

## Smt. Nirmala Choudhary and Others Vs Smt. Kamla Devi

**Court:** Madhya Pradesh High Court

**Date of Decision:** May 13, 2003

**Acts Referred:** Succession Act, 1925 & Section 372, 374, 63

**Citation:** (2003) 3 MPHT 240 : (2003) 3 MPLJ 509

**Hon'ble Judges:** S.K. Pande, J

**Bench:** Single Bench

**Advocate:** Imtiaz Hussain, for the Appellant; None, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

S.K. Pande, J.

Being aggrieved by the order dated 25-2-2002, passed by VII Additional District Judge, Bhopal in MCA No. 13/2001 reversing/modifying the

order dated 8-10-2001 passed by 3rd Civil Judge, Class-I, Bhopal in MJC No. 15/2001, petitioners have preferred this revision petition u/s 115

of CPC read with Section 388(3) of the Indian Succession Act, 1925.

Facts in brief are that Late Dr. Balkrishna Choudhary died at Sehore on 3-2-99. He was a Doctor in the service of the State of M.P. and was

posted at Civil Hospital, Sehore. On 10-1-99, Late Dr. B.K. Choudhary while in hospital at Indorc, executed a Will (Ex. P-13) in favour of the

petitioners Smt. Nirmala Choudhary, Ku. Ritu Choudhary, Renu Choudhary, Ku. Varsha Choudhary and Vikrant Choudhary. On the death, an

application u/s 372 of Indian Succession Act was filed for issuance of his succession certificate in respect of debt, securities of Late Dr. B.K.

Choudhary. Respondent, Kamla Devi claiming herself to be legally married wife, resisted the claim of the petitioners. Rejecting the objection, Civil

Judge Class-I, Bhopal, in MJC No. 15/2001 vide order dated 8-10-2001 allowed the application and directed issuance of succession certificate

in favour of the petitioners. Being aggrieved by this order respondent preferred MCA No. 13/2001 in the Court of VII ADJ, Bhopal. Vide

impugned order dated 25-2-2002, the appeal was allowed in part directing that the respondent is entitled to seek succession certificate in respect

of debt, securities of Late Dr. B.K. Choudhary to the extent of 1 and 1/2. Petitioner Nos. 2 to 5 were jointly declared entitled to the extent of

remaining 1 and 1/2. Being aggrieved by this order, passed in MCA No. 13/2001, the present revision has been preferred.

Petitioners Smt. Nirmala Choudhary claimed herself to be legally married wife of Late Dr. B.K. Choudhary. Respondent-Kamla Devi also

claimed that she was legally married wife of Late B.K. Choudhary. It is an admitted fact that petitioner Nos. 2 to 5 Ku. Ritu, Renu, Varsha and

Vikrant are daughters-sons born from petitioner, Smt. Nirmala Choudhary. In the petition u/s 372 of Indian Succession Act, there was no

reference of the Will, however, Will dated 10-1-99 (Ex. P-13) was tendered in evidence at the time of examination of Nirmala Choudhary (P.W.

1). Keshav Tripathi (P.W. 2) was examined on Ex. P-13 as to its execution by Late Dr. B.K. Choudhary and attestation by Keshav Tripathi.

Keshav Tripathi (P.W. 2) has stated that Late Dr. B.K. Choudhary was admitted in the hospital at Indore. He had been to him. Late Dr. B.K.

Choudhary got scribed the recital of Ex. P-13 from him and signed it at A to A in his place. It was signed by Keshav Tripathi himself at B to B.

Vikrant Choudhary also signed the Will (Ex. P-13) at C to C, there is nothing in the cross- examination of Keshav Tripathi (P.W. 2) to state that

the witness in any manner is interested with one of the party or had no occasion to visit the hospital at Indore where Late Dr. B.K. Choudhary was

admitted. Keshav Tripathi (P.W. 2) is the resident of Indore. He has stated that he knew Late Dr. B.K. Choudhary and his wife petitioner No. 1

Smt. Nirmala Choudhary. Smt. Nirmala Choudhary (P.W. 1) has also stated that Will (Ex. P-13) has been signed by her husband Late Dr. B.K.

Choudhary. She is well conversant with the writing and signature of her husband, Late Dr. B.K. Choudhary. In the circumstances, Civil Judge

rightly held that the execution of Will (Ex. P-13) by B.K. Choudhary was proved. ADJ in appeal dis-believed the aforesaid part of the evidence

relating to Ex. P-13 only on two points -- (1) It was not referred in the application u/s 372 of Indian Succession Act; (2) Keshav Tripathi (P.W. 2)

himself being scribed could not be treated as an attesting witness of the Will and other attesting witness Vikrant was not examined. The Will is

required to be proved in a manner described u/s 63 of the Indian Succession Act. Scribe may be attesting witness to Will but it must be shown that

signature of scribe was put down for the purpose of attesting the document. A scribe not signing or attesting the Will as a scribe is not a

circumstance against the genuineness of the Will, therefore, production of will by Smt. Nirmala Choudhary (P.W. 1), cannot be taken as ground of

suspicion. Keshav Tripathi (P.W. 2) is an independent witness. He is not interested in either of the party. In Ex. P-13, Keshav Tripathi, Vikrant

Choudhary have stated to be the witnesses. Keshav Tripathi (P.W. 2) has stated that Will (Ex. P-13) was written by him at the dictation of Late

Dr. B.K. Choudhary. Late Dr. B.K. Choudhary signed it at A to A and Vikrant Choudhary attested it by signing at C to C. Keshav Tripathi has

stated that his signature in Ex. P-13 is at B to B, therefore, it is clear from the statement of Keshav Tripathi (P.W. 2) as well as from Ex. P-13 that

Keshav Tripathi was scribe as well as the attesting witness of Ex. P-13. Late Dr. B.K. Choudhary signed at A to A and Vikrant Choudhary at C

to C, thereafter Keshav Tripathi signed the document at B to B, therefore, Keshav Tripathi (P.W. 2) as scribe as well as attesting witness has

proved the execution of the Will (Ex. P-13). Nirmala Choudhary (P.W. 3) has stated that it bear the signature of her husband, the Late B.K.

Choudhary. Therefore, ADJ has recorded an erroneous finding to the effect that Will (Ex. P-13) was not proved duly executed as required u/s 63

of the Indian Succession Act. The Will was proved duly executed by Late Dr. B.K. Choudhary. This being the position, vide Will (Ex. P-13)

except the petitioners all other persons were excluded. The succession certificate issued u/s 374 of Indian Succession Act only empowers the

grantee to recover the dues. The grant of succession certificate does not amount to decree or order within the meaning of Civil Procedure Code.

The rival claims of legally married wife Nirmala Choudhary vis-a-vis Kamla Devi are not to be adjudicated while deciding the application u/s 372

of Indian Succession Act.

The Will (Ex. P-13) was executed in favour of petitioners. Therefore, the Civil Judge was right to grant succession certificate in favour of the

petitioners vide order dated 8-10-2001 passed in MJC No. 15/2001. The impugned order passed by ADJ in MCA No. 13/2001

reversing/modifying the aforesaid order suffers from material irregularity and deserves to be set aside. 5. Accordingly, the revision is allowed.

Impugned order dated 25-2-2002 passed by 7th ADJ, Bhopal in MCA No. 13/2001 is set aside. Instead, order dated 8-10-2001, passed by

3rd Civil Judge Class-I, Bhopal in MJC No. 15/2001 is restored. Parties to bear their costs. Counsel fee as per rules or certificate (whichever is

less).