

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :28/07/2021

Order passed on :12/08/2021

WP227 No. 1042 of 2018

- Reshma Khan, W/o Late Jani Khan, Aged About 26 Years, R/o Bhatgaon Colliery, Ward No. 10, Near Maszid, Surajpur, District Surajpur Chhattigarh. Present Address Kapoor Dafai, Chhota Bazar, Chirimiri, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Petitioner

Versus

1. Personnel Manager, S.E.C.L. Kalyani Sub Area, Navapara Mines Bhatgaon, District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh
2. Branch Manager, Indian Life Insurance Corporation, Branch Surajpur, District Surajpur., District : Surajpur, Chhattisgarh
3. Rasida Bibi @ Ulekha, W/o Harun Khan, Aged About 55 Years, R/o Bhatgaon, P.S. Bhatgaon, District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh
4. Safi Ahmad Khan @ Chintu, S/o Late Harun Khan, Aged About 24 Years, R/o Bhatgaon, District Surajpur., District : Surajpur, Chhattisgarh
5. Rafi Ahmad Khan @ Mintu, S/o Late Harun Khan, Aged About 24 Years, R/o Bhatgaon, District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh
6. Regional Commissioner, Provident Fund Office, Gupteshwar, Jabalpur Madhya Pradesh., District : Jabalpur, Madhya Pradesh
7. Gulshan Aara, D/o Late Harun Khan, Aged About 33 Years, Present Address Bartunga Colony, Bartunga Hill, Chirimiri Colliery, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Respondents

For Petitioner – Ms. Meena Shastri, Advocate.

For Respondent No.1 – Mr. Sudhir Kumar Bajpai, Advocate.

For Respondent No.3, 4, 5 and 7– Mr. Surfaraj Khan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

12-08-2021

Heard.

1. This petition has been brought under Article 227 of the Constitution of

India being aggrieved by the order dated 24-09-2018 passed in the Civil Appeal No.5A/2017 by the Court of Second Additional District Judge Surajpur in which the appeal of the private respondents was partly allowed. The order of the Civil Judge Class-I in Succession Case No.04/2011 dated 30-11-2016 was set aside and the case was remanded to the Court of Civil Judge Class-I Surajpur with a direction to frame issue on the pleading of divorce and grant opportunity of hearing to the parties before passing any order.

2. The petitioner had filed an application under Section 372 of the Indian Succession Act, 1925 (in short 'the Act, 1925'). which was registered as Succession Case No.4/2011. It was pleaded that the petitioner is widow of deceased Jani Khan who was employee in the SECL, therefore, she may be declared successor for the purpose of receiving the service benefit of the deceased. This application was contested by the private respondents who were non-applicants before that Court. The application of the petitioner under Section 372 of the Act, 1925 was dismissed by the order dated 30-11-2016. The private respondents preferred appeal against this order which has been decided by the impugned order with direction as mentioned herinabove.

3. Learned counsel for the petitioner submits that learned appellate Court has in a manner granted liberty to the private respondents to collect evidence in their favour. The question of the divorce could not have been dealt and decided in a succession case. The claim of the respondents that they are nominee and successor of deceased Jani Khan does not give them any entitlement over the service benefits of the deceased. They shall be regarded only as the custodian of the same. Reliance has been placed on the judgment of this Court in **Chhotu Dewangan and another vs Smt. Urmilabai and others**, 2007 (1) C.G.L.J. 56. It is submitted that proceeding under Section 372 of the Indian Succession Act, 1925 is summery proceeding. For declaration of right of the nominee, a civil suit was required to be filed. Therefore, issuance of

succession certificate in favour of the petitioner should have been ordered.

Reliance has also been placed on the judgment of Hon'ble the Supreme Court in the matter of **Smt. Sarbati v. Usha Devi**, AIR 1984 SC 346, in which it was held that bare nomination in favour of a person does not confer any beneficial interest with respect to the amount payable under life insurance policy on the death of the insured. The amount so received can be claimed by heirs of the assured in accordance with law of succession.

Reliance has also been placed upon the judgment of Hon'ble the Supreme Court in the matter of **Kattukandi Edathil Krishnan and another Vs. Kattukandi Edathil Valasan and others**, (2006) 9 SCC 166 on the point of remand of case granting opportunities to the parties to make additional pleadings and adduce additional evidence was whether a necessity, should be considered.

It is submitted that the impugned order is not sustainable. The petitioner has entitlement for grant of succession certificate in her favour. Therefore, the impugned order be set aside and the petitioner be granted succession certificate.

4. Learned counsel for the respondents No.1 made formal objection and it is submitted that they shall comply with the order passed by this Court.

5. Learned counsel for the respondents No.3, 4, 5 and 7 opposed the submissions made by the petitioner counsel and submits that the proceeding under Section 372 of the Indian Succession Act is summary proceeding. The Court cannot determine the entitlement of a party in such a proceeding except for the party being a successor in accordance with the provisions under the Indian Succession Act. It is clear that the petitioner is not a nominee in the service record of deceased Jani Khan, therefore, no error has been committed by the Court of Civil Judge Class-I in rejecting the application of the petitioner.

The question of maintainability of this petition is also raised on the ground that Under Section 388 of the Act, 1925 clearly provides that a civil revision shall be maintainable against the order passed by the District Judge in appeal.

Reliance has been placed on the judgment of the Division Bench of Calcutta High Court in the matter of **Gita Das and another Vs. Sefali Lata Das**, AIR 2018 CALCUTTA 80, in which it has been held that such an order which is passed in appeal by the District Judge is revisable under Section 388 of the Act, 1925. Therefore, the present petition filed is not maintainable which may be dismissed.

6. In reply it is submitted by learned counsel for the petitioner that there is no specific provision under the Act, 1925 for preferring revision against the appellate order passed under Section 384 of the Act, 1925, therefore, the petition under Article 227 of the Constitution of India is maintainable.

7. Heard learned counsel for the parties and perused the documents.

8. The question of maintainability of this petition has to be decided first. Sub-section 2 and 3 of Section 388 of the Indian Succession Act, 1925 are relevant which are as under:-

“384. Appeal.—

(1) xxxxxx xxxxxx

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.”

9. According to the provision mentioned herein the District Judge has exercised the power of appellate authority. Therefore, according to Sub-section 3 of Section 388 of the Act, 1925 the order passed by District Judge was subject to provision as to reference or revision by the High Court. Subsequent to which, the order would be regarded as final. This provision clearly provides

for filing of revision petition. The reliance of the petitioner in **Chhotu Dewangan and another vs Smt. Urmilabai and others** (supra) is also a decision on civil revision, before the High Court. As for the reason that there is statutory remedy available to the petitioner by way of filing a revision petition against the impugned order, this petition under Article 227 of the Constitution of India cannot be regarded as maintainable. Hence, this petition is dismissed and disposed off on the ground that it is not maintainable under Article 227 of the Constitution of India. The petitioner has liberty to file civil revision against the impugned order.

The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge