

HIGH COURT OF CHHATTISGARH, BILASPURCivil Revision No.25 of 2017

1. Smt. Tameshwari Yadu, aged about 48 years, W/o Late Bharat Lal Yadu
 2. Sumit Yadu, aged about 24 years, S/o Late Bharat Lal Yadu
 3. Shubham Yadu, aged about 20 years, S/o Late Bharat Lal Yadu
- All R/o Village Bhanbhedal, Tahsil Bhanupratappur, Distt. Uttar Bastar Kanker (CG)

--- Applicants

Versus

1. Smt. Rita aged about 56 years,
2. Devanshu Yadu, aged about 22 years,
(as per cause title of the lower court, it was shown as Wife of and Son of Bharat Lal Yadu respectively)
Both R/o Avantika Colony, Jagdalpur, Distt. Bastar (CG)

--- Non-applicants

For Applicants	:	Mr.Parag Kotecha, Advocate
For Non-applicants	:	Mr.T.K.Jha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

29/04/2019

1. The applicants herein filed an application under Section 372 of the Indian Succession Act, 1925 (hereinafter called as "the Act of 1925") for grant of succession certificate claiming the amount left by late Shri Bharat Lal Yadu in which they also impleaded Smt. Rita Yadu and Devanshu Yadu being second wife and son of Bharat Lal Yadu respectively, however, Smt.Rita Yadu and Divanshu Yadu in the latter stage of the trial proceeded *ex-parte* and did not adduce any evidence and ultimately, *ex-parte* order granting succession certificate in favour of the present applicants was passed on 30.11.2015. The said grant was challenged by the non-applicants herein in Civil Appeal No.4A/2016 before the Additional District Judge, Bhanupratappur. Learned Additional District Judge not only

allowed the appeal, but also remanded the matter to the succession Court after framing two issues. The order of remand has been challenged by the applicants herein in the instant revision preferred under Section 388(3) of the Act of 1925.

2. Mr.Parag Kotecha, learned counsel for the applicants, would submit that learned Additional District Judge did not have power to make remand as it was Misc. Appeal under the provisions of the Act of 1925, therefore, the impugned order is liable to be set aside.
3. On the other hand, Mr.T.K.Jha, learned counsel for the non-applicants, would submit that appeal under Section 384 (1) of the Act of 1925 was a regular appeal, therefore, learned Additional District Judge has all the power and jurisdiction to make remand to the succession Court for hearing and disposal in accordance with law relying upon the judgment of the Supreme Court in the matter of **Gaudiya Mission v. Shobha Bose & Anr.**¹.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. After hearing learned counsel appearing for the parties, the short question that arises for consideration as to whether appeal under Section 384(1) of the Act of 1925 preferred by the non-applicants herein before the first appellate Court was a regular appeal or it was Misc. Appeal ?
6. The question so raised is no longer res-integra and stands authoritatively and conclusively adjudicated by Their Lordships of the

¹ AIR 2008 SC 1012

Supreme Court in **Gaudiya Mission** (supra) in which the Supreme Court after considering Section 384 of the Act of 1925 held as under:-

“14. Bare reading of the aforesaid provision leaves no room for doubt that it is a regular appeal and all questions i.e. questions of fact and of law are open to urge before the appellate Court.....”

Likewise, in para-18 it has been further held as under:-

“18. From what has been observed by this Court in Asha Devi and considering the fact that an appeal under Section 384 of the Indian Succession Act is a regular appeal, we are of the view that arguable points had been raised by the appellant-Mission in the appeal which ought to have been admitted by the Division Bench.”

7. Applying the principle of law laid down by Their Lordships of the Supreme Court in **Gaudiya Mission** (supra) to the facts of the present case, it is quite vivid that an appeal under Section 384 of the Act of 1925 is a regular appeal, which is subject to further challenge by way of revision under Section 388(3) of the Act of 1925.
8. In the matter of **Abdul Karim and another v. Raheesa Ansari**² the Kerala High Court has clearly held that the appellate Court hearing appeal under Section 384(1) and under proviso to Section 388(2) of the Act of 1925 has power to order remand and neither sub-section (1) of Section 384 nor proviso to sub-section (2) of Section 388 contains any restriction on the power of the appellate Court.
9. Since the appeal under Section 384(1) of the Act of 1925 is a regular appeal as held by the Supreme Court in **Gaudiya Mission** (supra), therefore, the Court hearing an appeal under Section 384(1) of the Act of 1925 has power and jurisdiction to make an order of remand to the trial Court. I fully agree with the view taken by the Kerala High

² AIR 1986 Kerala 183

Court in Abdul Karim (supra).

10. In view of the above-stated legal position, learned Additional District Judge is fully justified in directing remand to the succession Court after framing two issues for determination to the said Court. I do not find any jurisdictional error or perversity in the impugned order warranting interference.
11. Accordingly, the civil revision being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s). The succession Court is directed to conclude the hearing of the application for grant of succession certificate afresh as directed by the appellate Court within three months from the date of appearance of the parties as succession application was filed way back on 9.12.2014. Parties are directed to appear before the succession Court on **19th June, 2019**. Records be sent back forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-