

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 22.02.2018*

+ **RSA 16/2018, CM Nos. 4383/2018, 4384/2018 & 4385/2018**

POOJA TOMAR

..... Appellant

Through: Mr. C.S.S. Tomar, Advocate.

Versus

THE STATE & ORS.

..... Respondents

Through: Mr. Sunil Kumar, Advocate for
R-2 and R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (ORAL)

1. This second appeal impugns an Award dated 01.09.2016 passed by the learned ADJ and judgment dated 21.04.2016 as well as the order dated 03.11.2017 passed by the learned ACJ.

2. While working as a constable with Delhi Police, Sanjeev Kumar married Preeti on 08.05.1995. They were blessed with two children, namely, Master Vishal and Baby Khushboo (respondent nos. 2 and 3) respectively. With time, the couple developed differences and got estranged. After 14 years of cohabitation, Preeti moved out of her matrimonial home with the children in 2008. Their marriage was dissolved by mutual consent by a decree of divorce dated 16.01.2012. Preeti later settled her claims apropos alimony, etc. for an amount of Rs. 9 lacs with Sanjeev Kumar.

3. However, even prior to the aforesaid divorce, Sanjeev Kumar married Pooja Tomar-the appellant on 06.07.2011, about six months prior to the dissolution of his then subsisting marriage with his estranged spouse Preeti. Pooja Tomar had admitted to and relies upon her aforesaid marriage in her complaint to Police Station, Jafrabad dated 20.03.2015¹. Under Hindu Law, the second marriage is impermissible. Her purported marriage would not be a legal marriage and would be considered *void ab initio*. As a sequitor, Pooja Tomar, who believed that she had lawfully married Sanjeev Kumar, was actually not married to him. It is not her case that she had married Sanjeev Kumar after the dissolution on 06.01.2012, of his marriage with Preeti. Therefore, she did not attain the legal status of a wife/spouse and would not get any right or interest in the property/estate/debt and securities left behind by Sanjeev Kumar. Be that as it may, Pooja and Sanjeev Kumar were blessed with two children, namely Baby Ritika Tomar and Baby Pihu Tomar.

4. Sanjeev Kumar died intestate on 09.10.2014². His mother was alive at that time. His estate was valued at Rs. 14,90,517/-, apropos his employment with Delhi Police. The first two children Master Vishal and Baby Khushboo applied for a Succession Certificate under the Indian Succession Act, 1925 apropos the aforesaid estate, through their

¹ As per the impugned order dated 01.09.2016 at pg. 29 of the paper-book.

² As per para 10 of the appeal and as per para 1 of the judgment of the learned Trial Court dated 21.04.2016 he had passed away on 08.10.2014.

mother and natural guardian-Preeti. Notice of filing of the succession petition was published on 04.01.2015 in a Daily newspaper - "Mahamedha". Pooja Tomar was arrayed as Respondent no. 2. She was deemed to have been served due notice. However, till the date of pronouncement of the order by the learned Trial Court on 21.04.2016, "no objection to the grant of Succession Certificate in favour of the petitioners was received from the general public"³. The Trial Court held that the Succession Certificate could be issued and indeed was issued to Master Vishal and Baby Khushboo. Since the petitioners were minors, they were permitted to utilize only half the amount through their mother, till they attained the age of majority. The money was not to be used by the mother-Preeti, for her personal use.

5. Sanjeev Kumar's mother Smt. Chand Kaur/respondent no. 4 appealed against the aforesaid order. She and the present appellant had sought revocation of the Succession Certificate on various grounds. The order of the Trial Court was set aside by the First Appellate Court on 01.09.2016 for various reasons, including the fact that Preeti had not disclosed the full facts of the case be: i) that the mother-Smt. Chand Kaur was alive and ii) Sanjeev Kumar was the father of Baby Ritika Tomar and Baby Pihu Tomar as well. The order of the learned Appellate Court has reasoned that there could not be any distinction between legitimate and illegitimate children for the purpose of distribution of the estate of their natural father. Hence, alongwith the

³ Para 2 of the order dated 21.04.2016 in Succession Case No. 7249/2015 viz. Master Vishal vs. State.

mother of the deceased, the children would be entitled to equal portions of the estate of the deceased. Accordingly, it was directed that the securities amounting to Rs. 14,90,517/- that belonged to the deceased, lying with Delhi Police, be divided equally i.e. 1/5th each among five successors to Sanjeev Kumar i.e. his four children and his mother.

6. The appellant Pooja Tomar has impugned the aforesaid appellate order on the ground that, once Preeti has settled all her affairs for an amount of Rs. 9 lacs with Sanjeev Kumar, she would have no claim in the estate of Sanjeev Kumar.

7. She contends that she would become the sole beneficiary of the estate of the deceased, especially in terms of the letter issued by the deceased seeking change of his nominee from Preeti to Pooja Tomar.

