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**(2001) 02 DEL CK 0038**

**Delhi High Court**

**Case No:** LPA No. 52 of 1988

Smt. Sudershan Karir and others

APPELLANT

Vs

State and Others

RESPONDENT

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**Date of Decision:** Feb. 2, 2001

**Citation:** (2001) 4 AD 401 : (2001) 92 DLT 249 : (2001) 59 DRJ 154

**Hon'ble Judges:** M.S.A. Siddiqui, J; B.A. Khan, J

**Bench:** Division Bench

**Advocate:** Mr. B.R. Sabharwal, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

M.S.A. Siddiqui, J.

This appeal is directed against the judgment of a learned Single Judge of this Court dated 26th October, 1987 affirming the judgment of the Sub Judge, Delhi granting succession certificate to the respondents No. 2 to 4 and dismissing the appellants' petition No. 738/74 filed u/s 372 of the Indian Succession Act.

2. The appellants and Smt. Nirmal Karir and her children (respondents No.2 to 4) filed two separate petitions u/s 372 of the Indian Succession Act for grant of succession certificate to the estate of one Shri Sham Sunder Karir, who died on 30.7.1974. Smt. Nirmal Karir claimed that she was married to the deceased sham Sunder Karir on 26th September, 1963 at Delhi according to Hindu rites and her three children (respondents 2 to 4) were born to her out of the wedlock. On the contrary, the case of the appellant Smt. Sudershan Karir is that she was married to the said Sham Sunder Karir on 2nd February, 1962 at Simla according to Hindu rites and her two children were born out of this wedlock. On these pleadings, the trial court framed the following issues:-

"(1) Who out of Sudershan Karir and Nirmal Karir happens to be the legally wedded wife of Sham Sunder Karir? Onus on parties.

(2) Whether Arvind Karir, Monica Karir and Master Abhinav Karir were born out of the wedlock, of the deceased and Smt.Nirmal Karir and whether they would be entitled for grant of S.C. in this case?

(3) Whether Mohinder Karir and Km.Ashu Karir were born out of the wedlock of the deceased and Smt.Sudershan Karir and whether they would be entitled for grant of SC in this case?"

3. On consideration of the evidence adduced by the parties, the trial court held that Smt.Nirmal Karir was the legally wedded wife of the deceased Sham Sunder Karir and the appellant Smt.Sudershan Karir has failed to establish her claim. Consequently, the learned trial court dismissed the appellants' petition u/s 372 of the Indian Succession Act and granted succession certificate to Smt.Nirmal Karir and the respondents No.2 to 4 to the estate of the deceased Sham Sunder Karir. Aggrieved thereby, the appellants filed an appeal before the learned Single Judge of this Court, which was dismissed by the impugned judgment upholding the findings of fact recorded by the trial court. Not satisfied with the dismissal of first appeal, the appellants have filed the present appeal under clause X of the Letters Patent Act.

4. Assailing validity of the impugned judgment, the learned counsel for the appellants vehemently contended that the learned Single Judge had committed a manifest error of law in dismissing the appeal. According to him, the evidence on record is sufficient to prove that Smt.Sudershan's marriage with late Sham Sunder Karir was solemnized on 2nd February, 1962 at Simla according to Hindu rites and both the courts have misappreciated evidence adduced by the appellants. He further submitted that the appellants were also denied of an opportunity to produce additional evidence in support of their case.

5. It is worth-mentioning that on the issue No.1, the trial court held that Smt.Nirmal Karir was the legally wedded wife of the deceased Sham Sunder Karir and the appellants have failed to establish their claim to the estate of the said Sham Sunder Karir. In deciding the said issue the trial court took note of the following circumstances:-

(i) that the sole testimony of Smt.Sudershan (RW-1) about her alleged marriage with Sham Sunder Karir on 2nd February, 1962 at Jakhu Temple, Simla is replete with discrepancies and contradictions and so it does not inspire confidence. She testified that her marriage at Simla was solemnized in the presence of Vidya Sagar Bhatia and Arjun Singh but none of them was produced in the witness box to corroborate her testimony;

