

Civil Appeal
Present: The Hon'ble Mr. Justice Bhaskar Bhattacharya
And
The Hon'ble Mr. Justice Prasenjit Mandal
Judgment on: 30.04.2010.
F.A. No. 233 of 2008
Smt. Sandhya Banerjee
Versus
Smt. Shyama Banerjee & Anr.

Points:

SUCCESSION CERTIFICATE: Determination as to the dispute as to who are the heirs and legal representatives of the deceased - whether to be made while granting succession certificate- Indian Succession Act, 1925 (39 of 1925) S. 372

Facts:

Ajit Banerjee married with Renu Banerjee, on 27th April, 1958 and that their mother Renu Banerjee died in the month of December, 1977 of cancer. Ajit Banerjee being married with Renu in the year 1959, the second marriage with Shyama in the year 1965 was invalid and after the death of Renu on 2nd December, 1977 the marriage of Ajit Banerjee with Sandhya was a valid marriage and in such a case, Shyama was not at all a lawful married wife of Ajit Banerjee even if it is assumed that there was so-called marriage between them in the year 1965 and three children were born in the wedlock. In the year 1997, Ajit Banerjee filed a suit for declaration against Shyama being Title Suit No.2365 of 1997 before the learned City Civil Court at Calcutta where the said Ajit Banerjee prayed for decree for declaration that there was no relationship between Ajit and Shyama as husband and wife and that Shyama was not the wife of Ajit. The notice of the said suit was duly served upon Shyama and she received the same but she never appeared in the suit. After the death of Ajit Banerjee, Sandhya had been substituted and the said suit was still pending.

Shyama filed a title suit being Title Suit No.59 of 2001 before the Ninth Bench of City Civil Court at Calcutta where she impleaded Sandhya as party defendant and prayed for a decree of declaration that Shyama and her sons are the legal heirs and representatives of late Ajit Banerjee. The said suit, however, was withdrawn by Shyama on 24th November, 2004. Ajit Banerjee

in the year 1965 married Shyama and two sons were born in their wedlock. Shyama filed a maintenance case against Ajit Banerjee under Section 125 of the Code of Criminal Procedure and in that case, the learned Magistrate was pleased to grant maintenance @ Rs.400/- a month for Shyama and Rs.300/- a month for her minor sons. Sandhya was married to the said Ajit Banerjee in Falgoon, 1978 and Sandhya gave birth to a son, namely, Ashis Banerjee on 12th March, 1983 as a wife of Ajit Banerjee. Shyama being married in the year 1965 and the second marriage of Ajit Banerjee with Sandhya in the year 1978 could not be said to be valid. Sandhya's son should be held to be legitimate son and consequently, Shyama along with her two sons was held to be entitled to 3/4th share in the service benefit while Ashis Banerjee, the son of Sandhya, was entitled to 1/4th share in the service benefit.

Being dissatisfied, Sandhya has come up with the present appeal.

Held-

Whether the marriage between the deceased and Shyama was a valid marriage or whether the ones with Sandhya and Renu were legal or not cannot be decided in these summary proceedings. But the fact remains that all these six children were *prima facie* the children of the deceased.

Para 13

Since of the two contesting claimants as the widow of the deceased, Shyama is the applicant and had two children through her out of the six children and at the same time, Sandhya has also withdrawn some amount of money by virtue of her nomination, Court do not propose to set aside the certificate granted in favour of Shyama and Ashis but want to add some conditions to safeguard the interest of the other heirs as done in the aforesaid decision of the Apex Court. Court modified the certificate impugned to this extent that Shyama would be entitled to withdraw the balance service and the retrial benefit of the deceased to the extent of three-fourth share as directed by the Trial Court provided she gives security to the extent of 13/28th share of the

amount sought to be recovered from the employer to the learned Trial Judge before such withdrawal. Similarly Ashis will be permitted to withdraw one-fourth share as ordered by the Trial Court provided he gives security to the extent of 3/28th share. It is needless to mention that the provident fund dues and some other amount have already been withdrawn by Sandhya by virtue of the order passed in the writ-jurisdiction which has attained finality by virtue of her nomination in her favour and thus, Shyama and Ashis are not required to give any security for that amount. It is needless to mention that nomination does not create any title to the property and by virtue of such nomination, she merely becomes a trustee for the owners. The actual share of the parties to this appeal in the debts payable to the deceased will depend upon the decision of the competent Court in a suit at the instance of any of the heirs of the deceased or by mutual agreement among all the eight persons mentioned above. The security to be given to the learned Trial Judge will continue till the dispute among those persons is resolved in a regularly constituted suit or by agreement among the aforesaid eight persons as mentioned above.

