IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 5189 of 2014

1. Parwati Devi, wife of Late Baleshwar Dhobi
2. Sarita Kumari (Minor)
3. Sangita Kumari (Minor)
   Both are Minor daughters of Late Baleshwar Dhobi
4. Anand Rajak @ Anand Kumar Rajak (Minor)
   Son of Late Baleshwar Dhobi
   All are residents of Village- Bhullo, P.O. & P.S. Sikandra, District- Jamui (Bihar), at present all residents of Bhagabandh, Tinpatia, P.O. Bhagabandh, P.S. Putki, District- Dhanbad (Minor being represented by their natural guardian mother namely Parwati Devi)

... Petitioners

-Versus-

1. Surji Devi, W/o Late Soharai Dhobi (Mother of Late Baleshwar Dhobi)
2. Gita Devi, W/o Shri Mahadeo Rajak (Daughter of Late Baleshwar Dhobi)
3. Rina Devi, W/o Shri Neharu Rajak (Daughter of Late Baleshwar Dhobi)

4(i). Asha Devi, W/o Dullu Rajak, R/o Rajak Tola, Chalkari, Jaridih Bazar, P.O. & P.S. Bokaro

4(ii). Savitri Devi, W/o Vinod Rajak, R/o Baliyari, P.O. Jhari, P.S. Amas, District- Gaya, Bihar

4(iii). Sumitra Devi, W/o Gyanchand Rajak, R/o Vill. Chandabad, P.O. Kurumba, P.S. Chandrapura, District- Bokaro

4(iv). Shivshankar Dhobi, S/o Late Baleshwar Dhobi

4(v). Mithun Rajak, S/o Late Baleshwar Dhobi, both residing at Tinpatya Basti, Near Purana Durga Mandir, Bhagabandh, Nirsa cum Chirkunda, District- Dhanbad

5. The Commissioner, C.M.P.F., Dhanbad, P.O., P.S. & Dist.- Dhanbad
6. Project Officer, B.C.C.L. Bhagabandh Colliery, P.O. Bhagabandh, P.S. Putki, District- Dhanbad

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Shekhar Prasad Sinha, Advocate
For Legal Heirs of Resp. No.4 : Mr. Ajay Kumar Sah, Advocate
For Resp. Nos.1-3, 5 & 6 : None

17/14.09.2026 On repeated calls, nobody has appeared on behalf of respondent nos. 1 to 3, 5 and 6. Learned counsel for the petitioners and legal heirs of respondent no.4 are present.

2. It transpires from the order dated 09.11.2016 that Mr. Nitish Krishna, learned counsel has appeared on behalf of respondent nos. 1 to 3. Mr. Indrajit Sinha, learned counsel has appeared on behalf of respondent no.4.

Respondent no.5 has also filed counter affidavit. Thereafter, it appears that respondent nos.1 to 3 and respondent nos. 5 and 6 have chosen not to appear in the case as their appearance is not shown in the orders dated 21.01.2020, 13.02.2020, 27.01.2021, 19.04.2023, 16.05.2023, 27.06.2023, 01.08.2023 and 28.08.2023. Further on 12.01.2024, Mr. Akhouri Avinash Kumar, learned counsel has entered his appearance on behalf of substituted respondent no.4 and took two weeks' time to file Vakalatnama on behalf of legal heirs of respondent no.4. Mr. Ajay Kumar Sah, learned counsel submits that he has been instructed to appear on behalf of legal heirs of respondent no.4.

3. In view of the aforesaid orders, it transpires that respondent nos. 1 to 3 and respondent nos. 5 and 6 have got no interest to pursue this matter. This matter is of the year 2014 and in that view of the matter, this writ petition is being heard and decided in absence of respondent nos. 1 to 3 and respondent nos. 5 and 6.

