

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1620 of 2019**

1. Maya Devi W/o Late Lakshman Ram @ Laxman Ram R/o Mohalla Surkhi Mill Bairagi, Town/ Village- Nagar Nigam, Gaya, P.S.- Delha, Distt.- Gaya.
2. Akash Kumar S/o Late Lakshman Ram @ Laxman Ram R/o Mohalla Surkhi Mill Bairagi, Town/ Village- Nagar Nigam, Gaya, P.S.- Delha, Distt.- Gaya.

... .. Petitioners

Versus

1. Sunila Devi D/o Dino Paswan resident of Mohalla- Bhajari Tola, Ward no.- 31, Viveka Nand Chowk, Power House Road Purani Machhli Bazar, Begusrai, P.O., P.S. and District- Begusarai.
2. Sonu Kumar S/o Sunila Devi is under guardianship of his mother, resident of Mohalla- Bhajari Tola, Ward no.- 31, Viveka Nand Chowk, Power House Road Purani Machhli Bazar, Begusraai, P.O., P.S. and District- Begusarai.
3. Radha Kumari D/o Sunila Devi Daughter of Late Laxman Ram, is under guardianship of her mother, resident of Mohalla- Bhajari Tola, Ward no.- 31, Viveka Nand Chowk, Power House Road Purani Machhli Bazar, Begusraai, P.O., P.S. and District- Begusarai.
4. Priti Kumari D/o Sunila Devi Daughter of Late Laxman Ram, is under guardianship of her mother, resident of Mohalla- Bhajari Tola, Ward no.- 31, Viveka Nand Chowk, Power House Road Purani Machhli Bazar, Begusraai, P.O., P.S. and District- Begusarai.

... .. Respondents

Appearance :

For the Petitioner/s : Dr. Mallika Nawal, Advocate
For the Respondent/s : Mr. Pravin Chandra Prasad, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 16-07-2024

The present petition has been filed by the petitioner under Article 227 of the Constitution of India for quashing the order dated 04.07.2017 passed by the learned Sub-Judge-I, Begusarai in Succession Case No. 14 of 2015, whereby and whereunder the learned Sub Judge-I, Begusarai declared the plaintiffs/respondents as legal heirs and successors of one late



Laxman Ram, who was an employee of East Central Railway, Sonapur.

02. Briefly stated, the facts of the case are that the petitioners, who were defendants before the learned trial court, claimed themselves to be the real legal heirs and successors of late Laxman Ram. The defendant/petitioner no. 1 claims to be the legally wedded wife of late Laxman Ram and defendant/petitioner no. 2 is the son of defendant/petitioner no. 1 with late Laxman Ram. The marriage between Laxman Ram and defendant/petitioner no. 1 was solemnized in the year 1993. It further appears from the record that plaintiffs/respondents filed Succession Case No. 14 of 2015 and has been able to obtain a Succession Certificate as the learned trial court held that defendant/petitioner no. 1 was the first wife of late Laxman Ram but she had no issues with late Laxman Ram and thereafter she left him and married with one Dharamraj Ram @ Dharamraj Paswan. After the petitioner no. 1 deserted Laxman Ram, he entered into wedlock with the plaintiff/respondent no.1. Proceeding on this assumption, the learned trial court held that marriage between Laxman Ram and defendant/petitioner no. 1 had got dissolved and thereafter late Laxman Ram married with the plaintiff/respondent no. 1 in 1998 and held that the



respondents were entitled to get all the death benefits of late Laxman Ram dues from East Central Railway, Sonapur Division. The petitioner no. 1 was also held to be entitled to get family pension. This order has been challenged in the present case by the petitioners.

03. Learned counsel for the petitioners submits that the learned trial court has passed the order in a mechanical manner without applying its judicial mind. The learned trial court has not considered the fact that a petition for grant of succession certificate was not maintainable before it as the case was directly filed before the learned Subordinate Judge and not before the learned District Judge. Even if it was filed before learned Subordinate Judge, it could have brought the matter to the notice learned District Judge and thereafter the District Judge could have allowed the matter to proceed before the learned Subordinate Judge. The learned trial court committed further error when it proceeded in the matter when the matter was not maintainable before it on the ground of lack of jurisdiction relating to competency as well as territorial jurisdiction. Under Section 372 of the Indian Succession Act (for short 'the Act'), an application for certificate of succession is required to be filed before the court of learned District Judge.