(ii) that Smt.Sudershan (PW-1) had nowhere stated in her evidence-in-chief that her marriage at Simla was solemnized by Pandit, Shivram. She closed her evidence on 15th May, 1985 and till date no attempt was made to produce Pandit Shivram in the witness box. It was only after the arguments were heard and supplementary statement of Smt.Sudershan (PW-1) was recorded on 13th September, 1985 when

she for the first time disclosed that her marriage at Simla was solemnized by Pandit Shivram in accordance with Hindu rites. However, Pandit Shivram was not produced in the witness box to lend assurance to the improved or afterthought version of Smt.Sudershan;

(iii) that Smt.Sudershan further testified that she had also obtained a marriage certificate from Jakhu Temple, Simla about the said marriage but no such certificate was produced before the Court to substantiate her claim and this gives rise to an adverse inference against her case;

(iv) that in her evidence-in-chief, Smt.Sudershan (RW-1) stated that her marriage with Sham Sunder Karir was celebrated on 17th June, 1962 at Gurudwara Bangla Saheb according to Sikh rites. However, in her cross-examination, she resiled from her earlier statement and deposed that on 17th June, 1962, no religious ceremony had been performed at the said Gurudwara in connection with her marriage. On the contrary, Prabhu Dayal (RW-2), Puran Prakash Arora (real brother of Smt.Sudershan) and Bhagwan Dass (RW-5) deposed that on 17th June, 1962, Smt.Sudershan's marriage with Sham Sunder Karir was solemnized at Gurudwara Bangla Saheb, Rohtak in accordance with Sikh rites;

(v) that Smt.Sudershan (RW-1) has failed to offer any Explanation, whatsoever, about non-intimation of her alleged marriage to the head of her department;

(vi) that Smt.Sudershan (RW-1) had signed the authority letter (Ex.PW-10/1) as Sudershan Arora and not as Sudershan Karir;

(vii) that Smt.Sudershan (RW-1) testified that she had been franchised during general elections but no document was produced in support of the said contention. On the contrary, the voter's list (Ex.P-3/A) produced by Smt.Nirmal Karir clearly mentions her name as the wife of Sham Sunder Karir;

(viii) that Smt.Sudershan (RW-1) asserted that after her marriage with Sham Sunder Karir, his name was added in her ration card but no such ration card was produced in support of the said assertion;

(ix) that the affidavit (marked YZ) purported to have been executed by Smt.Sudershan's father-in-law, namely, Milkhi Ram cannot be relied upon to prove the factum of appellant Smt.Sudershan's marriage with late Sham Sunder Karir;

(x) that the evidence adduced by Smt.Nirmal Karir proves beyond doubt that she was married to Sham Sunder Karir on 26th September, 1963 in accordance with Hindu rites.

6. It is also necessary to recount at some length the findings arrived at by the learned Single Judge in appeal. Taking up the issue of the appellant's marriage with Sham Sunder Karir, the learned Single Judge decided it against the appellants. In deciding the said issue, the learned Single Judge took note of all those facts which the trial

court had taken into considerations, as also of the following additional circumstances:-

(i) that name of no witness was mentioned in the list of witnesses of Smt.Sudershan Karir, who had solemnised her marriage with Sham Sunder Karir at Simla or ho has witnessed the said marriage. It was only on 13th September, 1985, she gave three names who had witnessed the marriage at Simla, namely, Pandit Shivram who has solemnized the marriage on the presence of Vidya Sagar and Arjun Singh. However, none of the said witnesses was produced in the witnesses box. Moreover, non-inclusion of names of the said witnesses in the list of witnesses filed by Smt.Sudershan Karir robs efficacy of her statement made in that behalf;

(ii) that in the application for permanent residence in Canada (mark A-3), she did not give name of Sham Sunder Karir as her husband. Moreover, she had also left the columns relating to her parents-in-law blank;

(iii) that after her marriage respondent Smt.Nirmal Karir was openly residing with Sham Sunder Karir as his wife but the appellant Smt.Sudershan neither raised hue and cry nor took any legal action against her. This circumstance alone knocks the bottom out of the appellants" case.

7. The findings entered by the learned trial court and affirmed by the learned Single Judge that the appellant Smt.Sudershan has failed to prove her marriage with the deceased Sham Sunder Karir and further the respondent Nirmal Karir was the legally wedded wife of the said Sham Sunder Karir are based on a detailed consideration of the legal evidence available on the record. That being so, it is not open for us to re-appreciate the said evidence and substitute our conclusions in place of those entered by the said courts, while exercising the jurisdiction conferred by clause X of the Letters Patent Act. Learned counsel for the appellants has taken us through the relevant portions of the evidence having a bearing on the plea of appellant Smt.Sudershan"s alleged marriage with the deceased Sham Sunder Karir, and we are satisfied that the findings entered by the trial court and affirmed by the learned Single Judge cannot be aid to be unreasonable or perverse. Thus, the judgment of the learned Single Judge does not disclose that there are any permissible grounds for interference, with the findings of the trial court. Consequently, we are not inclined to interfere with the aforesaid concurrent findings of fact.

8. This leads to the argument of the learned counsel for the appellants that the appellants were also denied of an opportunity to produce additional evidence in support of their case. It transpires from the record that the list of witnesses filed by the appellants was conspicuous by the absence of any witness, who has witnessed the appellant Smt.Sudershan"s alleged marriage with late Sham Sunder Karir. The appellants closed evidence on 15th May, 1985 and till then no attempt was made to produce any eye witness about the said marriage. It was only after the arguments

were heard and supplementary statement of Smt.Sudershan was recorded on 13th September, 1985 when she for the first time disclosed that her marriage at Simla was solemnized by Pandit Shivram in presence of Vidya Sagar and Arjun Singh.

9. It is worth-mentioning that Vidya Sagar was not alive on 13th September, 1985, when his name was given by Smt.Sudershan in her supplementary statement. No attempt was made to summon the third witness Arjun Singh as his address was not available by then. It also transpires from the record that the appellant Smt.Sudershan Karir was granted last opportunity to produce Pandit Shivram on April 29, 1986. On that day, the appellants intimated the court about his death and they filed an application before the trial court seeking leave to prove the affidavit purported to have been sworn by Pandit Shivram. The said application was disallowed by the trial court. As the correctness of the said facts is not questioned before us, it will be convenient to excerpt the following observations of the learned Single Judge dealing with the plea raised by the appellants in this regard:-

"It may now be pointed out that an application dated April 29, 1986 was made by Smt.Sudershan Karir before the trial court for production of an affidavit allegedly that of Pandit Shiv Ram and to prove the same by examining the Oath Commissioner of Shimla. At the request of Smt.Sudershan Karir she was allowed last opportunity to produce her witness Pandit Shiv Ram on April 29, 1986 on her own responsibility. She in her application dated April 29, 1986 stated that she had gone to Shimla to contact Pandit Shiv Ram in order to call him as her witness. It was learned that said Pandit Shiv Ram had died and that an affidavit given by him had been traced and that may be allowed to be produced in evidence. This application was opposed on behalf of Smt.Nirmal Karir and others. The trial court dismissed this application of Smt.Sudershan Karir. Mr.Kalra, learned counsel for the appellants, has submitted that the trial court was in error in declining the prayer of Smt.Sudershan Karir for producing the said affidavit in evidence and getting the same proved from the evidence of the Oath Commissioner who had attested the affidavit. This affidavit purports to be of April 22, 1975. As per S.32(5) of the Evidence Act, a statement, written or verbal, of relevant facts made by a person who is dead, is itself a relevant fact when the statement relates to the existence of any relationship between persons as to whose relationship the person making the statement has special means of knowledge, and when the statement was made before the question in dispute was raised. (Emphasis supplied. In the present case the dispute as regards the question of Smt.Sudershan Karir being the legally wedded wife of Sham Sunder Karir and consequently her being entitled to the grant of succession certificate to his estate had admittedly become disputed prior to April 22, 1975 inasmuch as the two petitions for the grant of succession certificate by the two sets of parties had already been moved in November, 1974. That being so, the statement of Pandit Shiv Ram given on affidavit on April 22, 1975 is not a relevant statement. As such the question of the affidavit being admissible in evidence does not arise. Apart from that it is to be noted that nothing was stated in the application as to from whom Smt.Sudershan

Karir learnt about the alleged death of Pandit Shiv Ram and on which date and when did Pandit Shiv Ram, according to her, die. It has also not been stated as to how Pandit Shiv Ram happened to give his affidavit and from where and when the alleged affidavit was found out and by whom. Under these circumstances the trial court was right in dis-allowing the said application of Smt.Sudershan Karir."

10. In our opinion, the learned Single Judge has rightly held that sufficient opportunity was afforded to the appellants to adduce evidence in support of their claim and the arguments to the contrary advanced by learned counsel for appellants in this regard is fallacious.

11. For the foregoing reasons, the appeal is dismissed.