

## Meena Pradhan (Smt.) Vs Kamla Pradhan (Smt.) and Others

**Court:** Madhya Pradesh High Court

**Date of Decision:** Nov. 17, 1995

**Acts Referred:** Succession Act, 1925 " Section 210, 212, 213, 276, 299

**Citation:** (1996) 2 MPJR 119

**Hon'ble Judges:** Ramesh Surajmal Garg, J

**Bench:** Single Bench

**Advocate:** S.R. Singh, for the Appellant; Om Namdeo, for the Respondent

### Judgement

R.S. Garg, J.

The appellant/objector being aggrieved by the order dated 5.7.95 passed in Succession case No. 94/92 by the VIth Additional Judge to the Court

of District Judge, Jabalpur, has preferred this appeal u/s 299 of Indian Secession Act.

The factual matrix leading to the case is that respondent No. 1 and 2 filed an application u/s 373 of the Indian Succession Act for grant of a

succession certificate alleging that the respondent No. 1 was legally wedded wife and the respondent No. 2 was the off spring out of the wedlock,

it was also submitted that the present appellant Suit. Meena Pradhan though was married to the deceased Bahadur Pradhan but the marriage ties

were broken between the parties by divorce deed dated 4.5.90. After the publication of the notice the present appellant appeared and objected to

the grant of succession certificate alleging that marriage ties did not snap between the deceased and the objector and she continued to be the

legally wedded wife of the deceased. She also submitted that the respondent No. 3 and 4 namely Ravi Kumar and Sushnia Pradhan were

legitimate children from the said marriage. After the said objections were filed the respondent No. 1. as alleged, surreptitiously to play a fraud,

joined Ravi Kumar and Sushnia as applicant No. 3 and 4. The matter was hotly contested between the parties and during the course of the

evidence respondents propounded the will ex. P-2 and contended that deceased Bahadur Pradhan did not intestate but has left a will under which

the rights have been given the respondents. The learned trial Court after recording the evidence and hearing the parties came to the conclusion that

respondent No. 1 was not the legally wedded wife, the marriage ties between the deceased and the present appellant continued and the respondent

No. 2 to 4 were the children of deceased Bahadur Pradhan. Holding that the will Ex. P-2 dated 30.7.92 was validly executed and duly attested,

the Court below granted the succession certificate on the strength of the will directing that the amount deposited in the name of the deceased be

delivered/given to the original claimants /respondents. Being aggrieved by the said order the appellant has preferred this appeal.

It was contended by the learned Counsel for the appellant that an application u/s 373 would only lie if the person has died intestate and has not left

any will or codicil behind him. It was submitted that on face of the will Ex. P-2 an application u/s 372 for grant of succession certificate was not

maintainable. Relying on Section 276 it was further contended that an application for probate or for letters of administration shall be made by a

petition with a copy of the will to the competent Court, which means that if a will is available then an application u/s 276 alone would be

maintainable and not an application u/s 373. Replying the above said arguments Shri Namdeo submitted that if an application u/s 373 was tiled

then too the Court was competent to consider contents of the will and could give proper order in favour of the original claimants.

The scheme of the Indian Succession Act, 1955 is that if the person died intestate then the application for succession certificate is to be made u/s

372 of the Act. The procedure is given u/s 373. It is clear from the language of section 372 read with section 370 that a succession certificate

cannot be granted if the deceased left a will behind him. According to section 370, a succession certificate shall not be granted under part 10 with

respect of any debt or security which is required by section 210 or section 213 to be established by letters of administration or probate. Section

212 is not applicable to the present case but according to section 213 no right as executor or legatee can be established in the Court of Justice,

unless a Court of competent jurisdiction in India has granted the succession certificate under his right as claimed, or has granted letters of

administration with the will or with a copy of an authenticated copy of the will annexed. From these provision it is clear that if a will is propounded

then no proceedings can be drawn u/s 372 or Section 373 because of the bar contained u/s 370.

It is to be noted further that a petition for probate is to be tiled before the Court u/s 276 of Indian Succession Act. The said application is to be

filed alongwith the will. In a case when the party comes to the Court for grant of succession certificate then the moment is propounded a will which

is said to be validly executed then lower Court would have no jurisdiction u/s 373 to proceed with the matter. Successful reliance can be placed on

Kishan Goptal v. Chhunilal AIR 1938 Nag 47. In the said case a succession certificate was claimed by person to the estate of the deceased as heir

or reversioners, in defence the opposite party set up the registered will. The trial Court in that case proceeded further with the matter. The matter

was brought in revision before the High Court. The High Court was of the opinion that if a will is set up; then the Court must first decide whether

the will was validly executed or not. If the Court came to the conclusion that the will was validly executed then it had no jurisdiction to grant the

succession certificate. The Court was also of the opinion that the question of the jurisdiction must be decided first. The following observations from

the said judgment would be useful to note :-

The Court must first decide whether the "will" was validly executed by Radhabai and this will not involve the question whether she was entitled to

dispose of the property mentioned in the "will". Chunnilal applied for a succession certificate in respect of her property, that is a decree passed in

her favour, and if there is a valid "will" no succession certificate can be granted in respect of "will".

In the instant case the moment will was set up by the claimants, the Court below was not entitled to exercise its jurisdiction further in the matter. It

is not a case where the defendant has propounded the will and challenged the jurisdiction of the Court by alleging that, in view of the will

proceedings for succession certificate could not continue. In such a case Court would be obliged to decide the due execution and attestation of the

will. In the case on hands it was the claimant who after claiming the succession certificate propounded the will. This in fact divested the Court of its

jurisdiction to decide the application filed u/s 373 of Indian Succession Act. In view of the discussion above the proceedings u/s 373 of the Indian

Succession Act were not maintainable. The proceedings are liable to be quashed.

Shri Singh submitted that the findings regarding the validity of the marriage and legitimacy of the children being a finding of fact should be upheld.

At the same time Shri Namdeo submitted that the findings regarding validity and attestation of the will also being finding of fact deserve to be

upheld. I am unable to accept these arguments. If the proceedings were absolutely without jurisdiction then any findings given in such proceedings

cannot be allowed to stand. If the findings are to be upheld then it will have to be held that trial Court had jurisdiction to decide the issues, which in

the opinion of this Court the trial Court did not have.

The proceedings being contrary to law cannot be allowed to stand. The proceedings are quashed. The parties are free to move the competent

Court for Redressal of their grievance or for obtaining the relief. There shall be no orders as to costs.

It is informed by the Counsel for the respondents that in accordance with the order of the trial Court fees has already been paid and the original

documents have also been deposited in the trial Court. The trial Court is directed to return the documents and issue certificate for refund of the

Court fee paid by the respondents.