

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.78 of 2015

-
1. Smt. Kavita Singh Wife of Dr. Sunil Kumar Singh, Resident of 233 Athena AY-233, Ashiana Sun City, HH-33, Baliguma Mango, Jamshedpur, Jharkhand-831018.
 2. Smt. Aashima Wife of Sri Manoj Tiwari, Resident of Block-2, Flat No.E, Railway Officer Colony Road, J.K. Pal Road, New Alipur, Kolkata (WB)-700038.
 3. Smt. Anuja Singh Wife of Sri Rajeev Ranjan, Resident of Flat No.-102, Tower D-1, the Lagent Apartment, Sector 57, Gurgaon, Haryana-122001.
 4. Smt. Pooja Singh Wife of Niraj Sexena, Resident of B-670, Obrai Splendor, Opposite Majas Bus Depot Jogeshwari Vikroli, Link Road, Andheri East, Mumbai-60.

... .. Petitioner/s

Versus

1. Smt. Kamta Devi Wife of Late Baidyanath Singh
2. Dr. Lallan Kumar Son of Late Baidyanath Singh. Both Resident of Village and P.O.- Sijhauri, P.S.-Sikandra, District- Jamui.
3. Dr. Rekha Singh Wife of Late Baidyanath Singh, Resident of 396, A.P. Colony, P.S.- Rampur, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shri Nandan Prasad Singh, Advocate
For the Respondent/s	:	Mr. Naresh Nandan, Advocate
		Mr. Shaswat Shanker, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 15-02-2019

Heard learned counsel for the parties.

2. This civil revision application has been preferred, under Section 115 of the Code of Civil Procedure, against the order dated 23.04.2015, passed by the learned Additional District Judge-VI, Patna in Revocation Case No.114/2002/R-51/2014, refusing prayer of the petitioners to revoke the order dated 09.04.2002 as well as succession certificate issued in pursuance



of that order in favour of opposite party No.1 in Succession Case No.33 of 2001.

3. Undisputed fact of this case is that *Late Dr. B.N.Singh* died on 07.01.2001 at Gaya, where he was working as the Head of the Department in Radiology Department in Medical College, Gaya. Opposite Party No.1, *Kamta Devi*, who was first wife of *Late Dr. B.N.Singh* along with her son *Dr. Lallan Kumar* had brought the aforesaid succession case, wherein succession certificate was allowed.

4. The claim of the petitioners is that *Late Dr. B.N.Singh* had one more wife, namely, *Dr. Rekha Singh*, who was second wife of *Late Dr. B.N.Singh*. The petitioners are daughters of *Late Dr. B.N.Singh* from his second wife *Dr. Rekha Singh*. They were not noticed in the succession proceeding and ex parte order was passed. Therefore, their claim was for revocation of the order as well as succession certificate.

5. The impugned order would reveal that the prayer has been refused on the ground that *Smt. Kamta Devi* was legally wedded wife of *Late Dr. B.N.Singh* and mother of the petitioners, *Dr. Rekha Singh* was the second wife of the deceased. Therefore, the petitioners are not Class I heirs under the Hindu Succession



Act, as such not entitled to file a case for revocation of the succession certificate already granted.

6. Submission of the learned counsel for the petitioners is that even on admitted facts the petitioners are legitimate daughters of *Late Dr. B.N.Singh*, for the reason that Section 16 of the Hindu Marriage Act, 1955 provides that:

“16. Legitimacy of children of void and voidable marriages.- (1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such a child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

7. In this case, no decree of nullity of marriage between *Late Dr. B.N.Singh* and mother of the petitioners is there. Petitioners are legitimate children otherwise too, as such are Class I heirs being daughters of *Late Dr. B.N.Singh*.



8. On the contrary, contention of the learned counsel for the opposite parties is that in fact the opposite parties denied that mother of the petitioners was wife of *Late Dr. B.N.Singh*.

Learned counsel for the opposite parties also informs that the petitioners have already filed a separate case for grant of succession certificate in respect of property left by *Late Dr. B.N.Singh* at Gaya court, wherein they are also parties.

9. Though there is no material brought on the record regarding aforesaid denial, nor the impugned order speaks so. However, even if it is assumed that opposite parties had denied, the issue should have been adjudicated by giving opportunity of leading evidence to the parties and the petition should not have been thrown at the threshold, as has been done by the court below. If the impugned order would have been passed in favour of the petitioners, considering that they were legitimate children of *Late Dr. B.N.Singh* even after being issues of second wife, the matter might have been disposed of in favour of the petitioners. Therefore, this civil revision application is maintainable.

10. The impugned order suffers from apparent illegality inasmuch as non-consideration of provisions of law. Hence, the same is hereby ***set aside*** and this civil revision



application stands *allowed* and the matter is remitted back to the court below to pass order, according to law.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	21.02.2019
Transmission Date	21.02.2019

