

AD-25
Ct No.09
06.06.2023
TN

WPA No. 1496 of 2023

Smt Shibani Sardar
Vs.
The District Magistrate & Collector, South 24-
Parganas and others

Mr. Saibal Acharyya,
Mr. Ambu Bindu Chakraborty,
Ms. Mrinmoyee Roy Chowdhury
.... for the petitioner

Despite service, none appears for the respondents at the time of call.

The affidavit-of-service filed in court today be kept on record.

The petitioner is a lady of humble means and makes her livelihood by working in several households as maid/cook.

The petitioner had obtained a Legal Heir Certificate on the demise of her husband late Ranajit Sardar. The petitioner produced before all relevant authorities, and has also annexed copies to the present writ petition, several documents to establish her entitlement as heir of her deceased husband Ranajit Sardar.

At page – 14 of the writ petition, a Certificate of Death of the said Ranajit Sardar on June 21, 2009 has been annexed. That apart, the petitioner has also

annexed voters' lists of several periods, her ration card, voter's identity card, Aadhaar card, certificates issued by the Block Development Officer, by the Pradhan of the local gram panchayat, the Sub-Divisional Officer as well as the District Magistrate, South 24-Parganas, apart from an affidavit affirmed by her before the concerned Judicial Magistrate, to establish that she was indeed entitled to have the benefits as a legal heir of the deceased Ranajit Sardar, with regard to the service where the deceased was employed prior to his death.

However, by the impugned order dated June 07, 2022, the Additional District Magistrate (General), District: South 24-Parganas cancelled the Legal Heir Certificate issued previously in favour of the petitioner and observed that after hearing the contention of the parties, it was found that the Legal Heir Certificate issued by the office vide Memo No. RM/433 dated April 30, 2015 was factually incorrect. It was ordered further that a rectified Legal Heir Certificate of late Ranajit Sardar be issued after enquiry.

It is seen from the records further that the complainant, at whose behest the revocation was made, was the present respondent no.4, namely, one Sri Biswajit Sar, alias Sardar, who is a brother of the deceased Ranajit Sardar.

As such, obviously, the said Biswajit Sar, alias Sardar has a vested interest in the matter, as in the absence of the petitioner, who is the widow of the deceased, it would be the said Biswajit Sar @ Sardar who would probably be entitled to the benefits accrued to the deceased after his demise.

However, the flimsy pretext on which the revocation was effected by the impugned order, cannot be sustained.

The Additional District Magistrate proceeded merely on the premise of a certified copy of an *ex parte* decree purportedly passed in Matrimonial Suit No. 159 of 2016 by the Additional District Judge, Haldia, District: Purba Medinipur dated December 03, 2016, which indicated dissolution of marriage between the petitioner and one Ashok Pramanik.

First, the said Ashok Pramanik has never come forward to produce such certified copy and/or to prove any document in support of his subsisting marriage with the present petitioner at the relevant juncture, that is, on June 21, 2009, on which date the said Ranajit Sardar met his demise.

Even taking into consideration the effect of Section 41 of the Indian Evidence Act, which confers the status of a judgment in *rem* on a matrimonial decree, it cannot be said without reasonable doubt

that mere production of the said certified copy, even if the same operates as a judgment in *rem*, would be sufficient to vitiate the Legal Heir Certificate obtained by the petitioner Shibani on the demise of her husband Ranajit Sardar. Apart from the fact that Ranajit Sardar died in the year 2009, which was seven years prior to the decree being purportedly passed, it is evident that there is nothing to indicate that Shibani had not been married to Ranajit Sardar till his demise, even if for argument's sake it is assumed that she was subsequently married to the said Ashok Pramanik who obtained a decree for divorce.

The interregnum period between the year 2009 and 2016, in any event, is under shadow insofar as nothing has been substantiated to indicate as to when the present petitioner was married to the said Ashok Pramanik, if at all. We cannot brush aside the fact that the decree was passed *ex parte*, although the same has equal binding effect as a contested decree. We are also not sure of the fact as to whether the petitioner was duly served prior to the said decree being passed.

Although the certified copy itself is *prima facie* proof of such decree, in view of the same having been passed more than seven years after the date of demise of Ranajit Sardar, mere existence of the said decree

cannot nullify the legal heir certificate obtained by the petitioner on the demise of Ranajit Sardar.

In any event, the legal heir certificate was granted in the first place to the petitioner upon being substantially and sufficiently satisfied as to her entitlement to the same. Such entitlement has also been amply demonstrated by the several documents, photocopies of which have been annexed to the present writ petition.

In the absence of the same being controverted by the respondent-authorities or the private respondent, there is no reason to justify the order impugned in the present writ petition.

Hence, the Additional District Magistrate acted patently without jurisdiction in revoking the Legal Heir Certificate of the petitioner on the demise of Ranajit Sardar and issuing a fresh enquiry in that regard.

In such view of the matter, WPA No. 1496 of 2023 is allowed, thereby setting aside and quashing the impugned order dated June 07, 2022 passed by the Additional District Magistrate (General), District: South 24-Parganas on the complaint of the present respondent no.4, whereby the Legal Heir Certificate of the petitioner was revoked and a fresh enquiry was

directed. Any step, if taken pursuant to the impugned decision, is also hereby set aside and reversed.

It is made clear, to remove all probable doubts, that the Legal Heir Certificate issued by the concerned authorities vide Memo No. RM/433 dated April 30, 2015 in favour of the petitioner on the demise of her husband late Ranajit Sardar is revived and shall, for all practical purposes, be relied on as valid by any authority before which the same is produced by the petitioner.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)