Paras 14 to 16

certificate holder. Any finding recorded by a Court in such a proceeding as regards the relationship of the applicant or the objector with the deceased does not become binding in any subsequent suit for title. At the same time, simply because some disputed questions of fact are involved, a Court dealing with an application under Section 272 should not refuse to grant certificate on that ground alone as the debt due to the deceased may for not grant of certificate become barred or the ultimate heirs may be deprived of the interest on the amount of dues for delay in recovering the amount of debt. Para-9

In such circumstances, since of the two contesting claimants as the widow of the deceased, Shyama is the applicant and had two children through her out of the six children and at the same time, Sandhya has also

withdrawn some amount of money by virtue of her nomination, The Court does not propose to set aside the certificate granted in favour of Shyama and Ashis but want to add some conditions to safeguard the interest of the other heirs as done in the aforesaid decision of the Apex Court. Para-14

The Court therefore, modifies the certificate impugned to this extent that Shyama would be entitled to withdraw the balance service and the retiral benefit of the deceased to the extent of three-fourth share as directed by the Trial Court provided she gives security to the extent of 13/28th share of the amount sought to be recovered from the employer to the learned Trial Judge before such withdrawal. Similarly Ashis will be permitted to withdraw one-fourth share as ordered by the Trial Court provided he gives security to the extent of 3/28th share. It is needless to mention that the provident fund dues and some other amount have already been withdrawn by Sandhya by virtue of the order passed in the writ-jurisdiction which has attained finality by virtue of her nomination in her favour and thus, Shyama and Ashis are not required to give any security for that amount. It is needless to mention that nomination does not create any title to the property and by virtue of such nomination, the nominee merely becomes a trustee for the owners. Para--15

The actual share of the parties to this appeal in the debts payable to the deceased will depend upon the decision of the competent Court in a suit at the instance of any of the heirs of the deceased or by mutual agreement among all the eight persons mentioned above. The Security to be given to the learned Trial Judge will continue till the dispute among those persons is resolved in a regularly constituted suit or by agreement among the aforesaid eight persons as mentioned above.

The appeal is, thus, allowed to the extent indicated above as regards the furnishing of the security by Shyama and Ashis. Para-16.

Cases cited:

State of Chhatisgarh vs. Dhirajo Kumar Sengar reported in AIR 2009 SC 2568= (2009)13 SCC 600

Vidhyadhari vs. Sukhrana Bai reported in AIR 2008 SC 1420= (2008) 2 SCC 238:

For the Appellant: Mr. Udayan Chakraborty,
Mrs. Sanjukta Bhattacharya.
For the Respondent No.1: Mr. S. S. Samanta,
Mrs. Sulekha Mitra.
For the Added Respondent: Mr. R.N. Saha.

The Court:

This appeal is at the instance of a respondent in a proceeding for grant of succession certificate under the provision of Section 372 of the Indian Succession

Act and is directed against an order dated 24th August, 2007 passed by the learned Chief Judge, City Civil Court at Calcutta, in Act, XXXIX Case No.17 of

2004 thereby allowing the said application in part by permitting Smt. Shyama

Banerjee, the applicant, to get succession certificate to the extent of 3/4th share

in respect of service benefit of her deceased husband, Ajit Banerjee, with further

observation that Ashis Banerjee being an illegitimate son of Ajit

Banerjee should

get succession certificate to the extent of remaining 1/4th share of the service

benefit of his deceased father, viz. Ajit Banerjee.

2) Being dissatisfied, Smt. Sandhya Banerjee, the defendant of the said proceeding and the mother of Ashis, has come up with the present appeal.

3) The facts giving rise to filing of the proceeding under Section 372 of the Indian Succession Act may be summed up thus:

4) Smt. Shyama Banerjee claiming to be the widow of late Ajit Banerjee, a former employee of the Calcutta Municipal Corporation, prayed for grant of succession certificate in respect of service-benefit of the said deceased on the

allegation that she was the wife of the deceased and the deceased left herself as the widow and two sons namely, Sukumar Banerjee and Soumen Banerjee, as the sole heirs and legal representatives. According to Smt. Shyama Banerjee, the deceased did not make any Will in respect of his estate.

5) The said application was opposed by Smt. Sandhya Banerjee, the appellant before us, and her objection may be summed up thus:

(a) She is the legally married wife of late Ajit Banerjee and the said Ajit Banerjee,

since deceased, used to reside in the village Bhowanipur, Nutan Pally, Kalibari

Road, P.O. and Police Station Sonarpur, District-24-Parganas (South) with the

said objector.

(b) The proceeding for succession was filed by Shyama by suppressing the fact

that Sandhya filed a Miscellaneous case being No.41 of 2004 under Act XXXIX

before the learned District Delegate at Baruipur for grant of succession certificate in her favour which was contested by Shyama. Since similar proceeding under Act XXXIX had already been initiated by Sandhya, the subsequent proceeding on the selfsame cause of action was not maintainable.