4. This writ petition has been filed under Article 227 of the Constitution of India for quashing the order dated 21.08.2014 passed by the learned District Judge-I, Dhanbad in Misc. Appeal No.80/2008, whereby, the appeal preferred by original respondent no.4 has been allowed reversing the judgment and order dated 13.06.2008 passed by the District Delegate, Dhanbad in Succession Case No.144/2000.

5. Mr. Shekhar Prasad Sinha, learned counsel for the petitioners submits that the District Delegate, Dhanbad has passed the order dated 13.06.2008 and in view of that, an appeal will lie before the High Court, however, the learned District Judge-I, Dhanbad has exercised power of appellate authority which is not in accordance with law. He further submits that there are other

points also in the writ petition. He next submits that the petitioners instituted Succession Case No.144/2000 for grant of succession certificate with regard to schedule debt which relates to C.M.P.F account amounting to Rs.28,187/- laying into the credit of Late Baleshwar Dhobi. He submits that Baleshwar Dhobi was the legally married husband of petitioner no.1, namely, Parwati Devi. He then submits that Baleshwar Dhobi died on 04.05.2000 at Central Hospital, Dhanbad and he left the property relates to C.M.P.F. account no.C/2592 as the deceased was an employee of Bhagabandh colliery. He also submits that Baleshwar Dhobi left behind petitioner no.1-wife, petitioner nos. 2 and 3-minor daughters, petitioner no.3-minor son, respondent no.1 who is the mother of Late Baleshwar Dhobi and respondent nos. 2 and 3, who are married daughters of Late Baleshwar Dhobi. He further submits that respondent no.4 has got no relation with Baleshwar Dhobi and in spite of that, she has claimed C.M.P.F. amount of deceased husband of petitioner no.1 and in view of that, learned District Delegate has rightly passed the order in favour of the petitioners, however, the appeal preferred by respondent no.4 being Misc. Appeal No.80/2008 was wrongly allowed by the learned District Judge-I, Dhanbad in favour of original respondent no.4. He submits that the learned appellate court has wrongly passed the impugned order dated 21.08.2014 and in view of that, the impugned order may kindly be set-aside.

6. Mr. Ajay Kumar Sah, learned counsel appearing for legal heirs of respondent no.4 submits that legal heirs of respondent no.4 have instructed him that they have already received the C.M.P.F amount. He further that the learned appellate court has given the reasons and has discussed the evidences placed therein and thereafter passed the impugned order. He

submits that there is no illegality in the impugned order. He further submits that if the District Delegate is acted as the Court of District Judge, an appeal will lie to the District Judge not before the High Court. He also submits that in light of Section 384 of the Indian Succession Act, 1925, if the order of the District Judge has to be challenged, then only the appeal will lie before the High Court. He next submits that in view of that original respondent no.4 has chosen to file appeal before the District Judge-I, Dhanbad. He submits that in view of that the writ petition may kindly be dismissed.

7. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record including the judgment of the learned District Delegate as well as the learned District Judge-I, Dhanbad. So far as the jurisdiction of the District Judge is concerned, the said question is already set at rest in view of the judgment passed by the Bombay High Court in the case of ***Vitthal Ramchandra Mali & etc. v. Smt. Laxmi Ganpati Mali & another etc.***, reported in ***2006 SCC OnLine Bom 550***. The Bombay High Court has considered several Sections of the Indian Succession Act including Sections 384 and 388 of the Indian Succession Act and has come to the conclusion that if the succession case is decided by the inferior Court to the District Judge, appeal will lie before the District Judge. For ready reference, paragraphs 2 to 8 of the said judgment are quoted herein below:

> ***"2.*** *It will be necessary to refer to the relevant provisions of law which are necessary for deciding the aforesaid question. Section 384 of the said Act of 1925 reads thus:*
>
> *"384.Appeal.-(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the*

person to whom the certificate should be granted and direct the District judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final."

(Emphasis supplied)

Section 388 of the said Act of 1925 reads thus:

"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 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 an appeal from any such Provided that an appeal from any such Provided that an appeal from any such order of an inferior Court as is mentioned in order of an inferior Court as is mentioned in order of an inferior Court as is mentioned in sub-section (1) of section 384 shall lie to sub-section (1) of section 384 shall lie to sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, the District Judge, and not to the High Court, the District Judge, and not to the High Court, and that the District Judge may, if he thinks and that the District Judge may, if he thinks and that the District Judge may, if he thinks fit, by his order on the appeal, make any such fit, by his order on the appeal, make any such fit, by his order on the appeal, make any such declaration and direction as that sub-section declaration and direction as that sub-section declaration and direction as that sub-section authorises the High Court to make by its order authorises the High Court to make by its order authorises the High Court to make by its order on an appeal from an order of a District on an appeal from an order of a District on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing

sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908(5 of 1908), as applied by section 141 of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Part from an inferior Court, and may either himself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a Court inferior in grade to a District Judge."

(Emphasis supplied)

Under Section 372 of the said Act of 1925 an Application for grant of succession certificate is required to be made to the District Judge. Sub-section (1) of section 388 of the said Act of 1925 empowers the State Government to invest any court inferior in grade to a District Judge with power to exercise the functions of a District Judge under Part X of the said Act of 1925 which deals with grant of succession certificates. The said power is to be exercised by the State Government by publishing a notification in the official gazette. Proviso to sub-section (2) of section 388 of the said Act of 1925 states that an appeal from any such order of an inferior court shall lie to the District Judge and not to the High Court. Section 384 of the said Act of 1925 provides that an Appeal shall lie to the High Court from an order of District Judge granting, revoking or refusing the succession certificate. On plane reading of the proviso to sub-section 2 of section 388 of the said Act of 1925, irrespective of the value of the subject matter of the Application for succession certificate, an Appeal against an order passed by a court inferior in grade to a District Judge will lie to the District Judge. The proviso will apply when there is a notification issued under sub-section 1 of section 388 by the State Government and the court inferior to a District Judge has exercised the power conferred by such notification.

3. *It is brought to my notice that under section 28-A of the Bombay Civil Courts Act, 1869 (hereinafter referred to as the said Act of 1869) this Court has a power to invest in any Judge powers of a District Judge under certain statutes. Section 28-A reads thus:*

28A. Power to invest civil judges with jurisdiction under certain Acts.

(1) The High Court may by general or special order invest any judge, within such local limits and

subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District judge or a District Court as the case may be under the Indian Succession Act, 1865, under the Indian Succession Act, 1865, under the Indian Succession Act, 1865, probate and Administration Act, 1881, probate and Administration Act, 1881, probate and Administration Act, 1881, or paragraph 5 of Schedule III to the Code of Civil Procedure, 1908.

(2) Every order made by a Civil Judge by Every order made by a Civil Judge by Every order made by a Civil Judge by virtue of the powers conferred upon virtue of the powers conferred upon virtue of the powers conferred upon him under sub-section (1) shall be him under sub-section (1) shall be him under sub-section (1) shall be subject to appeal to the High Court or subject to appeal to the High Court or subject to appeal to the High Court or the District Court according as the the District Court according as the the District Court according as the amount or value of the subject-matter amount or value of the subject-matter amount or value of the subject-matter exceeds or does not exceed two lakh exceeds or does not exceed two lakh exceeds or does not exceed two lakh rupees.

(3) Every order of the District Judge passed in appeal under sub-section (2) from the order or a Civil Judge shall be subject to an appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals from appellate decrees.

(Emphasis supplied)

4. *The Registrar (Judicial I) has submitted a report dated 03rd May, 2006 inviting my attention to a notification dated 25th October, 1890 issued by the Governor in Council. The said notification has been issued in exercise of power conferred on Local Government under section 26(1) of the Succession Certificate Act, 1889 (hereinafter referred to as Act No.VII of 1889). By the said notification, the Governor General in Council invested with the functions of a District Judge under the said Act No.VII of 1889 the courts of all subordinate Judges in the State which have not been already so invested. Under the said Act 1889 a provision was made for grant of succession certificates and jurisdiction to grant succession certificate was vested in District Court.*

5. *It will be also necessary to refer to the relevant paragraphs of the Civil Manual and in particular paragraph Nos.304 and 305 of Chapter XIV. The said paragraphs read thus:*

"304. Attention is invited to Government Notification No.5861, dated the 25th October, 1890, issued under section 26(1) of the Succession Certificate Act (VII of 1889) and printed at page 1259 of the Bombay Local

Rules and Orders under Central Acts, Volume I, 1953 edition, under which all civil judges in this State have for the purpose of the said Act been invested with the function of a District Court. Although the Succession Certificate Act, 1889, has been repealed, the notification, dated 25th October, 1890, remains in force by virtue of section 24 of the General Clauses Act, 1897.

305. (i) Under section 265 of the Indian Succession Act, 1925, the High Court has appointed all Civil Judges to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases arising within the local limits of their respective jurisdiction.

(ii) In exercise of the powers conferred by section 28-A (1) of the Bombay Civil Courts Act (XIV of 1869), the High Court has invested all Civil Judges (Senior Division), with all the powers of a District Judge to take cognizance of any contested proceeding under Indian Succession Act, 1925, arising within the local limits of their respective jurisdiction that may be transferred to them by their respective District Judges.

(iii) In exercise of the powers conferred by section 28-A(1) of the Bombay Civil Courts Act, (XIV of 1869), the High Court has invested all Civil Judges (Junior Division) with all the powers of a District Judge in the matter of issuing Succession Certificate limited to debts and securities to the extent of their pecuniary jurisdiction.

(Emphasis supplied)

6. *The sub-section 1 of 28-A of the said Act of 1869 does not authorise this Court to invest any inferior court with the powers of a District Judge under Chapter X of the said Act of 1925. The sub-section 1 of section 28A authorises this Court to invest in any Civil Judge powers of a District Judge or District Court only under the Indian Succession Act, 1865 and the probate and Administration Act, 1881. Both the said enactments did not confer a power on a District Judge to grant a succession certificate. Both the enactments do not deal with grant of a succession certificate. After the said Act of 1869 came into force, the Act VII of 1889 i.e. the Succession Certificate Act, 1889 was enacted. Under the said Act No. VII of 1889, a power is vested in a District Court to grant a succession certificate in respect of debts payable to the deceased. Section 26(1) empowers the local government by a notification in the official gazette to invest in a court inferior in grade to a District court with the functions of the District Court under the Act. As stated earlier, there is a notification issued under section 26(1) on 25th October, 1890 by the Governor in Council by which the functions of the District Court under the said Act VII of 1889 were invested in all the sub-ordinate Judges in the State. Section 26 of the said Act VII of 1889 reads thus:*

"26. (1) The Local Government may, by notification in the official Gazette, invest any Court inferior in grade

to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.

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

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court, and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorises the High Court make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI and XLVII of the Code of Civil Procedure as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court and may either itself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Court and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local areas.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Court shall for the purposes of this section be deemed to be a Court inferior in grade to a District Court."

7. *Thus, it is apparent that sub-section 1 and sub-section 2 of section 388 of the said Act of 1925 are similar to sub-section 1 and sub-section 2 of section 26 of the said Act VII of 1889. The said Act of 1925 was enacted with a view to consolidate the law applicable to intestate and testamentary succession. The Act VII of 1889 was repealed by the said Act of 1925. Thus, in view of section 24 of the General Clauses Act, 1897 the notification issued on 25th October, 1890 under section 26(1) of the said Act VII of 1889 shall be deemed to be notification under sub-section 1 of section 388 of the said Act of 1925 as the provisions of section 26(1) of the said Act VII of 1889 are not inconsistent with the provisions of the said Act of 1925.*

8. *Therefore, the said notification dated 25th October, 1890 will have to be treated for all purposes as a notification under section 388(1) of the said Act of 1925. If the paragraph*

