

Surendra Tiwary Vs Raj Kumari Devi and Others

Court: Patna High Court

Date of Decision: Nov. 5, 1998

Acts Referred: Banking Regulation Act, 1949 " Section 45ZA

Hindu Succession Act, 1956 " Section 15, 16

Succession Act, 1925 " Section 372

Citation: (1999) 2 BLJR 986 : (1999) 1 BLJR 329 : (1998) 3 PLJR 848

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Judgement

M.Y. Eqbal, J.

This Miscellaneous appeal is directed against the judgment and order dated 12.7.1991 passed by the Subordinate Judge I,

Barh, in Succession Case No. 13 of 1988, whereby the Court below after rejecting the objection filed by the objector-appellant allowed the

application filed by the petitioner-Respondent 1st set u/s 372 of the Indian Succession Act, 1925.

2. The facts of the case lies in a narrow compass. The applicant Respondent No. 1 Raj Kumari Devi filed an application u/s 372 of the Indian

Succession Act, 1925 for the grant of a succession certificate in respect of the assets of the deceased Panna Devi fully described in the Schedule

of the application. The details of the movable properties left by the deceased are cash deposits in the Punjab National Bank and State Bank of

India, post offices and deposits under Group Insurance Scheme and the amount of gratuity. Respondent No. 1, and Respondent No. 6 are the

own nieces of the deceased Panna Devi who was headmistress in a lower Primary school, Pandarak in the district of Patna. She died on 2.6.1988

in the Holy Kurji Hospital, Patna. The case of the applicant-respondent No. 1 was that she and Respondent No. 6 are only legal heirs of the

deceased Panna Devi. The deceased was working as Government teacher and she during her lifetime had opened an account and deposited cash

in the local Bank and post offices. According to her, there is no other legal heir except Respondent Nos. 1 and 6. Accordingly, she made an

application for grant of a succession certificate. In the said proceeding the applicant-Respondent No. 1 made Banks, post master of the Post office

and the District Superintendent of Education, Patna as parties. The present appellant intervened in the said case and he was made party by the

order of the Court below. The case of the present appellant-objector is that the deceased Panna Devi during her lifetime opened a joint accounts in

her name and in the name of the appellant and the said amount is payable to the survivor after maturity. The appellant also claimed himself as legal

heir of the deceased on the ground that he is the son of the own sister of the deceased Panna Devi. The Court below after hearing the parties and

after considering the facts and evidence of the record came to the conclusion that the objection raised by the appellant has no merit and the

applicant & Respondent No. 6 are only heirs and entitled to the properties. Accordingly, a succession certificate was granted in favour of the

Respondent No. 1. Hence this appeal.

3. I have heard learned Counsel for the parties. Learned Counsel for the appellant as sailed the impugned judgment and order as being illegal and

contrary to law and the evidence on record. Learned Counsel submitted that the Court below has completely misconstrued the law with regard to

succession and disposition. Learned Counsel further submitted that admittedly, assets are self-acquired property of the deceased and she had

absolute power to demise the same in favour of any person to the exclusion of all. According to the learned Counsel, the Court below committed

serious error of law in applying Sections 15 and 16 of the Hindu Succession Act. Learned Counsel lastly submitted that the deposit made in the

bank were in the joint name of the deceased and the appellant which also provided the mode of operation either by former or survivor. The

succession certificate granted in favour of the applicant-Respondent No. 1 is, therefore, bad in law.

4. On the other hand, learned Counsel appearing on behalf of the Respondent No. 1 submitted that admittedly the applicant-Respondent No. 1

and Respondent No. 6 are daughters of the deceased's husband brother and they are heirs from the side of the husband of the deceased. On the

other hand, the ejector-appellant is the sister's son of the deceased. According to the learned Counsel therefore, it is the two daughters of the

husband's brother of the deceased who are entitled to succeed the interest of the deceased. The Court, below has therefore, rightly granted

succession certificate in favour of the applicant Respondent No. 1.

5. Before appreciating the case of the parties and the arguments made on behalf of the learned Counsel, it would be proper to first look into the

schedule of the property/or which succession certificate was claimed by the applicant-Respondent No. 1. From perusal of the application filed by

the Respondent No. 1 for the grant of succession certificate it appears that the following properties have been shown in the schedule of the

application which reads as under:

Schedule.

Particulars of amount.

1. Deposit in Punjab National Bank Pandarak under multi-benefit and old age deposit receipt in the name of Panna Devi or Surendra Tiwary vide

receipt No. PQB 438439 dt. 8.2.1983 Account No. 351 Serial No. 19/83 sum of Rs. 10,000/- payable in maturity after 78 months on 8.8.1989

a sum of Rs. 20,245/-.

2. Deposit in P.N.B. Pandarak vide No. QAN 178602 Account No. 351 S.N. 109/87 dated 26.9.87 payable on 26.9.89, sum deposit Rs.

13,000/- matured value Rs. 15,775.50 paise in the name of Panna Devi or Surendra Tiwari.

3. Deposit in SBI Barh Branch vide Account No. 12347 in the name of Panna Devi sum of Rs. 2,310.30.

4. Account in post office Pandarak in the name of Panna Devi R/D Account No. 77,128 at the rate of Rs. 200/- per month; total deposit Rs.

2,400/- with interest.

5. SB Account No. 682337 in the name of Panna Devi in the post office Pandarak amount deposit Rs. 3,038.10.

6. SB account No. 682388 at Pandarak post office in the name of Panna Devi amount deposit Rs. 1,509.00.

Total amount Rs. 40192.10

LIC Group Insurance Scheme Rs. 24,000.00

Amount of gratuity Rs. 17,000.00

Rs. 86,277.90

6. Admittedly, the first two deposits lying in the Punjab National Bank are in the name of the deceased Panna Devi and petitioner Surendra Tiwari.

