

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1028 of 2017

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1. Mona Devi @ Monal Kumari wife of Late Dr. Shyamal Kumar Das, D/o Bal Kishore Das,
 2. Ansh Kumar, minor s/o Late Dr. Shyamal Kumar Das,
 3. Ankit Kumari, minor d/o Late Dr. Shyamal Kumar Das,
 4. Anshu Kumari, minor d/o Late Dr. Shyamal Kumar Das,
- All 2 to 4 are minor son and daughter under guardianship of Mona Devi @ Manal Devi, wife of Late Shyam Lal Kumar Das. All resident of Mohalla Staff Colony Sadar Hospital Motihari, P.O. and P.S.- Motihari Town, District- East Champaran.

... .. Appellant/s

Versus

1. Abhishek Diwakar @ Sunni Diwakar son of Late Shyamal Kumar Das.
2. Abhilasha Kumari, d/o Late Shyamal Kumar Das.
3. Anamika Kumar, d/o Late Shyamal Kumar Das. At present resident of Mohalla Alkapuri, P.O. Anishabad, P.S.- Gardanibagh, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amish Kumar
For the Respondent/s	:	Mr. Neha Gupta, Adv.
	:	Mr. Sanjeev Kumar Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 01.10.2019

Heard the parties.

2. This appeal under Section 384 of Indian Succession Act, 1925 has been filed for setting aside the order dated 07.09.2017 passed in Succession Case No. 04 of 2012 by which learned Sub-Judge-1st, Motihari has dismissed the succession case filed by the appellants under Section 372 of Indian Succession Act, 1925 for issuance of succession certificate in respect of Rs. 1 lakh.



3. Appellants had filed Succession Case No. 04 of 2012 before the court of District Judge, Motihari, East Champaran under Section 372 of Indian Succession Act, 1925 for issuance of succession certificate, upon which notices were issued to respondents and after appearance they filed their objection.

4. Appellants claimed to be legal heirs of deceased Dr. Shyam Lal Das who died on 18.09.2008 at Appolo Hospital, Ranchi. Deceased Dr. Shyam Lal Das was government doctor and posted in Sadar Hospital, Motihari. The ordinary residence of the deceased at the time of his death was at Motihari who died leaving behind properties as detailed in schedule I of the application. Deceased Dr. Shyam Lal Das had two marriages. From first wife Dr. Nisha Narayan he had one son Abhishek Diwakar @ Sunny Diwakar and two daughters Abhilasha Kumari and Mikky Kumari. However, his first wife died during his life time and after death of first wife he solemnized second marriage with appellant Mona Kumari on 20.05.2004 at Motihari in the temple of Sadar Hospital, Motihari while he was posted there. Appellant No. 2 Ansh Kumar is son and appellant Nos. 3 and 4 are daughters and as such are entitled for succession certificates to the extent of 4/7



shares in the property left by deceased. Deceased Dr. Dr. Shyam Lal Das was a government doctor and an amount of Rs. 1,75,000/-, retiral dues is payable to his legal heirs for which succession certificate was required and 4/7 of same will be Rs. 1 lakh.

5. On notice opposite parties appeared and filed their objection petition that the claim of appellant is baseless and they are not the legal heirs of deceased and as such not entitled for succession certificate. Deceased Dr. Shyam Lal Das was permanent resident of Ranchi where he died during treatment, as such, Motihari court had no territorial jurisdiction to entertain the case. Appellant was a maid servant of Dr. Shyam Lal Das who got her appointed seeing her pathetic condition Deceased Dr. Shyam Lal Das had only one marriage who is the mother of opposite parties and who pre-deceased her father. The marriage of deceased with appellant No. 1 is denied and it is also denied that appellant Nos. 2, 3 and 4 are his children. Opposite parties are the only legal heirs of deceased and entitled for retiral dues payable to his legal heirs.

6. Seven witnesses were examined on behalf of appellants and two documentary evidences were produced which has been marked as Exhibits- 1, 2 and 3 which are birth



certificate dated 23.07.2010, Immunization Card and birth certificate dated 23.08.2011 whereas on behalf of opposite party, three witnesses have been examined who had denied appellant No. 1 to be the wife of deceased. Death certificate has not been filed on behalf of appellant and ordinary place of residence of deceased is also disputed as per appellant it was Motihari whereas as per opposite party it was Ranchi. Deceased died in Ranchi.

7. The trial court has held that there is serious dispute with regard to factum of marriage as well as appellant Nos. 2, 3 and 4 to be the children of deceased and complicated questions of law and facts are involved which cannot be decided in a summary procedure and has dismissed the case of appellant for grant of succession certificate.

8. During pendency of this appeal I.A. No. 3426/2018 was filed to bring on record additional evidence, death certificate of deceased and enquiry report dated 02.06.2014 and identity card dated 29.04.2012 which have been admitted as additional evidence by order dated 01.04.2019 passed by this Court.

9. In the enquiry report conducted by three government hospital's doctors, the committee on the basis of



evidences adduced before it has held that first wife Dr. Nisha Narayan of the deceased Dr. Shyam Lal Das died on 24.11.1999 and thereafter deceased Dr. Shyam Lal Das solemnized second marriage with Mona Kumari on 20.05.2004 after death of first wife, as such marriage is legal and valid and from said wedlock three children were born.

10. Death certificate has been brought as additional evidence in which place of death has been stated to be Appolo Hospital, Ranchi and date of death is 18.09.2008 and residence has been stated to be Harmu, Ranchi, even the appellant Mona Kumari in her cross-examination has stated that deceased was posted in Motihari Hospital and he was resident of Ranchi and his house was in Harmu from which it is apparent that neither deceased died in Motihari nor his ordinary place of residence was Motihari, as such, Motihari court has no territorial jurisdiction to entertain the succession case on behalf of appellant.

11. For the reasons, as stated above, this Court is not inclined to interfere in the order passed by trial court. However, dismissal of this appeal will not preclude the appellant to approach the competent court having jurisdiction over the matter for declaration of her marital status and also that



appellant Nos. 2, 3 and 4 are sons and daughters of late Dr. Shyam Lal Das.

12. With such observation and liberty this miscellaneous appeal is disposed of.

LCR of this case be returned to the court concerned forthwith.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	28.06.2019
Uploading Date	16.10.2019
Transmission Date	N.A.

