

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.37556 of 2020

Smt. Anupama Kar @ Panda ***Petitioner***

-versus-

Sabitri Panda @ Acharya and ***Opposite Parties***
others

CORAM: JUSTICE S. PUJAHARI

ORDER

13.04.2022

Order

No.

12.

1. This matter is taken up through hybrid mode.
2. This writ petition has been filed by the Petitioner with a prayer to set aside the orders dated 22nd November, 2019 and 6th December, 2019 passed by the learned Senior Civil Judge, Balasore in Intestate Case No.04 of 2019 consequently directing the learned court below to exempt the Succession Duty in Intestate Case No.04 of 2019 with further direction to issue Succession Certificate in her favour.
3. Heard.
4. The Petitioner has challenged the order dated 6th December, 2019 passed by the learned Senior Civil Judge, Balasore wherein the prayer for exemption of duty for issuing succession certificate and also prayer for exemption of duty for temporary period at the initial stage.

5. As it appears, the court refuse to review its earlier order inasmuch as the earlier order passed the Court had held that the exemption claimed in view of the circular of the Government of Orissa vide its Law Department Notification, has no application to succession certificate.

6. Counter affidavit has also been filed by the Opposite Parties No.1 and 2 defending the order of the trial court.

7. During the course of hearing, learned counsel for the Petitioner fairly admits that the exemption is not applicable to the present case inasmuch as the sum payable is not a court fee as has been held by the Division Bench of this Court in the case of ***Hasina Bibi v. Amurat Bibi and others, reported in AIR 2003 Orissa 205.***

8. In the case of *Hasina Bibi* (supra), this Court at paragraph-6 have held as follows:-

“6. For the reasons aforesaid, we have no hesitation to hold that the ‘sum’ payable on the application for grant of certificate being not court-fee, the Government Notification dated 7.6.1994, has no application. It can however, be pressed into service after termination of the proceeding for grant of succession certificate in favour of the applicant. In view of what has been stated above, the view taken by the learned single Judge in Sharmila Das (supra) is correct and the case of Smt. Saudamini Das (Supra) has not been correctly decided which is hereby overruled.”

9. However, learned counsel for the Opposite Parties No.1 and 2 submits that in the decision rendered, it has not been stated that the sum deposited though not court fee and can be pressed into the service after termination of the proceeding for succession certificate in favour of the applicant, no proposition has been laid down that the Petitioner can prosecute a probate proceeding without payment of the same.

10. Without expression any opinion on the merit of the contention of the parties, since the Petitioner had sought for exemption of the court fee in view of the circular of the Government of Orissa vide its Law Department Notification and the Court rendered decision in that contest, this Court, while not interfering with the impugned order, dispose of this writ petition asking the Petitioner to file a fresh petition along with a copy of this order seeking payment of the court fee on conclusion of the proceeding within a month hence, the court concerned shall on hearing the parties and taking note of the law laid down in this regard, shall decide the same not later than fifteen working days of filing of such application.

(S. Pujahari)
Judge

DA