The jurisdiction of the District Judge will be decided by the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits. In the present case, the deceased was ordinarily residents of district-Gaya whereas the petition has been filed in district-Begusarai, that too, in the court of learned Subordinate Judge. Learned counsel further submitted that even on merits of the case, the learned trial court has committed gross mistake and the impugned order is completely erroneous. The learned trial court failed to appreciate the fact that due to subsistence of first marriage, second marriage is void under the Hindu Marriage Act, 1955 and also as per the provisions of the Railway Services (Conduct) Rules, 1966. The learned trial court without any documentary evidence and merely on oral submission and oral evidence, declared the defendant/petitioner no. 1 as ex-wife of late Laxman Ram, which is a perverse finding. The marriage of deceased Laxman Ram was solemnized with petitioner no. 1 in the year 1993 and the deceased Laxman Ram, during his lifetime, has nominated petitioner no. 1 as nominee in his service-book and also in his bank account and never changed



the same. In the Attendance (*Upasthiti Pehchan-Patra*) submitted to the Railway in the year 2011, the deceased Laxman Ram had clearly indicated that petitioner no. 1 was his wife and petitioner no. 2 was his son. The respondent no. 1 has claimed that petitioner no. 1 solemnized another marriage with Dharamraj Paswan, but the said Dharamraj Paswan is none other but the younger brother of late Laxman Ram, who is already married and living with his own separate family and has no concern with the petitioners. Even Rule 21 of the Railway Services (Conduct) Rules, 1966 categorically stated that 'no railway servant, having a spouse living shall enter into, or contract, a marriage with any person'. The second marriage during subsistence of first marriage has got no legal sanctity and the Hindu Marriage act makes such marriage *void-ab-initio*. Thus, the learned counsel submitted that the learned trial court has passed an erroneous order and the said order is not sustainable and must be set aside.

04. Learned counsel appearing on behalf of the respondents vehemently opposed the submission made on behalf of the petitioners. Learned counsel for the respondents submitted that there is no question of impugned order being passed by the court of incompetent jurisdiction. The Subordinate



Judge acts as a delegate Judge of the District Judge and Section 388 of the Act also provides that the State Government may, by notification in the Official Gazette, invest any court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part and such inferior court so invested with the power shall have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by the Statute upon the District Judge, and the provisions relating to the District Judge shall apply to such inferior court as if it were a District Judge. Learned counsel further submitted that so far as territorial jurisdiction is concerned, admittedly, Laxman Ram died within the jurisdiction of the court at Begusarai. Under Section 372 of the Act provides that a petition for issuance of succession certificate shall be filed at the place where the deceased ordinarily resided and since the deceased ordinarily resided within the jurisdiction of Begusarai, the case has been rightly filed before the court at district-Begusarai. Learned counsel further submitted that in 1993, petitioner Maya Devi left her husband and solemnized marriage with Dharamraj Paswan and since then they have been living their conjugal life together. After desertion of the petitioner no. 1, Laxman Ram solemnized marriage with respondent Sunila Devi in the year



1995 and she gave birth to three children, one son and two daughters from this wedlock. All children are minor and under their natural guardian. Sometimes after the marriage, the relationship deteriorated between the deceased Laxman Ram and Sunila Devi and she filed a maintenance case bearing no. 10 of 2006 against Laxman Ram in the Family Court, Begusarai and the said case was compromised and a compromise petitioner was filed before the Family Court, Begusarai. The matter was disposed of in view of compromise with direction to Laxman Ram to get the name of Sunila Devi entered in his service-book in place of first wife Maya Devi. The learned Family Court also sent a request letter to the Divisional Railway Manager and other authorities to get the name of Sunila Devi entered in the service-book of Laxman Ram and also directed them to pay maintenance amount of Rs. 3,000/- per mother after deducting it from the salary of Laxman Ram. Learned counsel further submitted that Laxman Ram died on 15.05.2014 at Muzaffarpur when he was posted there as R.R. Cook Diesel Lobby Muzaffarpur. Learned counsel further submitted that though a number of claims have been made on behalf of the petitioner Maya Devi and his son, they have not produced a single witness in support of the claim made in objection petition



filed by them. They did not even cross-examine the witnesses of the respondent no. 1 and the evidence of such witnesses attained finality. Thus, the learned counsel submitted that there is no infirmity in the impugned order and the same needs to be sustained.