(c) Ajit Banerjee, prior to his death, used to live permanently with Sandhya as

husband and wife and died on 15th October, 1998 at M.R. Bangur Hospital and as such, the City Civil Court had no jurisdiction to try the said proceeding.

(d) Smt. Shyama Banerjee is not the wife of Ajit Banerjee and she was trying to

harass Smt. Sandhya Banerjee in different way by filing different proceeding in different Courts stated below:

(i) Smt. Shyama Banerjee moved a writ-application being W.P.

No.11786(W) of 1999 without impleading Sandhya and her only son as a party to the proceeding wherein she prayed for disclosure and

disbursement of arrears death benefit of Ajit Banerjee to her but the

said writ-application was dismissed by the High Court by order dated

20th September, 2002. Against the said order of dismissal no appeal was

preferred by Shyama and as such, the said order has attained finality.

(ii) Smt. Sandhya Banerjee, on the other hand, filed a writ-application being W.P. No.1636 of 2000 before this High Court for release of Provident Fund of late Ajit Banerjee to her being the recorded nominee of the Calcutta Municipal Corporation and other retiral benefit of her husband. In the said writ-application Sandhya impleaded Shyama and her sons as respondents and in spite of notice, they did not contest the writ-proceeding by appearing before the learned Single Judge and the learned Single Judge by the order dated 29th August, 2000 disposed of the said writ-application by directing the C.M.C. Authority to pay the dues to Smt. Sandhya being the nominee as made by her husband Ajit Banerjee. The High Court has also given liberty to Sandhya to produce succession certificate before the C.M.C. Authority for the purpose of getting balance retiral benefit.

(iii) In pursuance of the order of the High Court, the provident fund amount of Rs.4,825/- and also a sum of Rs.15,485/-, the difference of revision of pay on account of Ajit Banerjee, were paid by the C.M.C. Authority to Sandhya which was recorded in the subsequent order dated July 4, 2004 passed by D.K. Seth, J. in connection with the contempt proceeding being C.C. No.46 of 2001 arising out of W.P. No.1636 of 2000. The payment of such amount by the C.M.C. Authority through a cheque was made subsequently to the learned Advocate of Smt. Sandhya Banerjee.

(e) In the year 1997, Ajit Banerjee filed a suit for declaration against Shyama

being Title Suit No.2365 of 1997 before the learned City Civil Court at Calcutta where the said Ajit Banerjee prayed for decree for declaration that there was no relationship between Ajit and Shyama as husband and wife and that Shyama was not the wife of Ajit. The notice of the said suit was duly served upon Shyama and she received the same but she never appeared in the suit. After the death of Ajit Banerjee, Sandhya had been substituted and the said suit was still pending.

(f) In the Voter Identity Card of Ajit Banerjee, Smt. Sandhya Banerjee and their

son the address has been recorded as the same address of village Bhowanipur, Nutan Pally, Kalibari Road, Sonarpur, District-24-Parganas (South). The certificates issued by the Gram Panchayat and the local M.L.A. would show that Sandhya was the widow of late Ajit Banerjee.

(g) Shyama having failed to get any relief from any Court or High Court, she filed

a title suit being Title Suit No.59 of 2001 before the Ninth Bench of City Civil

Court at Calcutta where she impleaded Sandhya as party defendant and prayed for a decree of declaration that Shyama and her sons are the legal heirs and representatives of late Ajit Banerjee. The said suit, however, was withdrawn by Shyama on 24th November, 2004.

6) The learned Trial Judge on consideration of the materials on record came to the conclusion that Ajit Banerjee in the year 1965 married Shyama and two sons were born in their wedlock. The learned Trial Judge further relied upon the fact that Shyama filed a maintenance case against Ajit Banerjee under Section 125 of the Code of Criminal Procedure and in that case, the learned Magistrate was pleased to grant maintenance @ Rs.400/- a month for Shyama and Rs.300/- a month for her minor sons. The learned Trial Judge further found that Sandhya was married to the said Ajit Banerjee in Falgoon, 1978 and Sandhya gave birth to a son, namely, Ashis Banerjee on 12th March, 1983 as a wife of Ajit Banerjee. According to the learned Trial Judge, Shyama being married in the year 1965 and the second marriage of Ajit Banerjee with Sandhya in the year 1978 could not be said to be valid. However, the learned Trial Judge held that Sandhya's son should be held to be legitimate son and consequently, Shyama along with her two sons was held to be entitled to 3/4th share in the service benefit while Ashis Banerjee, the son of Sandhya, was entitled to 1/4th share in the service benefit.

7) Being dissatisfied, Sandhya has come up with the present appeal. In this appeal, Sri Bablu Banerjee, Smt. Krishna Das and Sri Pradip Banerjee, claiming to be the children of Ajit Banerjee through their mother Smt.

