

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1013 of 2016

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Jitendra Kumar @ Rinku son of Sri Srinath Singh, resident of Village
Roopsagar, P.S. Nawanagar, District Buxar.

... .. Appellant/s

Versus

Mahmood Alam son of Late Nazir Alam resident of Salma Nazir Building,
Bank of Kaza Masjid, P.O. and P.S. Ara Town, District Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Anjani Kumar Sinha No. 1
: Mr.Achal Kumar Sinha, Adv.
For the Respondent/s : Mr. Raghiv Ahsan, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 02-08-2019

Heard the parties.

2. This appeal under Section 384 of Indian Succession Act, 1925 has been filed on behalf of appellant/respondent for setting aside the order dated 30.06.2016 passed by Sub-Judge-1st, Buxar in Succession (Miscellaneous) petition No. 8/2015 filed by respondent under Section 383 of Indian Succession Act, 1925 by which succession certificate granted by order dated 14.07.2015 in favour of appellant under Section 372 of the Act in succession certificate case No. 09/7 of 2014 has been revoked.

3. Case of the appellant is that his mother was posted as A.S.I. in C.I.D. and died on 01.02.2013 while in service and post death benefit were to be paid to her successors for which he



filed an application under Section 372 of the Act giving rise to Succession Certificate Case No. 9/7 of 2014 in the court of Sub-Judge 1st, Buxar stating therein that his mother died intestate leaving behind two sons and one daughter and one of the son Dharmendra Kumar became traceless for more than 10 years and her daughter had given her no objection for issuance of succession certificate in favour of appellant and on the basis of oral and documentary evidence, succession certificate was granted in favour of appellant by order dated 14.07.2015. However, during pendency of succession case and before issuance of succession certificate respondent filed an application before the Superintendent of Police, CID on 20.02.2013 to pay him death benefits of deceased mother of appellant claiming himself to be the husband of Late Padmavati Devi.

4. Department directed him to produce order of court of competent jurisdiction that Late Padmavati Devi was his legally wedded wife and thereafter he will be entitled to 50% of death benefit. He challenged said order in C.W.J.C. No. 24632 of 2013 in which upon notice appellant appeared and produced the succession order granted to him, however, it transpired during course of hearing of writ application that respondent had filed revocation case No. 8 of 2015 on 14.08.2015 and all post



retiral claims payment were kept in abeyance till final order is passed in revocation case.

5. Respondent Mahmood Alam filed petition under Section 383 of the Act to revoke the order dated 14.07.2015 passed in succession certificate Case No. 9/7 of 2014 claiming himself to be husband and only successor to the estate of deceased Padmavati Devi. It is stated in the revocation application that Padmavati Devi was firstly married to Shri Nath Singh but said marriage was annulled by a decree of divorce dated 12.12.86 by the District Judge, Bhojpur and thereafter Padmavati Devi embraced Islam on 11.10.87 and married petitioner on 05.07.88 and was called Noorjahan but she did not change her name in the official record. According to muslim law appellant is debarred from inheriting the estate of his mother who had converted to Islam. No issue was born from second marriage.

6. The ordinary residence of Padmavati at the time of death was at Patna and after her divorce she never visited village Rupsagar in Buxar till her death. She died in course of treatment at Laheriasarai, Darbhanga and her dead body was brought to Ara and buried according to Muslim rites by her husband namely, Mahmood Alam.



7. Respondent in his reply denied that his mother Padmavati Devi had embraced Islam and married petitioner on 05.07.88. She was not a divorcee nor her name ever changed as Noorjahan. Her mother Padmavati died on 01.02.2013 leaving behind her husband Shri Nath Singh and two sons namely, Jitendra Kumar @ Rinku and Dharmendra Kumar and one daughter Veena Kumari. Jitendra Kumar and Veena Kumari lived with father whereas Dharmendra Kumar resided with her mother but he became traceless for more than last 10 years.

8. Both parties led documentary as well as oral evidence before the court below and on consideration and appreciation of evidence adduced by both the parties the petition of the respondent Mahmud Alam under Section 383 of Indian succession Act was allowed and order dated 14.07.2015 passed in Succession Case No. 9/2014/07/2014 granting certificate to the appellant was revoked.

9. Part X of Indian Succession Act, 1925 deals with grant of succession certificate, 371 is with respect to court having jurisdiction to grant certificate, 372 is application for certificate which is to be made to the District Judge in the manner prescribed by Code of Civil Procedure, 1908. 373 deals with procedure and application and Clause 3 and 4 of Section



373 reads as follows:-

(3) 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.

(4) When there are more applicants than one for a certificate, and it appears to the judge that more than one of such applicants are interested in the estate of the deceased, the judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

10. Section 387 of Indian Succession Act, 1925 reads as follows:-

Effect of decisions under this Act, and liability of holder of certificate thereunder.- No decision under this part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this part shall be construed to effect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

11. A co-joint reading of both the Section makes it clear that District Judge on the application for grant of succession certificate shall issue a succession certificate after holding a summary procedure even complex question of law and facts are



involved to the person having prima facie best title. The decision will not operate as res judicata in view of Section 387 of the Act. Once upon the application of the respondent filed under Section 383 of Succession Act the court below revoked the succession certificate it was incumbent upon the court below to prima facie decide as to who is entitle for succession certificate and ought to have granted certificate in view of Section 373(3) of the Succession Act. Accordingly, the case is remanded back to the court below with a direction to pass order in consonance with provision of Section 373(3) of Succession Act. Applicant/appellant is son of deceased and claims to be one of the successors who is entitle to inherit the estate of deceased who was a government servant. Court below shall also consider the entitlement of applicant in terms of conditions of service of his deceased mother and his right to receive death-cum-retirement benefits in terms of service law as well.

12. Miscellaneous Appeal is disposed of with a direction to the court below to decide the case after hearing both the parties within six months from the date of receipt/production of a copy of order passed by this Court. However, it is made clear that if any title suit has been filed by respondent in a court of competent jurisdiction with respect to



right of inheritance and succession with respect to estate of deceased then the matter will be decided in the title suit only.

13. Let LCR be returned to the court below forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.01.2020
Transmission Date	N.A.

