

IN THE HIGH COURT OF ORISSA AT CUTTACK
TRP (C) No.230 of 2022

Prajna Parimita Panda ***Petitioner***
Mr. Haraprasad Panda, Advocate

Versus

Guru Prasad Nayak ***Opp. Party***

CORAM:
JUSTICE SAVITRI RATHO

ORDER
07.07.2022

Order No.

01. This matter is taken up by hybrid mode.
2. This application has been filed by the petitioner-wife under Sections 24 and 151 of C.P.C. for transfer of Succession Misc. Case No.1 of 2022 filed by the opp. party-husband under Section-372 of Indian Succession Act in the Court of learned Civil Judge (Senior Division), Nilgiri to the Court of learned Civil Judge (Senior Division), Bhubaneswar or any other competent Court under the jurisdiction of Hon'ble District Judge, Khurda at Bhubaneswar.
3. Learned counsel for the petitioner submits that Succession Misc Case No. 1 of 2022 has been filed by her father-in-law in respect of the LIC policy bearing No.857932027 of her late husband who expired on 14.5.2021 in KIIMs Hospital, Bhubaneswar and the death certificate has been annexed as Annexure-3 to the TRP (C). He further submits that the petitioner is residing with her minor son in Bhubaneswar for which it would

be inconvenient for her to travel to Nilgiri which is approximately 190 K.Ms from Bhubaneswar.

4. Referring to Section-371 of the Indian Succession Act, 1925, learned counsel for the petitioner further submits that as the deceased died in Bhubaneswar, the case should have been filed at Bhubaneswar for which this application for transfer should be considered.

5. Section 371 of the Indian Succession Act, 1925 is extracted herein below:-

371. Court having jurisdiction to grant certificate.—

The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.

6. Perused the petition in Succession Misc. Case No.01 of 2022 and the show cause filed on behalf of the petitioner which have been annexed to this transfer application. In the petition it has been stated that the LIC policy has been opened by the petitioner at Jajpur Branch on 10.02.2021 while he was working as Software Developer in Punctuations Solution Pvt. Ltd. Software Company at Palghar, Maharashtra and he is a permanent resident of village, Shyamasundarpur, P.S., Nilgiri in the district of Balasore. The show cause filed by opp. party in Succession Misc. Case No.1 of 2022 has been annexed as Annexure-2 to this transfer application, wherein it has been stated that the son of the petitioner died on 14.5.2021 at KIIMS Hospital, Bhubaneswar, but there is no

avermment nor any material that the property in respect of which Succession Case has been filed is situated in Bhubaneswar.

7. The first part of Section 371 refers to the place "*the deceased ordinarily resided at the time of his death*". The deceased had a transferable job. So in my opinion, the place where he was last posted or his permanent address could be taken to be the place where he ordinarily resided at the time of his death. So, even though he died in Bhubaneswar, it is apparent that he was residing at Bhubaneswar for his treatment and was not working or posted there, so it cannot be held to be the place where he ordinarily resided. Therefore in view of specific provision under Section 371 of the Indian Succession Act, it cannot be said that the Court of the learned Civil Judge (Senior Division), Nilgiri has no jurisdiction to decide the case.

8. I also find that the petitioner in the Succession case who is the father in law of the petitioner is aged about 70 years and he has stated in his application that he is old and ailing. Show cause has been filed by the petitioner in the case in April 2022. So even though I feel that the petitioner who has a young child will face inconvenience travelling to Nilgiri from Bhubaneswar, to contest the case, but in view of the age of the Opp Party, I do not think it would be in the interest of justice to transfer Succession Misc. Case No.1 of 2022 from Nilgiri to Bhubaneswar at this stage.

9. At this juncture, learned counsel for the petitioner submits that the petitioner may be permitted to make a motion before the learned Civil Judge (Senior Division), Nilgiri for early disposal of the case. As early disposal of the case would be in the interest of

both the parties, I therefore direct that if such an application is filed, the learned Civil Judge (Senior Division), Nilgiri shall consider the same sympathetically. It is also observed that in case the petitioner wants to adduce evidence or cross examine any witness through video conferencing, the same shall be considered in accordance with law by the learned Civil Judge (Senior Division), Nilgiri. Liberty is also granted to the petitioner to approach this Court in case any compelling circumstances arise in the future.

10. With the aforesaid observations and direction, the TRP (C) is dismissed.

11. Before parting with the case, I would like to add a few words of appreciation for Mr. Hara Prasad Panda, learned counsel for the petitioner who is a new entrant to the profession, but has conducted the case in a very efficient and impressive manner.

12. Urgent certified copy of this order be granted as per rules.

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Savitri Ratho
Judge

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