8. The Court is of the view that while Preeti Kumar settled her matrimonial claims with Sanjeev Kumar, the same could not purport to settle the rights of their children. A perusal of clause 5 of the said Settlement shows that, the mother had agreed not to claim any further maintenance and permanent alimony towards herself or for the children from Sanjeev Kumar. The agreement is silent apropos the legal rights of the children in the estate of their father, who passed away intestate. The mother had agreed to take care of the children in every way and to maintain them, including their schooling.⁴ Therefore, the argument of the appellant that Preeti had settled all her affairs and claims of her children as well, is untenable.

⁴ Page 74 of the paperbook

9. Furthermore, assuming, she was a nominee apropos the estate of Sanjeev Kumar, it would have been on the understanding that she was his legally wedded wife but in reality she was not. She was only *de facto* the mother of the children, namely, Baby Ritika Tomar and Baby Pihu Tomar. She would be holding the said estate only for the actual claims and successors i.e. first two children and latter two children alongwith the mother.

10. The appellant also contends that by letter dated 15.03.2012, Sanjeev Kumar had intimated the Delhi Police that a divorce had taken place with his erstwhile wife Preeti and a second marriage had been solemnized with Pooja Tomar. Therefore, he had submitted an application that the latter be made his nominee in lieu of Preeti. However, no such document seeking change of nominee or appointment of Pooja Tomar as nominee of Sanjeev Kujmar was produced before the Trial Court. It is only during the First Appeal that this plea was introduced through a Review Petition. It was dismissed by the order dated 30.11.2016, on the ground that the Review Petition was time barred. No application had been moved under Order 41 Rule 27 CPC for leading additional evidence. The allegations of fraud apropos the appellant's previous counsel and allegations against Preeti, were not pursued by a complaint to any Authority, including the Bar Council concerned. No error on the facts of the record were shown in the judgment, which would warrant a review of the order dated 21.04.2016. The learned Appellate Court also reasoned that a Second Appeal would be maintainable only on substantial questions of law, and not on facts, which the Review Petitioner sought to introduce for the first time at the

appellate stage, despite having due prior knowledge of the said document/incident. The Court also noted that *de hors* the non-submission of the aforesaid intimation/letter by Sanjeev Kumar, for change of nominee as Pooja Tomar, neither any arguments were raised in this regard nor was there any whisper of it in the written submissions filed on her behalf. Hence, the Review Petition was found to be meritless and was accordingly dismissed.

11. Be that as it may, for a moment assuming that the said request was made, it would be of no effect, because Pooja Tomar has admitted that her marriage was solemnized on 06.07.2011 i.e. at a time when Sanjeev Kumar was already married to Preeti. Hence Pooja Tomar's marriage would not be a marriage in law. Consequently, the intimation/request by Sanjeev Kumar for change of nominee from Preeti to Pooja Tomar on the ground that the latter was his lawfully wedded wife, would be baseless and the request could not be granted.

12. The appellant-Pooja Tomar had moved another application seeking revocation of the Certificate on the ground that the father of the deceased was alive, both before the learned Trial Court as well as the Appellate Court that both orders had erred and ought to be set aside. She submits that she had been made a nominee apropos the death-cum-retirement gratuity benefit of the deceased and lastly that she was not impleaded as a necessary party in the original petition seeking issuance of Succession Certificate. The said application was dismissed by the order dated 03.11.2017 on the ground that the Succession Certificate could be revoked under section 383 of the Indian Succession Act. Furthermore, since the parties are Hindus by religion, the mandate of

section 8 of the Hindu Succession Act would apply. The properties of a Hindu male are to devolve on the successors mentioned in the Schedule to the Act. A perusal of the said Schedule shows that the father is not a Class 1 heir. He is merely a Class 2 heir. Since, Class 1 heirs of the deceased are alive, there would be no need to implead the father, as party to the petition, for issuance of Succession Certificate. Therefore, the request of issuance of certificate, would not be set aside on the ground of non-impleadment of father. The appellant's contention for revocation of the Succession Certificate on the ground of non-impleadment of the father was found to be baseless and accordingly rejected. The said order has reasoned that the nominee of a deceased only holds the amount as a trustee and cannot claim any interest in the property, which ultimately would devolve upon the LRs and lawful successors. Non-impleadment of the mother-Pooja Tomar was also not considered necessary because she would in effect be only representing the interest of her children, namely, Baby Ritika Tomar and Baby Pihu Tomar, born from her relationship with Sanjeev Kumar. Therefore, insofar as the Appellate Court had already set aside the order of the Trial Court and granted equal rights to the said children, alongwith the mother of the deceased and the first two legitimate children of Sanjeev Kumar, no error was found in the order dated 21.04.2016.

13. The impugned order of 01.09.2016 has reasoned as under:-

“.....If any Hindu expires without leaving any Will, then his properties/debts and securities/estate will go to his legally wedded surviving wife, children and mother being the Class-1 legal heirs as per Hindu Succession Act at first instance. Sh. Sanjeev Kumar expired on

09.10.2014 admittedly without leaving any Will. It is also not in dispute that mother of Sh. Sanjeev Kumar is still alive and she was not impleaded as a party in the succession case before the Ld. Trial Court.

