

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.97 of 2020

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Airports Authority of India through the Airport Director B.C.H. Negi, Male,
Son of Shri S K Negi, resident of B-3/10, Rajbanshi Nagar, Bailey Road,
District- Patna, at Airports Authority of India, Jay Prakash Narayan
International Airport, Patna.

... .. Petitioner/s

Versus

1. Bibi Rizwana Khatoon, Divorcee of Late Khurshid Alam, residing at Mohalla Samanpura, in the house of Md. Yusuf, Police Station Shastri Nagar, in the Town and District of Patna, at present resident of C/o Md. Hanif Ansari, near Devisthan, Raja Bazar, Samanpura, P.O.- B.V. College, District- Patna.
2. Miss Amna Khatoon, Daughter of Late Khurshid Alam, residing at Mohalla Samanpura, in the house of Md. Yusuf, Police Station Shastri Nagar, in the Town and District of Patna, at present resident of C/o Md. Hanif Ansari, near Devisthan, Raja Bazaar, Samanpura, P.O.- B.V. College, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dr. Pankaj
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

27-02-2020

The present application has been filed “*for quashing the order dated 29.01.2019 by which and whereunder the learned court of Sub-Judge-III, Patna (Annexure-P/9) has rejected the petition dated 20.07.2018 under Order-XXXII Rule 12 & 13 of Code of Civil Procedure 1908.*”

2. The plaintiffs/respondents filed Title Suit No.489/2002, *inter alia*, seeking a declaration that plaintiff no.1 continued as wife of Late Md. Khurshid Alam till his death, in view of which the plaintiffs were entitled to receive all benefits upon the death



of Md. Khurshid Alam who died during service under defendant no.3/petitioner. Plaintiff no.2 was a minor, in view of which plaintiff no.1 came to be appointed as her guardian till her majority on 27.10.2009, by order dated 18.08.2003 passed in Guardianship Case No. 03/2003 by the learned Principle judge, Family Court, Patna. On 18.09.2006, plaintiff no.1 filed a petition for withdrawal of the suit on condition that death-cum-retiral dues of the deceased employee were paid to her minor daughter plaintiff no.2. Defendant no.3/petitioner had no objection in this regard. Accordingly the parties did not prosecute the matter any further and the suit was dismissed by order dated 28.05.2009. Plaintiff no.2 upon attaining majority submitted Pension Claim Form-10D along with all the relevant documents and further filed a petition under Order XXXII Rule 12 CPC for discharge of next friend/guardian, i.e. plaintiff no.1 in the original suit stating that plaintiff no.1 was a divorcee of her father. As such, plaintiff no.2 prayed for leave to proceed with the suit in her own name which prayer was allowed. The defendant no.3/petitioner has filed a petition dated 20.07.2018 to the effect that in view of the plaintiff no.2 having elected to proceed with the suit in her own name by discharging her next friend/guardian, it was the right time to oust the plaintiff no.1



from the suit. This petition has been rejected by the impugned order dated 29.01.2019.

3. Learned counsel for defendant no.3/petitioner states that all amounts due except by way of family pension have already been paid to plaintiff no.2. It is submitted that defendant no.3/petitioner is prepared to make payment of the family pension, but there is conflict of interest between plaintiff no.1 and plaintiff no.2. The plaintiff no.2 has sought for proceeding with the suit in her own name and further for ousting plaintiff no.1 from the suit. It is therefore not clear who is entitled to receive the family pension.

4. Having heard learned counsel for defendant no.3/petitioner and on consideration of materials on record, this Court is not inclined to interfere in the matter. In the impugned order dated 29.01.2019, the learned court below has opined that the suit was not instituted strictly as one on behalf of a minor, i.e. plaintiff no.2, inasmuch as it contained a prayer for declaration which was inseparable from plaintiff no.1, i.e. declaration of her status as a widow of the deceased. As such, role of plaintiff no.1 could not be said to have come to an end until such issue was decided. In other words, the prayer to oust plaintiff no.1 from the title suit has not been accepted.



5. This Court is of the view that considering the nature of the relief sought by plaintiff no.1 with regard to declaration of her status as a widow of the deceased Late Md. Khurshid Alam, the learned court below has rightly held that such claim had to be decided independently and until such time her role in the title suit has not ended. The petition is accordingly held to be devoid of merit and is dismissed.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04. 03.2020
Transmission Date	N/A

