

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.160 of 2012

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Deepak Kumar Gupta S/o Prem Prakash Gupta R/O Village - Manendra Garh,
P.O. Manenda Garh, District - Sarguja M.P. , At Present Shastri Colony, P.O.+
P.S. +District - Jamui

... .. Appellant/s

Versus

1. Om Prakash Gupta S/o Babulal Gupta R/o Shastri Colony, P.O.+ P.S.+
District - Jamui
2. The Executive Engineer, Irrigation Department Division - 2, Jamui

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Abinash Kumar, Advocate Mr. B.B. Sinha, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 06-03-2019

Heard learned counsel for the appellant.

2. By the impugned order dated 05.01.2011, the District Judge, Jamui, has refused to grant succession certificate to the appellant in Succession Case No.1 of 2007.

3. The appellant brought a case under Section 372 of the Indian Succession Act, 1925, to get a succession certificate in respect of the cash amount, referred in the petition, left by his father late Prem Prakash Gupta. Late Prem Prakash Gupta at the time of his death was posted in the irrigation department of the Government of Bihar in the District of Jamui. Late Prem Prakash Gupta died on



20.02.2007 and he was to retire in the month of the December, 2007. Late Prem Prakash Gupta died at Jamui, hence, application was filed before the District Judge, Jamui.

4. Evidences were brought on the record to substantiate the claim of the appellant, which reveals that the appellant was adopted son of late Prem Prakash Gupta. Wife of Prem Prakash Gupta had predeceased him. Prem Prakash Gupta had no other issue. Brother of Prem Prakash Gupta, namely, Om Prakash Gupta, respondent No. 1 herein, was impleaded in the proceeding before the court below. However, he did not contest. During pendency of this appeal he died. Since he had not contested before the court below, no step for substitution of legal heirs of respondent No. 1 was taken and on 16.05.2018 this Court exempted the appellant to file substitution petition regarding substitution of respondent No. 1.

5. The Court below refused to grant succession certificate on the ground that the petitioner did not mention in the succession certificate case that he is adopted son of late Prem Prakash Gupta nor he filed any order of declaring him as adopted son of Prem Prakash Gupta. It was further noticed by the learned District Judge that Late Prem Prakash Gupta



had shown his permanent address in the service book at Ambala Cant, in the State of Punjab, whereas the petitioner-appellant claims that the deceased was permanent resident of village Mahendra Garh in the District of Sarguja, Madhya Pradesh.

6. Learned counsel for the appellant submits that the material which was considered for refusal of the prayer are not impediment in absence of any other claim of succession from any other corner. Moreover, the witnesses filed affidavit before the court below that in fact the deceased was permanent resident of Madhya Pradesh and he was working as a driver in Ambala City just before his joining in the State of Bihar. Since identity card of the deceased would have been from Ambala that was the reason for mentioning the address of Ambala because the deceased had left his original village long back in search of his job.

7. Section 373 of the Indian Succession Act, 1925, provides for procedure before the District Judge on application being filed for grant of succession certificate. Sub-Section (1) thereof is a procedure and sub-Section (2) provides that when the District Judge decides the right thereto to belong to the applicant. He shall make an order for the



grant of certificate to him. Sub-Section (3) provides that if the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

Since the status of the adopted son is equal to that of natural son in the family of adoptive father. Hence, there was no need to make specific statement that the appellant was adopted son of the deceased.

8. In the present case, the appellant has established his prima facie claim over the property of late Prem Prakash Gupta. Hence, there was no reason for refusal of the certificate on that score. The District Judge could have imposed any condition on the appellant for reimbursement against any future claim put by anyone.

9. In the result, the impugned order is hereby set aside and it is directed that let a succession certificate be issued in favour of the appellant with condition that the appellant shall executed surety bound with two sureties before the District Judge insuring therein that whenever any future



and better claim would surface, the appellant would refund the entire received amount.

10. With the aforesaid observation, this appeal stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
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