Since, in the case of the deceased Sh. Sanjeev Kumar who expired on 09.10.2014, he has already taken divorce from his legally wedded wife Smt. Preeti on 16.01.2012 and the marriage with Smt. Pooja Tomar was not legal so after the death of Sh. Sanjeev Kumar, his estate, debt and securities and properties in absence of any "Will" would go to his children and mother only. There could not be any distinction between legitimate or illegitimate children for the purpose of distribution of his estate/properties etc. It means the property/debts and securities and estate of Late Sh. Sanjeev Kumar will go in favour of all the four children (two born from Smt. Preeti and two from Smt. Pooja Tomar) in equal proportions as well as mother. Since, the mother of deceased Sh. Sanjeev Kumar namely Chand Kaur is still alive and she was not impleaded as a party in the Ld. Trial Court by the respondents no. 2 & 3 who has also filed a separate appeal now in this court, so she is also having an equal right to claim the share in the estate properties and debts and securities of her deceased son. The judgment of the Ld. Trial Court itself is liable to be set aside on this ground that respondents no. 2 & 3 intentionally did not implead the mother of deceased as well as their co sisters i.e. the children of Smt. Pooja Tomar and thus concealed the material facts from the court and tried to play fraud upon the court itself.

During arguments, an offer has come from the side of Smt. Chand Kaur (mother of the deceased Sh. Sanjeev Kumar) and Smt. Preeti (mother of the respondents no. 2 & 3) that both the children of

deceased Sh. Sanjeev Kumar born from appellant of RCA no. 36/16 Smt. Pooja Tomar can claim equal share in the debts and securities left by the deceased so the same should be divided in five equal proportions. I am of the view that this is the good and justified proposal and is in accordance with the law which can be accepted. Accordingly, the impugned judgment dated 21.04.2016 is set aside and it is ordered that the Succession Certificate be issued now to Smt. Chand Kaur (mother of the deceased Sh. Sanjeev Kumar), respondents no. 2 & 3 Master Vishal and Baby Khushboo (children of Sh. Sanjeev Kumar born from Smt. Preeti) and Baby Ritika Tomar and Baby Pihu Tomar (children of Sh. Sanjeev Kumar born from Smt. Pooja Tomar) jointly. All these five persons shall equally get the share in the debts and securities amounting to Rs. 14,90,517/- belonging to the deceased Sh. Sanjeev Kumar lying in Delhi Police Department. They can claim the respective shares by completing necessary formalities before the Ld. Trial Court. The formalities of the minor children can be completed by their respective mothers/natural guardian and it is further ordered that the share of minors be kept in the FDRs till they get majority. However, the mother of respective minor is permitted to withdraw the quarterly interest on the FDRs for the purpose of welfare 85 spending it on the respective minor child and shall not be utilised for her personal use. It is hereby clarified that Smt. Pooja Tomar and Smt. Preeti are not entitled to any succession certificate in their personal capacity and thus are not entitled to get any share in the debt and securities left by Sh. Sanjeev Kumar in individual capacity.

14. The Court would refer with benefit to the judgment of the Supreme Court in *Revanasiddappa and another vs. Mallikarjun and others* (2011) 11 SCC 1, which has *inter alia* held:

“38. In our view, in the case of joint family property such children will be entitled only to a share in their parents' property but they cannot claim it on their own right. Logically, on the partition of an ancestral property, the property falling in the share of the parents of such children is regarded as their self-acquired and absolute property. In view of the amendment, we see no reason why such children will have no share in such property since such children are equated under the amended law with legitimate offspring of valid marriage. The only limitation even after the amendment seems to be that during the lifetime of their parents such children cannot ask for partition but they can exercise this right only after the death of their parents.

39. We are constrained to differ from the interpretation of Section 16(3) rendered by this Court in Jinia Keotin [(2003) 1 SCC 730] and, thereafter, in Neelamma [(2006) 9 SCC 612] and Bharatha Matha [(2010) 11 SCC 483 : (2010) 4 SCC (Civ) 498 : AIR 2010 SC 2685] in view of the constitutional values enshrined in the Preamble of our Constitution which focuses on the concept of equality of status and opportunity and also on individual dignity. The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage. This is the crux of the amendment in Section 16(3). However, some limitation on the property rights of such children is still there in the sense their right is confined to the property of their parents. Such rights cannot be

further restricted in view of the pre-existing common law view discussed above”.

15. Quite clearly, therefore, Ritika Tomar and Pihu Tomar would have equal rights in their father’s estate. This right has been granted to them by the impugned order. Their mother – appellant, not being the wife/widow of the deceased, does not fall in any of the Classes of Legal Heirs specified in the “*The Schedule*” to the Hindu Succession Act, 1956. She has no right or claim to the estate of Sanjeev Kumar.

16. In view of the above, no case is made out for interfering with the impugned judgment/orders dated 01.09.2016 and 03.11.2017. The appeal is without merit and is accordingly dismissed.

FEBRUARY 22, 2018
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NAJMI WAZIRI, J.

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