

14.03.2023
Court No. 19
Item no.10
CP

W.P.A. No. 5020 of 2023
Smt. Mithu Biswas @ Mithu Rani Biswas
Vs.
The State of West Bengal & Ors.

Mr. Sanjib Seth
Mr. Saptarshi Basu
Ms. Basanti Saren
Ms. Saheli Sur

....for the petitioner.

Mr. Sarwar Jahan
Mr. A. Mondal
Mr. T. Shit

....for the respondent no. 2.

Mr. Manas Kumar Das
Mr. Aritra Kumar Thokdar

....for the respondent nos. 5 & 6.

The petitioner prays for cancellation of the heirship certificate given by the Shyamnagar Gram Panchayat in favour of the respondent nos. 5 & 6. The petitioner submits that she was the legally married wife of the deceased Asit Baran Biswas @ Asit Biswas. That the marriage between Asit Baran Biswas @ Asit Biswas and the petitioner was solemnized on April 21, 1986. Thereafter they started living together as husband and wife. The couple was childless.

The marriage certificate has been annexed.

Learned advocate for the respondent nos. 5 & 6 submits documents like Aadhar Card, Ration Card, Death Certificate, Voter ID Card, Mark Sheets of the daughter etc. which indicate that Manali Biswas is the daughter of Asit Baran Biswas @ Asit Biswas and Chumki Biswas is the widow of Asit Baran Biswas @ Asit Biswas.

Mr. Jahan, learned advocate appearing for the respondent gram panchayat, submits that the petitioner did not reside within the territorial jurisdiction of Shyamnagar Gram Panchayat. The respondent nos. 5 & 6 were residing with the deceased for the past 20 years. Upon enquiry and upon perusal of the documents which were submitted by the respondent nos. 5 & 6, the heirship certificate was given. The existence of the petitioner or the relationship of the petitioner qua the deceased was not known to the panchayat authorities. The local enquiry also revealed that the deceased resided with Chumki and Manali.

Admittedly, heirship certificate is not a document of title. Asit Baran Biswas @ Asit Biswas's title will pass as per the laws of inheritance or as per his Will, if any, upon grant of probate. The heirship certificate is only a document for official use and for disposal of certain formalities. However, as there is a dispute with regard to the status of the petitioner

and Chumki Biswas and both claim to be the wives of the deceased Asit Baran Biswas @ Asit Biswas, the court is of the view that the civil court is the only forum which can decide the same.

The petitioner is entitled to file a suit for declaration of her status, for cancellation of the heirship certificate and also for injunction restraining the defendants from giving effect to such heirship certificate. If such suit is filed, the same shall proceed in accordance with law and independently.

The respondent nos. 5 & 6 shall be allowed to contest the suit. All actions that may have taken on the basis of the alleged heirship certificate shall abide by the result of the suit or the order of injunction, as the case may be.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)