05. I have given my thoughtful consideration to the submission made on behalf of the parties. So far as competency of the court of learned Subordinate Judge to accept the filing and hear the matter for grant of succession certificate is concerned, Section 372 of the Act provides for institution of the application in this regard. Section 372 of the Act reads as under:-

“ 372. Application for certificate. —

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the



deceased within those limits;
(c) the family or other near relatives of the deceased and their respective residences;
(d) the right in which the petitioner claims;
(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.”

06. A plain reading of this provision leaves an impression that all application(s) seeking grant of succession certificate should necessarily be filed before the learned District Judge. However, there could be investiture of power to the courts inferior to the Court of District Judge to exercise the function of District Judge under Part 10 of the Indian Succession Act. The relevant provisions are sub-sections (1) and (2) of Section 388 of the Act, which read as under:-



“Section 388. Investiture of inferior courts with jurisdiction of District Court for purposes of this Act.

(1) The State Government may by notification in the Official Gazette, invest any court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior court as if it were a District Judge:

Provided that

(3)

(4)

(5)

(6) ”

Thus, reading of aforesaid two provisions make it clear that even an inferior court so invested with the power shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge. So, the contention of the learned counsel for the petitioner with regard to competency of learned Sub Judge for accepting the application for grant of succession certificate and dispose of the same in terms of Section 371 of the Act is not sustainable in the light of specific



provisions of law.

07. So far as second contention of the learned counsel for the petitioner with regard to territorial jurisdiction is concerned, it appears from the impugned order that the deceased Laxman Ram is stated be an employee of East Central Railway, Sonapur and was posted at Garhara, Barauni Junction and was living at Quarter No. 61-L/B, South Railway Colony Garhara, PS-GRP, District-Begusarai. However, from the counter affidavit, I find that the respondents have stated that Laxman Ram died on 15.05.2014 at Muzaffarpur and this fact is also mentioned in the impugned order. There appears some doubt over the ordinary place of residence of the deceased at the time of his death. The learned trial court should have given an unequivocal finding on this aspect of the matter. But, as it appears from the record that the petitioner no. 1 appeared and filed objection but did not lead any evidence, so option before the learned trial court was limited.

Further, the status of defendant/respondent no. 1 has come to be challenged. Admittedly, the petitioner no. 1 was the first wife of the deceased and from the impugned order, I do not find any material to infer that the marriage was dissolved in manner known to law. If the marriage was subsisting between



the petitioner Maya Devi and Laxman Ram, the second marriage solemnized during subsistence of the first marriage could not be said to be valid and legitimate marriage. However, there are certain intervening circumstances like, respondent no. 1 filed a petition before the learned Family Court, Begusarai, where a compromise took place between Laxman Ram and respondent Sunila Devi admitting her status as his wife but the said status was not being reflected in the record. The service book and other documents still continue to show the petitioner Maya Devi and her son Akash Kumar as the family members and nominee of late Laxman Ram. This factor was required to be taken into consideration by the learned trial court but the learned trial court proceeded in the matter without ascertaining the exact status of the plaintiffs before it and, in my considered opinion, thus arrived at an erroneous finding which could not be sustained.

08. Therefore, for the reasons mentioned in the aforesaid discussion, I am of the considered opinion that the impugned order is not sustainable. The learned trial court is required to record unequivocal finding with regard to issues discussed here-in-above and for this reason, the order dated 04.07.2017 passed by the learned Sub-Judge-I, Begusarai in



Succession Case No. 14 of 2015 is set aside.

09. As as result, the present Civil Misc. Petition stands allowed.

10. However, this Court has not expressed any opinion on the merits of the case of either parties and the learned trial court is free to form its opinion after due deliberation on the facts of the case uninfluenced by the order passed by this Court within three months from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	25.06.2024
Uploading Date	16.07.2024
Transmission Date	NA