Renu Banerjee, since deceased, intervened and this Court allowed their prayer for intervention. According to these three persons, Ajit Banerjee married their mother, Renu Banerjee, on 27th April, 1958 and that their mother Renu Banerjee died in the month of December, 1977 of cancer. In support of their contention, the death certificate of Renu Banerjee, their mother, showing that Ajit Banerjee was their father was also produced.

8) Mr. Saha, the learned advocate appearing on behalf of these three applicants, contended that Ajit Banerjee being married with Renu in the year 1959, the second marriage with Shyama in the year 1965 was invalid and after the death of Renu on 2nd December, 1977 the marriage of Ajit Banerjee with Sandhya was a valid marriage and in such a case, Shyama was not at all a lawful married wife of Ajit Banerjee even if it is assumed that there was so-called marriage between them in the year 1965 and three children were born in the wedlock.

9) It is now settled law that a proceeding for grant of succession certificate is a summary one and it does not confer any title to the amount in favour of the certificate holder. Any finding recorded by a Court in such a proceeding as regards the relationship of the applicant or the objector with the deceased does not become binding in any subsequent suit for title. At the same time, simply because some disputed questions of fact are involved, a Court dealing with an application under Section 272 should not refuse to grant certificate on that ground alone as the debt due to the deceased may for not grant of certificate become barred or the ultimate heirs may be deprived of the interest on the amount of dues for delay in recovering the amount of debt.

10) The position of a certificate holder has been succinctly described the Supreme Court in a recent decision in the case of State of Chhatisgarh vs. Dhirajo Kumar Sengar reported in AIR 2009 SC 2568= (2009)13 SCC 600 in the

following way:

“A succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable by the deceased to his heirs and legal representatives. He does not derive any right thereunder. The succession certificate merely enabled him to collect the dues of the deceased. No status was conferred on him thereby. It did not prove any relationship between the deceased and the applicant.”

11) There are instances where the Court has even preferred a person whose marriage with the deceased has been found to be invalid due to existence of the lawful wife to such lawful wife for the purpose of grant of succession certificate.

In this connection, we may refer to the following observations of the Apex Court

in the case of Vidhyadhari vs. Sukhrana Bai reported in AIR 2008 SC 1420= (2008) 2 SCC 238:

“Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen’s estate which would be 1/5th. To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen’s properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the trial court to the satisfaction of the trial court.”

12) In the case before us, *prima facie*, it has been established that the deceased had physical relationship not only with Shyama and Sandhya but also with Renu. It has been further *prima facie* established that the deceased first lived with Renu and had three children; thereafter he lived with Shyama during the lifetime of Renu and had two sons. Ultimately, he lived with Sandhya as

husband and wife after the death of Renu but during the lifetime of Shyama and had a son in the said wedlock.

13) Whether the marriage between the deceased and Shyama was a valid marriage or whether the ones with Sandhya and Renu were legal or not cannot be decided in these summary proceedings. But the fact remains that all these six children were *prima facie* the children of the deceased.

14) In such circumstances, since of the two contesting claimants as the widow of the deceased, Shyama is the applicant and had two children through her out of the six children and at the same time, Sandhya has also withdrawn some amount of money by virtue of her nomination, we do not propose to set aside the certificate granted in favour of Shyama and Ashis but want to add some conditions to safeguard the interest of the other heirs as done in the aforesaid decision of the Apex Court.

15) We, therefore, modify the certificate impugned to this extent that Shyama would be entitled to withdraw the balance service and the retiral benefit of the deceased to the extent of three-fourth share as directed by the Trial Court provided she gives security to the extent of $\frac{13}{28}$ th share of the amount sought to be recovered from the employer to the learned Trial Judge before such withdrawal. Similarly Ashis will be permitted to withdraw one-fourth share as ordered by the Trial Court provided he gives security to the extent of $\frac{3}{28}$ th share. It is needless to mention that the provident fund dues and some other amount have already been withdrawn by Sandhya by virtue of the order passed in the writ-jurisdiction which has attained finality by virtue of her nomination in her favour and thus, Shyama and Ashis are not required to give any security for

that amount. It is needless to mention that nomination does not create any title to the property and by virtue of such nomination, the nominee merely becomes a trustee for the owners.

16) The actual share of the parties to this appeal in the debts payable to the deceased will depend upon the decision of the competent Court in a suit at the

instance of any of the heirs of the deceased or by mutual agreement among all the eight persons mentioned above. The Security to be given to the learned Trial Judge will continue till the dispute among those persons is resolved in a regularly constituted suit or by agreement among the aforesaid eight persons as mentioned above.

The appeal is, thus, allowed to the extent indicated above as regards the furnishing of the security by Shyama and Ashis.

In the facts and circumstances, there will be, however, no order as to costs.

(Bhaskar Bhattacharya, J.)

I agree.

(Prasenjit Mandal, J.)