> *No.304 of the Civil Manual makes this position very clear, it must be noted here that sub-paragraph No.(iii) of paragraph No.305 of the Civil Manual does not appear to be correct as section 28A does not confer a power on this Court to invest any sub-ordinate court with the powers of the District Judge to grant succession certificate."*

8. In view of the above judgment, it is crystal clear that if the inferior Court has passed the order, then the appeal will lie before the learned District Judge and, as such, the point raised by Mr. Shekhar Prasad Sinha, learned counsel for the petitioners is being answered saying that the appeal against the order of the inferior Court will lie before the District Judge.

9. So far as merit of the case is concerned, learned District Court has considered the evidence at paragraph no.11 of the said judgment and has found that Parwati Devi has appeared as P.W.-1, who is petitioner no.1 herein and she has supported her succession certificate and other witnesses have also supported succession certificate but during cross-examination, petitioner no.1 has admitted in para 6 that death of Baleshwar Dhobi has taken place in the house of Shanti Devi because he used to visit in house of Shanti Devi and petitioner no.1 has not been able to disclose the date of death of Late Baleshwar Dhobi. Further, petitioner no.1 has also stated that name of Shanti Devi, original respondent no.4 has been entered in the service book and other relevant place. P.W.3- Manoj Rajak has admitted in para 2 of his cross-examination that death of Baleshwar Dhobi has taken place in hospital where Shanti Devi was present and dead body was handed over to the son of Shanti Devi. P.W.4, who is independent witness has stated in his examination-in-chief that Baleshwar Dhobi has given name of Shanti Devi as nominee in the relevant register of company and he has put signature as witness and later on he came to know that Shanti Devi was not wife of the deceased and he

has also confirmed in cross-examination that deceased has given name of Shanti Devi as his nominee.

10. The learned District Judge-I, Dhanbad has further appreciated the documentary evidence and found that the office of B.D.O. has issued family certificate of late Baleshwar Dhobi and the same office has issued family certificate in the name of Parwati Devi as well as Shanti Devi and both were shown as member of the family of Late Baleshwar Dhobi and both were shown as wife of Late Baleshwar Dhobi.

11. The learned District Judge-I, Dhanbad has further found from the documents adduced on behalf of the contesting respondents before the District Delegate which also goes to show that Form-F of Bharat Coking Coal Limited related with the nomination has been filed and those documents were marked as Ext.2, Ext.C and C/1 on behalf of the appellant before the learned Court and that was further substituted before the learned Court by filing certified copy because original document was taken back after disposal, wherefrom, learned Court has found that Shanti Devi and her children Shiv Shankar Dhobi, Krishna Dhobi, Asha Kumari, Savitri Kumari, Sumitra Kumari, Ganga Devi and Panwa Devi have been mentioned as nominee of deceased Baleshwar Dhobi. The progress report of Indian National Academy School, Bhagabandh which is related with Shiv Shankar was also filed on behalf of the appellant before the learned Court, which was marked as Ext.A in which Baleshwar Rajak was shown as father of Shiv Shanker Rajak and Shiv Shanker Rajak was shown as one of the nominee of Late Baleshwar Dhobi in Form-F and other relevant papers.

12. In the aforesaid background, the learned District Judge-I, Dhanbad has been pleased to reverse the judgment of the District Delegate, which clearly suggests that he has appreciated and found that original respondent no.4 was the nominee and dead body of Baleshwar Dhobi was handed over to her son and further documentary evidence clearly suggests that Shanti Devi was the nominee in the document.

13. In view of the aforesaid facts, it is crystal clear that the learned District Judge-I, Dhanbad has rightly passed the order. There is no illegality in the impugned order and, as such, this writ petition is, hereby, dismissed.

(Sanjay Kumar Dwivedi, J.)

Dated: 14th September, 2026
Ajay/ ***A.F.R.***

Uploaded on
18th September, 2026