

**Singha Kisku
Vs.
Smt. Alamani Kisku**

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The appellant is not represented.

The matter is appearing in the list since 6th February, 2023. Therefore, the appellant has due notice.

The appeal is defective since 25th January, 2016. Since then no attempt has been made to remove such defects.

The appellate judgment and decree dated 15th September, 2015 affirming the judgment and decree passed by the trial court on 29th June, 2010 in a suit for declaration and enjoyment is the subject matter of challenge in this second appeal.

We have carefully gone through the judgment of the trial court as well as the first appellate court and grounds of appeal.

The issue involved with regard to the entitlement of the plaintiffs to receive the death benefit of Singrai Kisku, since deceased. The suit was decreed in part against the defendant nos. 3 and 4 and ex parte against the defendant nos. 1 and 2.

Singha Kisku, the present appellant here, claimed herself to be the wife of Singrai Kisku.

It appears from the judgment of the first appellate court that the plaintiff no. 1 is the legally married wife of deceased Singrai Kisku and the plaintiff nos. 2 and 3 are their children and that they are entitled to get all benefits from defendant nos. 1,2 and 3 being legal heirs of deceased Singrai Kisku, who happened to be an

employee under them and also permanent injunction against defendant no. 4 (appellant named Singha Kisku) from claiming any death benefit of Singrai Kisku from defendant nos. 1-3 before the Court of Civil Judge (Junior Division), 2nd Court Chandernagore in T.S No. 46 of 2003.

The plaintiffs alleged that the deceased Singrai Kisku married plaintiff no. 1, 25 years before filing of said Title Suit and resided as husband and wife at village Anantapur, P.S. Haripal, District-Hooghly. They belonged to schedule tribe community. Out of their nuptial tie they have two children, namely, plaintiff nos. 2 and 3. During lifetime of said Singrai Kisku, he gave his daughter, namely, plaintiff no. 2 in marriage with one Sambhu Murmu in the month of Falgun 1405 (B.S). Said Singrai Kisku was an employee of P.W.D (Roads) under defendant nos. 1,2 and 3, who died on 20.02.2003 in harness. After his death the plaintiffs approached before defendant nos. 1 to 3 with their claim to receive the death benefit of Singrai Kisku when the authority/defendant nos. 1,2 and 3 informed them that defendant no. 4 (Singha Kisku) has also preferred her claim over death benefit as legally married wife of deceased Singrai Kisku. That defendant no. 4 with the help of some of the officer of defendant nos. 1 –3 has been trying to receive all death benefits of deceased Singrai Kisku. Finding their legal and bona fide claim being clouded the plaintiff nos. 1,2 and 3 preferred this Title Suit.

Defendant no. 3 (Asst. Engineer P.W.D Roads) has contested this Suit by filing written statement wherein material allegation against the Officers of defendant nos. 1-3 is denied.

Specific defence in the amended written statement is that defendant no. 4 and plaintiff no. 1 has separately lodged their claim as legally married wife of late Singrai Kisku. That in the office record defendant no. 4, wife of Late Singrai Kisku is nominated in his P.F, Pension, Group Insurance cum Saving Scheme and other documents and the names of their children named Gopal Kisku and Mongal Kisku is recorded as second nominee. That Gram Panchayat Pradhan of Balaragh and Gram Panchayat Pradhan of Jirat have certified the status of defendant no. 4 as legal wife of said Singrai Kisku in separate certificate. Opposing claim of plaintiff nos. 1-3 as legal heir of late Singrai Kisku, the defendant no. 3, emphasized upon liability of the plaintiffs to prove their claim by filing their documents.

The case of the defendant no. 4 as made out in her written statement is that the plaintiff no. 1 was never married with Singrai Kisku and they have no children out of their marriage. Her specific claim is that she is the only legally married wife of Singrai Kisku and they have two sons and four daughters out of their wedlock who are legally entitled to get all death benefits of said Singrai Kisku.

The trial court on consideration of the materials on record declared that the plaintiff nos. 1 to 3 are the legal heirs and successors of deceased Singrai Kisku and they are entitled to get death benefit left by Singrai Kisku along with defendant no. 4 and her two children as per the Hindu Succession Act proportionately in the light of the observation i.e. $1/6^{\text{th}}$ each. The appellant was the defendant no. 4 in the trial court. She

Claimed to be the only legally married wife of the deceased and she is nominated in the service record while two sons Gopal Kisku and Mongal Kisku claiming death benefit of said deceased. The trial court on the basis of voter identity card of the plaintiff no. 1 and family ration card standing in the name of their children came to the conclusion that the plaintiff no. 1 is the wife and the plaintiff nos. 2 and 3 are the children of the deceased.

The trial court has also relied upon the certificate of Pradhan, Patra Gram Panchayat certifying the death of Singrai Kisku who died on 20.02.2003 leaving behind plaintiff no. 1 to 3 as his legal heirs. The trial court also relied upon the family photographs and other documents showing marital status of the plaintiff no. 1 with the deceased. It is also evident from the evidence led by P.W 2, Surjahan Begam and P.W 3, Saila Bala Dasi, who deposed that they used to live in the same village where Singrai Kisku resided and P.W 3 witnessed the marriage between the plaintiff no. 1 and Singrai Kisku which took place almost 32 to 35 years back. P.W 3 also in her cross-examination admitted that the Singrai Kisku died in his house and the children were living with the said deceased.

It has been rightly held by both the courts below that the nominee is entitled to receive the money and to hold the said amount to a trust to the legal heirs of the deceased. In the instant case, the marriage of the plaintiff no. 1 with the deceased could not be proved.

In view of the aforesaid, we do not interfere with the judgment of first appellate court as well as the trial court and there is no substantial

question of law involved in this second appeal.

On such consideration, the appeal is accordingly dismissed at the admission stage.

Interim order, if any, stands vacated.

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)