

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 20 of 2017

1. Amerika Bai W/o Dhram Das Khatri, Aged about 55 years R/o Village Litiya, Tahsil Dhamdha, District Durg (C.G.).
2. Santosh Kumar S/o Late Dharamdas Khatri, aged about 33 years R/o Village Litiya, Tahsil- Dhamdha, District Durg (C.G.).
3. Ku. Anant D/o Late Dharamdas Khatri, aged about 23 years R/o Village Litiya, Present address Village Nagpura, Tahsil & District Durg (C.G.)

---- Applicants

Versus

1. Amrit Bai W/o Dharamdas Khatri, Aged about 50 years R/o Village Litiya, Present address Gadadih, Tahsil Dhamdha, District Durg (C.G.)
2. Block Education Officer, Dhamdha, Tahsil & District Durg (C.G.).
3. Smt. Geetabai W/o Kanhaiya, aged about 42 years R/o Village Sondh Tahsil Berala, District Durg (C.G.).

---- Respondent

For Applicant s	:	Mr. Ravi Maheshwari, Advocate
For Non-applicant No.1	:	Mr. R.K. Gomasta, Advocate
For Non-applicant No.2	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

07/07/2021

Heard.

1. This revision has been filed against the order dated 11/01/2017 passed by 6th Additional District Judge, Durg in Misc. Civil Appeal No. A-29/2016.
2. Respondent No.1 filed an application under Section 372 of the Indian Succession Act, 1925 praying for issuance of succession certificate in her favour on account of death of her husband Dharamdas (henceforth

'the Deceased'). The applicants were made party in that application and it was pleaded that applicant No. 1 was not legally wedded wife of the Deceased. This application was contested by the applicants/respondents. The learned Court below passed the final order on 23/07/2016 directing for issuance of succession certificate in favour of respondent No.1 and the applicants jointly.

3. This order dated 23/07/2016 was challenged in the court of 6th Additional District Judge, Durg in Misc. Civil Appeal No. A-29/2016. The appeal was partly allowed, in which it was held that applicant No. 1 is not legally wedded wife of the Deceased. The issuance of succession certificate was also modified in which applicant No. 1 was not granted any relief.
4. It is submitted by the counsel for the applicants that the Deceased had previously married with someone, that was dissolved by a divorce. Then he married with respondent No.1 in customary manner by making her wear bangles. No child was born to respondent No.1. Although it is claimed by respondent No. 1, that applicant No. 1 and the Deceased never married each other, but the facts remains that applicant No. 1 was always recognized as wife of the Deceased. The document submitted before the Court below, shows that the Deceased had nominated applicant No.1 for General/Contributory Provident Fund. It is also submitted that respondent No. 1 in her statement before the Court below admitted in cross-examination that applicant No. 1 is wife of the Deceased. Therefore, the applicants had entitlement to be declared as successor of the Deceased. The learned Court below committed error in passing the impugned order, which may be corrected by this Court in exercise of the power conferred

under Article 227 of the Constitution of India.

5. Counsel for respondent No. 1 opposes the submissions and submits that it is only respondent No. 1 who is legitimate wife of the Deceased. There is no proof that applicant No. 1 and the Deceased ever married. The learned Appellate Court has not committed any error in holding that applicant No. 1 has no entitlement to be declared as successor of the Deceased. On the other hand, applicant No. 2 who is son of applicant No.1 and the Deceased, has been benefited with compassionate appointment on account of death of the Deceased who was a government servant. Relying on the judgment of M.P. High Court in the case of **Prabhat Kumar Gupta v. Smt. Meena Gupta, reported in 1992 Vol- 1, M.P. Weekly Notes page 105**, it is submitted that the power of revisional Court under Section 388 (3) is not wide enough to interfere with the finding of the facts properly arrived by the two courts below. Therefore, this Court cannot interfere with the finding of the Appellate Court. Hence, this revision is without any merit which may be dismissed.
6. In reply, it is submitted by the counsel for the applicants that there is no evidence present that respondent No.1 is legally wedded wife of the Deceased. Applicant no. 1 has equal entitlement over the retiral benefits of the Deceased, therefore, this petition be allowed.
7. Considered on the submissions.
8. Section 388(3) of the Indian Succession Act, 1925 provides that the order of District Judge is subject to revision by the High Court. The power of revision which is exercised by the High Court is clearly under Section 115 of the Code of Civil Procedure. At the instance, the High

Court may exercise the power of revision, if it finds the subordinate Court have exercised a jurisdiction not vested in it by law, which is not the case here; the Court below has failed to exercise its jurisdiction so vested, which is also not the case here; and the Court below must have acted in the exercise of its jurisdiction illegal or with material irregularity, then the High Court may interfere by the revisionary power. It is a case in which the finding has been given by the Appellate Court on the basis of appreciation of facts, which was brought by the parties though evidence. The law is clear that during the subsistence of a marriage any of the spouse cannot remarry. The case of applicant No. 1 is of subsequent marriage. Thus, I am of the view that the finding of the fact cannot be/should not be interfered in exercise of revisionary power.

9. Consequently, this revision appears to be without any substance which is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge