

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 908 OF 2015**

Smt. Laxmibai Omprakash Chavariya & Ors. ... Appellants

V/s.

Beena @ Mina Narsing Hada @ Meena
Father Omprakash Chavariya

... Respondent

...

Mr. Girish R. Agrawal for the Appellants.

None for the Respondent.

CORAM: SMT. SADHANA S. JADHAV, J.

DATED : 21st JANUARY, 2020.

P.C:-

1. Heard the learned Counsel for the appellants.
2. None appears for the respondent, though notice was issued and by way of last opportunity, the matter was listed today.
3. The Second Appeal is of the year 2015 and the appellant No.1 is almost 60 years old as on today.
4. The appellant herein impugns the judgment and order dated 11th March, 2015 passed by the District Judge, Nashik in Regular Civil Suit No.192 of 2010 thereby, setting

aside the judgment and order passed by the Civil Judge, Senior Division, Nashik in Civil Miscellaneous Application No. 58 of 2005 and under Section 372 of Indian Succession Act.

5. It is the case of the appellant that she was married to Omprakash Chavariya 7 years after demise of his first wife Hilmo. The appellant had begotten one son and two daughters from said wedlock with Omprakash Chavariya who was working as Sweeper with Deolali Cantonment Board. Omprakash Chavariya had retired from service on 16th November, 1996. He expired on 19th May, 1999 at Panipat, Haryana. His last rites were performed by the son of the appellant i.e. by Ajay Omprakash Chavariya i.e. appellant No.2. The appellant had been to Deolali Cantonment Board to seek the retirement benefits and she was directed to produce Succession Certificate.

6. It appears that Omprakash Chavariya had filed some letters with the Cantonment Board claiming that one Beena was his adoptive daughter and therefore, the defendant Beena was also directed to obtain Succession Certificate in accordance with law.

7. The appellant had filed application under Section 372 of the Indian Succession Act. The appellant had also placed on record Birth Certificates of her children who were born at Deolali Cantonment Hospital, which are at Exhibit-22, 24 and 53. The name of their father in birth certificate is shown as Omprakash Chavariya. It appears that to verify the claim of the

defendant the Court had called upon the Cantonment Board, to place on record the Service Book alongwith the application for pension and affidavit of Omprakash Chavariya, wherein it was shown that the defendant is adopted daughter. The defendant had also placed on record the Adoption Deed. However, the same is discarded by both the Courts below, principally on the ground that she was a married woman on the date of adoption. In fact, she happens to be, daughter of brother of deceased Omprakash Chavariya and therefore, Adoption Deed dated 1st August, 1996 was held to be invalid. The defendant was married to Narsing who had retired from Territorial Army Department. However, she claimed to be Beena Omprakash Chavariya.

8. The First Court had considered the entire evidence filed by the appellant, especially the Birth Certificate of the appellant Nos. 2 and 3, which discloses the name of father as Omprakash Chavariya and that the appellant No.1 had given birth to their children at Cantonment General Hospital at Deolali. The Trial Court had also discarded the adoption deed on the basis of evidence of the defendant that she was married in the year 1989 and Adoption Deed is dated 1st August, 1996.

9. Section 10 of the Hindu Adoption and Maintenance Act, 1956. Clause 3 of the said Act reads as follows: -

“(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married

being taken in adoption.”

10. In such circumstances, the Court of 6th Joint Civil Judge Senior Division, Nashik had allowed the application filed by the present appellant and had directed the issuance of Succession Certificate in the name of appellant for receiving the amount of family pension of Rs.1,21,584/- from the office of Cantonment Board, Deolali.

11. Being aggrieved by the said judgment and order, original defendant had filed Regular Civil Appeal. The Appellate Court had taken into consideration the documents filed by Omprakash Chavariya, stating therein that Beena happens to be his adoptive daughter and that she would be entitled to the retiral benefits. The Appellate Court had observed that Omprakash, during his life time had nominated Beena to receive his retiral benefits. Hence this appeal.

12. On perusal of the record and proceedings, it appears that the defendant had not examined any officer of the Cantonment Board to prove the contents of the said affidavit or even to prove that the affidavit and the application were filed by deceased Omprakash Chavariya voluntarily in the presence of any officer neither it is known as to whether the same were submitted by the defendant. The Appellate Court has also held the Adoption Deed to be invalid and has set aside the judgment and order passed by the First Court and has held that the appellant No. 1 has failed to prove that she is legally wedded wife of deceased Omprakash Chavariya since, she could not file

any marriage registration certificate. Although, the witness Prakash Bhandare has admitted that the community record would show that the appellant had married deceased Omprakash.

13. In view of the above mentioned fact, the substantive question of law that needs to be determined is as follows:-

(a) Whether the application filed by deceased Omprakash appointing the respondent as nominee to receive retiral benefits would prevail over the rights of the legal heirs of the deceased.

(b) Whether the status of nominee could be that of recipient of the benefits of the retiral benefits of deceased Omprakash.

(c) Whether mere nomination may in favour of particular person would have the effect to confer on the nominee any beneficial interest in the property after demise of the concerned.

14. To substantiate the said issue, the learned Counsel has placed reliance on judgment of Hon'ble Apex Court in *Shipra Sengupta V/s. Mridul Sengupta & Others, reported in (2009) 10 Supreme Court Cases 680.*

“The High Court while following Sarbati Devi case held that it is well settled that mere nomination made in favour of a particular

person does not have the effect of conferring on the nominee any beneficial interest in property after the death of the person concerned. The nomination indicates that hand which is authorised to receive the amount or manage the property. The property or the amount, as the case may be, can be claimed by the heirs of the deceased, in accordance with the law of succession governing them.”¹

“The controversy involved in the instant case is no longer res integra. The nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession.”

15. In the present case, although Will of deceased Omprakash to nominate the defendant as a nominee, it would only mean that she would act as trustee to receive the said amount only on behalf of legal heirs of the deceased. The Adoption Deed is held to be invalid. There was no reason for Omprakash to adopt a married daughter only to receive the retiral benefits. The affidavit served by the deceased is dated 10th July, 1996 i.e. just 4 months before his retirement. Hence, Issue No. 1 deserves to be answered in the negative.

16. As far as Issue No. (b) and (c) is concerned, in view of the judgment of the Apex Court in the case cited supra ***Shipra Sengupta V/s. Mridul Sengupta & Others, reported in (2009) 10 Supreme Court Cases 680***, it will have to be held that the status of a nominee would be that of a trustee to

¹ (1984) 1 SCC 424:1984 SCC (Tax) 59

receive the amount on behalf of legal heirs to be disbursed in accordance with Hindu Succession Act.

17. In view of the above discussion, the Second Appeal deserves to be allowed. The judgment and order dated 11th March, 2015 passed by the Principal District Judge, Nashik deserves to be quashed and set aside and judgment and order dated 10th August, 2010 is restored.

(SMT. SADHANA S. JADHAV, J.)