IN THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

R.F.A. No. 04 of 2016

Rajendra Chhetri,
S/o Late Karna Bahadur Chettri,
R/o Middle Sichey,
P.O P.S. Gangtok, East Sikkim.

... Appellant

Versus

1. Devi Maya Chettri,
W/o Late Karna Bahadur Chettri,
R/o Samdong House, Middle Sichey,
P.O. P.S. Gangtok, East Sikkim.

2. General Public.

3. Mrs. Manita Chettri,
W/o Mr. Rajendra Upreti,
R/o Deorali, Tadong,
East Sikkim.

4. Mrs. Maheshwari Chettri,
W/o S. Singh,
R/o House No. 417, Sector-37,
Noida, Uttar Pradesh.

5. Mrs. Gitanjali Chettri,
W/o M. Chettri,
R/o Alok Bihar-II, Flat No. 6114,
Sector 50, Noida, Uttar Pradesh,

... Respondents

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.

For the appellant : Mr. A.K. Upadhyaya, Senior Advocate with Ms. Rachhitta Rai, Advocate.

For the respondent No. 1 : Mr. T.B. Thapa, Senior Advocate with Mr. B.K. Gupta, Advocate.

For the respondent No. 3, 4 and 5 : Ms. Puja Lamichaney, Advocate.

Date of hearing : 22.10.2020

Date of judgment : 23.11.2020

JUDGMENT

(Arup Kumar Goswami, CJ)

Heard Mr. A.K. Upadhyaya, learned Senior Counsel, assisted by Ms. Rachhitta Rai appearing for the appellant, Mr. T.B. Thapa, learned Senior

Counsel assisted by Mr. B.K. Gupta for respondent no. 1 and Ms. Puja Lamichaney, learned counsel appearing for respondent nos. 3, 4 and 5.

2. An application under Section 372 of the Indian Succession Act, 1925 (for short, the 1925 Act) for grant of Succession Certificate in respect of a sum of Rs.6,99,699/- being the payment of arrears due to Karna Bahadur Chettri, who died on 22.11.2010, from Sikkim Public Service Commission(SPSC),was filed by the appellant in the Court of District Judge, East and North, Sikkim at Gangtok wherein the same was registered as Civil Misc. Case (Succession) No. 43 of 2014. By the said application, the appellant had prayed for grant of Succession Certificate along with a prayer to direct SPSC to allow the appellant and respondent no. 1 to collect and receive 50% each out of the dues and securities standing in the name of late Karna Bahadur Chettri.

3. This appeal is preferred against the judgment dated 31.12.2015 passed by the learned District Judge, East District at Gangtok, in Civil Misc. Case (Succession) No. 43 of 2014, whereby the sum of Rs.6,99,699/- was directed to be divided into five equal proportion of Rs.1,39,939.80 each for the appellant, respondent no. 1 and respondent nos. 3, 4 and 5.

4. In paragraph 5 of the application it is stated that the deceased, at the time of his death, left behind the following family members and other close relatives: (i) Smt. Devi Maya Chettri, (ii) Shri Rajendra Chettri (son), (iii) Smt. Anjana Chettri (Sharma) (daughter-in-law), (iv) Master Adithya Chettri (Elder Grandson) and (v) Master Sidharth Chettri (Younger Grandson). The three daughters, namely, (i)Smt. Mamita Chettri @ Upreti, (ii) Smt. Gitanjali Chettri and (iii) Smt. Maheswari Chettri @ Singh of the deceased were not included in the list of family members in paragraph 5 but in paragraph 6, a reference was made to the effect that they are all married and settled with their respective families in the house of their in-laws.

5. Respondent no. 1 had filed an objection to the application stating that the three daughters have not been made parties despite being legal heirs and as such the application is not maintainable for non-joinder and mis-joinder of necessary parties. It is stated that three daughters are also entitled to equal share of the dues and securities left behind by her deceased husband. It is also stated that the three daughters want to give their shares to her. A prayer was also made that a Maruti SX4 Car, the value of which is about Rs.5 lakhs, left behind by her late husband, is to be included in the schedule of the application filed by the appellant and the same be given to her by adjusting a sum of Rs.1 lakh in favour of the appellant, if he has any objection to her prayer.

6. At this juncture, it is relevant to note that the learned District Judge declined to consider the prayer made in respect of Maruti SX4 Car holding that the vehicle is not a due or security left behind by the deceased.

7. Smt. Mamita Chettri filed an objection stating that all the surviving Class-I legal heirs i.e. herself, appellant, respondent no.1 and respondent nos. 4 and 5 are entitled to the assets left behind by the deceased Karna Bahadur Chettri in equal share and that the appellant is not entitled to 50% of the arrear amount as prayed for by him.

8. A reply was filed by the appellant to the objection filed by Smt. Mamita Chettri. In the said reply it is stated that Smt. Mamita Chettri has no *locus standi* to file objection as she is not impleaded in the said proceedings. It is further stated that she having been married long ago and settled with her husband cannot claim to be a Class-I legal heir of Late Karna Bahadue Chettri as per law for the time being enforced and extended to the State of Sikkim. It is also stated that he being the only son is entitled to 50% of the amount under the law. It is asserted that he being the son and respondent no.1 being the widow of the deceased are the only Class-I legal heirs and there are no other legal heirs. It is also stated that there is no precedence or law enforced in the State of Sikkim

enabling the married daughters to claim share of dues of deceased father. In the said reply, it is also stated that the objector had given false declaration of her age.

9. Smti. Gitanjali Chettri and Smti. Maheswari Chettri had also filed a joint objection, which is more or less identical to the objection filed by Smti.Mamita Chettri. The appellant had filed a reply, which is more or less similar to the reply filed to the objection filed by Smti. Mamita Chettri.

10. Mr. Upadhyaya submits that the learned District Judge fell in error in dividing the sum of Rs.6,99,699/- in five equal shares to include the appellant, respondent no. 1 and the respondent nos. 3, 4 and 5 as it is only the appellant and respondent no. 1, who are entitled on 50:50 basis to the aforesaid amount of Rs.6,99,699/-. He submits that the Hindu Succession Act, 1956, for short, Act of 1956, is not in force in Sikkim and therefore, there was no question of application of Hindu Succession (Amendment) Act, 2005, on which the learned Judge had placed reliance. He also submits that reliance placed on the judgment of the Hon'ble Supreme Court in the case of ***Prakash and others vs. Phulavati and other***, reported in ***(2016) 2 SCC 36*** , relating to Hindu Succession (Amendment) Act, 2005 is misplaced.

11. Mr. T.B. Thapa, learned Senior Counsel appearing for respondent no. 1 submits that not only the Act of 1956 but the Act of 1925 is also not enforced in Sikkim. However, all along, applications under Section 372 of the Act of 1925 have been filed in Sikkim and the same are also entertained by Courts. This submission of Mr. Thapa has not been disputed by Mr. Upadhyaya and Ms. Lamichaney. Mr.Thapa has drawn the attention of the Court to a judgment of this Court in the case of ***Sonam Topgyal Bhutia vs. Gombu Bhutia*** ,reported in ***AIR 1980 Sikkim 33***.

12. Ms. Lamichaney has submitted that not only applications under Section 372 of the Act of 1925 are filed but Succession Certificates have also been issued in respect of daughters and therefore, the appeal deserves to be dismissed.

13. I have considered the submissions of learned counsel appearing for the parties and have perused the materials on record.

14. In ***Sonam Topgay Lepcha*** (supra), the subject matter was a Will, which was held to be not a genuine Will of the deceased by the learned District Judge. This Court noted that though there is no legislation in Sikkim relating to Wills, the Courts in Sikkim had followed and applied the provisions of the Act of 1925 in all matters relating to Wills including granting of probate and Letters of Administration. A question was posed as to whether the provisions relating to Wills in the Act of 1925, which have never been formally adopted in or extended to Sikkim by any form of legislative authority are to be regarded as laws in force in Sikkim. A Division Bench of this Court held that the statutory laws relating to Wills as contained in the Act of 1925 have, as a result of their continuous and systematic recognition and application by the Courts in Sikkim, become the non-statutory laws of Sikkim. An earlier decision of this Court in the case of ***Jas Bahadur Rai vs. Puttra Dhan Rai***, wherein it was observed that the Courts in Sikkim will have to continue to do that amount of law-making until such time when direct legislative laws will begin to hold and occupy the field, was referred in this context.

15. In the application under Section 372 of the Act of 1925, while making a statement that the appellant is entitled to receive 50% amount out of the arrear amount, the source of his entitlement is not indicated. In his replies to the objections filed by (i) Smti.Mamita Chettri and (ii) Smti.Gitanjali Chettri and Smti.Maheswari Chettri, wherein they had taken a stand that they being surviving Class-I heirs of the deceased, are entitled to equal share, the appellant had stated that he and respondent no. 1 being the son and wife, respectively, of

the deceased, are the only Class-I heirs and the daughters being married and settled with their husbands, they can no longer claim themselves to be Class-I heirs.

16. This Court will not comment on the submission of Ms. Lamichaney that daughters are also granted Succession Certificate as the said position has not been conceded by Mr. Upadhyaya. Since there are no materials on record to come to any conclusion in that regard, this Court will proceed on the basis of materials placed before the court on the premise that the Act of 1956 is not formally extended to the State of Sikkim.

17. Though the Act of 1956 is not enforced, what cannot escape the notice of the Court is that entitlement of the appellant is founded on the basis that he is a Class-I heir. The list of Class-I heirs are given in the Schedule to the Act of 1956. Attention of the Court is not drawn to any other statute or law in force in Sikkim where there is reference to Class-1 heirs. Thus, appellant's prayer for Succession Certificate has to be considered to be based on Act of 1956. If that be so, necessarily, relevant provisions of Act of 1956 have to be taken note of and considered.

18. Under the Schedule of Act of 1956, son, daughter and widow, apart from others, are listed as Class-I heirs. Section 8 of the Act of 1956 provides that property of a male Hindu dying intestate shall devolve, firstly, upon the heirs, being the relatives specified in Class-I of the Schedule. Section 9, which deals with the order of succession, lays down that among the heirs specified in the Schedule, those in Class-I shall take simultaneously and to the exclusion of all other heirs. Though learned District Judge had relied on Section 6 of Act of 1956, as amended, Section 6 will not be attracted in as much as the arrear amount of the deceased lying in SPSC was not part of any coparcenary property but was his exclusive and individual property.

19. The stand taken by the appellant is that as the daughters were married, they ceased to be Class-I heirs and therefore, they are not entitled to the share of the property of the deceased reflected in the Schedule of Debts and Securities. The reasoning is wholly untenable for the simple reason that legislature has not made any distinction between a daughter and a married daughter in the Schedule of the Act of 1956.

20. In view of the above discussion, no interference is called for with the impugned judgment and the appeal is dismissed.

21. LCR be sent back.

Chief Justice

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