Appeal. It has been submitted by learned Counsel for the Respondent No. 1 that the entire claim of the petitioner is based on falsity and the father of the opposite party had not married any women by the name of Srimati nor was her case that Md. Samid died issueless based on any evidence. On the contrary, the opposite party No. 1 was the only son of late Md. Samid who had married Anjum Ara and out of the said wedlock, the present opposite party No. 1 (Md. Raza Ali) was born on 15.02.1987. It was further submitted that Md. Raza Ali in support of his case and to reinforce his parentage had produced relevant documents which were marked from Exhibit 'A to E'.

26. Learned counsel appearing on behalf of the Respondents has further submitted that Exhibit 'A' is the Muslim Minority College Identity Card dated 30.07.2002 whereas Exhibit 'B' is the Voter ID Card, Exhibit 'C' is the Registration receipt of Matriculation Examination of the year 2000 itself and Exhibit 'D' is the Provisional Certificate from Bihar Intermediate Education Council of the year 2004, Exhibit 'E' is the Admit Card for the Matriculation Examination. It was submitted by learned counsel for the opposite party that such documents are public documents and are not required to specifically proved and the judgment which is sought to be set



aside in the present Appeal has been passed on such documents, the credence of which cannot undoubtedly be believed unless proved to the contrary. It has further been submitted that D.W.-6 is the maternal uncle of O.P. No. 1 and brother of the mother of the opposite party No. 1, who has categorically stated regarding the birth of the present opposite party and has stated that his sister had died leaving behind defendant witness No. 7. It was further submitted that in view of the fact that no public document was available with the petitioner to show that he had embraced Islam nor had the Qubulait been placed and marked as exhibit, there was nothing to show that the applicant had married the father of the opposite party late Md. Samid so as to entitle her to any part of his retiral benefits. He further submitted that no Nikahnama has been exhibited nor any Mullah examined to prove the conversion of the petitioner to the Muslim Faith. He thus submits that in view of the fact that the alleged marriage could not be substantiated by cogent documentary evidence, the marriage was wholly illegal and could not form the basis of any Succession Certificate.

27. Having considered the entire submissions of the parties and in view of the fact that the applicant has failed to establish her case in the Court regarding her marriage with late Md. Samid on the basis of any documentary evidence, the oral evidence which has come on record is not enough to satisfy and prove the marriage.



28. This Court in its considered opinion is not inclined to interfere with the judgment which has been passed by the Court below. Moreover, there is ample evidence in the shape of documentary evidence as also oral evidence which goes to show that the opposite party No. 1 is the son of Md. Samid from his wife Anjum Ara who had predeceased him and there being such positive evidence in his favour, the Court is but inclined to decide in accordance with such evidence which is indicative of his being the son of late Md. Samid. Thus, this Court on the basis of available evidence arrives at the finding that Md. Raza Ali is the son of the deceased Md. Samid and also that the story of the applicant as being the legally married wife is wanting in credibility and fit to be rejected.

29. As such, the Appeal is devoid of any merit. The judgment and decree passed in Succession Case No. 20 of 2002 by the learned 7th Additional District Judge, Bhagalpur is affirmed and a decree be prepared in terms of the order as passed in this case.

30. The First Appeal stands dismissed.

(Anjana Mishra, J)

Saif/-

AFR/NAFR	AFR
Uploading Date	11.10.2018
Transmission Date	N/A

