

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 47 of 2021**

Smt. Manisha Jain, D/o Late Sureshchand Jain, W/o Shri Laxmichand Jain, aged about 35 years R/o Navin Bazar, umesh Society Vastralayay, in-front of Gupta Lounge, Kawardha, District Kabirdham (C.G.)

---- Applicant

Versus

1. General Public (to whom so ever it may concern).
2. Akshay Jain, S/o Late Shri Kushal Bathiya (wrongly mentioned in the impugned order as Godson of Late Sureshchand Baid), aged about 24 years R/o Azad Chowk, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.).

---- Respondents

For Applicant	:	Mr. Palash Agrawal, Advocate
For Respondent No.2	:	Mr. Tanuj Patwardhan, Advocate

Hon'ble Shri Justice Deepak Kumar Tiwari
ORDER ON BOARD

17/11/2021

1. This civil revision preferred under Section 384 (3) of the Indian Succession Act, 1925 (henceforth 'the Act') against the order dated 09/08/2021 passed by the District Judge, Rajnandgaon in Miscellaneous Civil Appeal No. 09/2019 arising out of order dated 26/02/2019 passed by the learned First Civil Judge, Class-I, Rajnandgaon in Succession Case No. 50/2012 whereby the appeal preferred by the applicant has been dismissed and order of the Court below was affirmed in which succession certificate under Section 372 of the Act has been granted to both the applicant and respondent No.2.

2. Brief facts of the case are that the applicant filed an application under Section 372 of the Act as the banks were asking for succession certificate after the death of her father who was having various deposits in the bank accounts in his name. It has been stated that mother of the applicant Smt. Shobha Baid died on 16/09/1996 and her father late Sureshchand Baid died on 26/12/2010. She is the only legal heir of her father. It was further pleaded that after death of her mother Shobha Baid, her father got performed second marriage with Smt. Meena Jain, mother of respondent No. 2/Objector who was widow. Earlier husband of Smt. Meena Jain was Kushal Bhatiya and out of their wedlock, they have one daughter and one son (respondent No.2). Late Sureshchand Baid nurtured respondent No.2 as his son. Smt. Meena Jain died on 16/09/2017. On succession application, respondent No. 2 raised objection that as per will dated 09/09/2010 (Ex-D-2) executed by late Sureshchand Baid, respondent No.2 is also entitled to get his movable property.
3. The learned trial Court framed three issues. After hearing the parties, the Court below held that if the Court fee is duly paid with regard to total consideration of the property then the succession certificate would be issued to the property claimed by the parties. The applicant preferred an appeal and after hearing the appeal against it, the impugned order has been passed. Hence, this revision.
4. Learned counsel for the applicant submits that both the Courts below have not considered the application in proper manner and the order is illegal,

erroneous and contrary to the law and is liable to be set-aside. Respondent No. 2 is not biological son of her father and the applicant is the only legal heir of late Sureshchand Baid. The will dated 09/09/2010 (Ex.D-2) is forged and not registered and there is no registered adoption deed, so respondent No.2 is not entitled to get any share in the suit property. He prays to set-aside the impugned order passed by the Courts below.

5. Counsel appearing on behalf of respondent No. 2 opposed the submissions made by the counsel for the applicant and supports the impugned order.
6. I have heard learned counsel for the parties and perused the records.
7. The questions for determination before this Court are (1) Whether the impugned order passed by the Courts below is legal, justifiable and proper; and (2) whether the revision is maintainable against the appellate order passed by the District Judge in the succession certificate case.
8. It is an admitted fact that respondent No.2 is the son of Kushal Bathiya and not the biological son of Late Sureshchand Baid. After the death of Sobha Baid in the year 1996, late Sureshchand Baid got married with mother of respondent No.2, Meena Jain. At that time, respondent No. 2 was 1 & ½ years old. Late Sureshchand Baid has nurtured respondent No.2 as his son since his childhood. Even in the school records also, name of late Sureshchand Baid has been recorded as father of respondent No.2. In the said circumstances, the Courts below appreciated the will dated 09/09/2010 (Ex-D-2) which was executed in favour of both the applicant and

respondent No.2 to get equal share of late Sureshchand Baid's self earned movable property. So the finding arrived therein is very logical and proper. Hence, orders passed by the Court below to issue succession certificate in favour of both is affirmed.

9. Section 379 of the Indian Succession Act, 1925 deals with mode of collecting Court fees on certificate. It has been provided that every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court -Fees Act, 1870 (7 of 1870) in respect of the certificate or extension applied for. If the application is allowed, the sum deposited by the applicant shall be expended under the direction of the judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid. Any sum received under Section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it. As a matter of fact, the Court fees on such certificate is payable under Court Fees Act, 1870, Schedule-1 article 12 and is paid when the certificate is issued, mainly after termination of the proceeding under the Indian Succession Act. So the direction given by the trial Court in para 16 of the judgment is also proper.
10. With regard to question No.2, the said question had also come before Allahabad high Court in the matter of *Vitta Devi & others v. Atul Singh and others (In civil revision No. 347/2017, decided on 15/12/2017)*, it was held that the revision is not maintainable against the appellate order passed by the District Judge in the case of succession certificate in view of the law

laid down by the Full Bench in the matter of *Jupiter Chit Funds v. Dwarka Diesh and Others*, AIR 1979, Allahabad 218. In the said case the word ‘or other proceedings’ was considered occurring in the proviso to Section 115 Code of Civil Procedure, 1908 (for short ‘the CPC’) and has gone on to hold that these words mean that the order passed in original proceedings alone is revisable and that an appellate order is not amenable to revisional jurisdiction of the High Court under Section 115 Code of Civil Procedure, 1908 (*also see “Ram Kumar v. Shoola Devi, order dated 02/07/2018 passed in Civil Revision No. 103/2009 by Allahabad High Court*). The appellate Court jurisdiction exercised by the District Judge by passing the impugned order, herein is a power concurrent with that of the High Court and this appellate power has been exercised by the District Judge only because the order on application under Section 372 of the Act had been passed by the Court subordinate to the grade to the District Judge.

11. The Indian Succession Act is an enactment of the year 1925 and revisional power under Section 115 of the Code of Civil Procedure, 1908 amended in 1976. In case of *Jupiter Chit Funds* (Supra), it was held that the High Court can exercise its revisional power only against the order passed in the original proceedings and not as regard with the order passed at appellate stage. In the present case, the impugned order has been passed at appellate stage, therefore, it is not maintainable at High Court under Section 115 of the CPC.

12. Consequently, for the aforesaid reasons, this Court is of the opinion that the revision fails at motion stage and is hereby dismissed accordingly.

13.

Sd/-

(Deepak Kumar Tiwari)
Judge