The rest of the deposits in the SBI and post offices as shown in Item Nos. 3 to 6 are in the name of the deceased Panna Devi. The other important

admitted facts are that the appellant is the sister's son of the deceased Panna Devi while the applicant and Respondent No. 6 are the daughters of

the husband's brother of the deceased. In other words, the applicant-Respondent No. 1 and Respondent No. 6 are the heirs from the husband's

side of the deceased Panna Devi while the appellant is the heir from the mother side of the deceased.

7. In view of the aforementioned admitted facts a question arises as to who is entitled to inherit the assets of the deceased Panna Devi who died

issueless and her husband also predeceased her. At this juncture it would be useful to quote Section 15 of the Hindu Succession Act which reads

as under:

15. General rules of succession in the case of female Hindus.(1) The property of a female Hindu dying intestate shall devolve according to the rules

set out in Section 16-

(a) Firstly, upon the sons and daughters (including the children of any predeceased son or daughter and the husband);

(b) Secondly, upon the heirs of the husband;

(c) Thirdly, upon the mother and father;

(d) Fourthly, upon the heirs of the father, and

(e) Lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in Sub-Section. (1).-- (a) any property inherited by a female Hindu from her father or mother shall

devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not up to the other

heirs referred to in Sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the

deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in Sub-section (1) in the order specified

therein, but upon the heirs of the husband.

8. From bare reading of the aforementioned provisions, it is manifest that this Section provides a definite and uniform scheme of succeeding to the

properties of a female Hindu who died intestate after commencement of the Act. Sub-section (1) of Section 15 of the Hindu Succession Act

divided the heirs into five groups who are entitled to inherit the property of a female dying intestate. However, two exceptions are provided i.e. if a

female dies without leaving an issue, then in respect of the property inherited by her from father or mother that property will devolve not in

accordance with the order laid down in the five groups but upon the heirs of the father. Another exception is that if a female dies without leaving any

issue then in respect of the property inherited by her from her husband or father-in-law, it will devolve not in accordance with the order laid down

in the five entries but upon the heirs of the husband. Admittedly, the properties mentioned in the schedule of the application for which a succession

certificate has been sought for are not the properties of the deceased either inherited from the side of her father or from her husband. Undisputedly,

these properties are self-acquired property of the deceased. By reading Section 15 together with Section 16 of the Hindu Succession Act, it is,

therefore, clear that so far as the properties described in Item Nos. 3, 4, 5 and 6 are concerned, it is the applicant-Respondent No. 1 and

Respondent No. 6, the two daughters of the husband's brother of the deceased who are entitled to inherit and succeed in the said properties on

the death of the deceased.

9. Now, I will deal with the deposits made with the Punjab National Bank as shown in Item Nos. 1 and 2 in the Schedule. Admittedly, these two

deposits were made in the joint name of the deceased and the appellant Surendra Tiwary payable to ""former or survivor"". In the Court below, the

appellant examined Branch Manager of the Punjab National Bank as O.P.W. 1 who deposed that the fixed deposit was made by the deceased in

the joint name of herself and Surendra Tiwary which was payable to the ""former"" or survivor"". The witness further deposed that after the death of

Panna Devi, it is the appellant Surendra Tiwary who is entitled to operate the fixed deposit account. The question, therefore, falls for consideration

is whether the appellant would be entitled to the fixed deposit amount notwithstanding the order of succession provided under Sections 15 and 16

of the Hindu Succession Act. The answer would be in affirmative in view of the provisions made under the Banking Regulation Act, 1949. In the

Banking Regulation Act, part III-B has been inserted by virtue of Banking Regulation Amendment Act, 1984. This part consists of Section 45Y to

45Z, Section 45ZA reads as under:

45ZA. Nomination for payment of depositor's money.-(1) where a deposit is held by a banking company to the credit of one or more persons, the

depositor or, as the case may be, all the depositors together may nominate in the prescribed manner one person to whom in the event of the death

of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in

respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of

deposit from the banking company, the nominee shall be on the death of the sole depositor or, as the case may be, on the death of all the

depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the

exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to

receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of this Section shall constitute a full discharge of the banking company of its

liability in respect of the deposit;

Provided that nothing contained in this sub-Section shall effect the right of claim which any person may have against the person to whom any

payment is made under this Section.

10. From bare reading of the aforesaid provision, it is manifest that if any deposit is made by a person in the joint name or nomination is made then

in such case on the death of depositor, the nominee or survivor shall be entitled to all the rights in relation to such deposit to the exclusion of all

other persons, unless the nomination is varied or cancelled in the prescribed manner. According to this Section, therefore, it is the appellant who

being the "survivor" of the fixed deposit account is entitled to inherit, succeed or operate such fixed deposit account notwithstanding the provision

of Sections 15 and 16 of the Hindu Succession Act. From the impugned judgment and order it appears that the learned Court below has

completely overlooked the provisions of Section 45ZA of the Banking Regulation Act. It is, therefore, clear that the applicant-Respondent No. 1 is

not entitled to succession certificate in respect of the fixed deposit lying with the Punjab National Bank as shown in Item Nos. 1 and 2 of the

schedule of the application.

11. Having regard to the facts and circumstances of the case and the discussions made above, this appeal is allowed in part and the succession

certificate granted in respect of the deposits made in the Punjab National Bank, Pandarakis set aside. The rest part of the judgment and order of

the Court below granting succession certificate in respect of other properties of the deceased Panna Devi is hereby confirmed. In the facts and

circumstances of the case, there shall be no order as to costs.