

**IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA****PRESENT :-**

*Sri Raj Kishore Lenka*  
*Senior Civil Judge, Khurda.*

*Dated this the 6<sup>th</sup> day of September, 2014*

*INTEST CASE No. 01 OF 2013.*

Mrs. Padmabati Sahoo, aged about 70 yrs, W/o- Late Jagannath Sahoo, At- Mukundaprasada, P.O.- P.N. College, Khordha, P.S./Dist- Khordha.

.....Petitioner.

Verses

1. Mrs. Manjuprava Sahoo, aged about 53 yrs, W/o- Kunjabihari Sahoo, At- Mukundaprasada, P.O.- P.N. College, Khordha, P.S./Dist-Khordha.
2. Mrs. Laxmipriya Sahoo, aged about 50 yrs, W/o- Khirod Kumar Sahoo, At- Saguan Bagicha, Samantarapur, P.O./P.S./Dist- Khordha.
3. Mrs. Anasuya Sahoo, aged about 47 yrs, W/o- Gadadhar Sahoo, At- Mukundaprasada, P.O.- P.N. College, Khordha, P.S./Dist-Khordha.
4. Miss Anupama Sahoo, aged about 44 yrs, D/o- Late Jagannath Sahoo, At- O/O- Soil Conservation, Rayagada, P.O./P.S./Dist- Rayagada.
5. Mr. Jitendra Kumar Sahoo, aged about 42 yrs, S/o- Late Jagannath Sahoo, Accounts Manager, Hotel Padma, In front of Puri Zilla School, Grand Road, Puri, P.O.- Puri. P.S.- Town P.S., Puri, Dist- Puri.
6. Mr. Jimuta Kumar Sahoo, aged about 40 yrs, S/o- Late Jagannath Sahoo, At- Mukundaprasada, P.O.- P.N. College, Khordha presently

residing At No. 148, 1<sup>st</sup> floor, 6<sup>th</sup> cross street, Balaji Nagar, Selaiyur,  
Tambaram-East, Chennai – 600073.

.... .. Opp. Parties.

Counsel for the petitioner	....	Sri S.K. Das & associates, Advocates, Khordha.
Counsel for the opp-party No. 4	....	Sri N.N. Mohapatra & associates, Advocates, Khordha.
Counsel for the opp-party No. 5	....	Sri R.P.Dash & associates, Advocates, Khordha.
Counsel for the opp-party Nos. 1 to 3 & 6	....	Ex-parte

.....  
Date of argument - 16.08.2014  
Date of Judgment - 06.09.2014  
.....

Judgment

The present application has been filed by the petitioner for grant of a succession certificate as per the provision U/s 372 of Indian Succession Act, 1925, in order to withdraw the arrear LTA amount of Rs. 5,82,080/- (hereinafter referred to be case amount) of her deceased husband deposited in the account No. 11276625904, SBI, Khordha Branch, Khordha.

02. The petitioner's case is that she is the widow and the Opp. Parties are daughters and sons of deceased Jagannath Sahoo. As the Opp. Parties are residing out of the village, the petitioner preferred this application for grant of succession certificate in her favour to withdraw the aforementioned amount. The petitioner's specific case is that her deceased husband Jagannath Sahoo was retired as a principal of Gopa College in the

year 1998. In the month of February, 2011, deceased Jagannath had been to Srilanka as a tourist. On 28.02.2011, he felled down in side the temple at Candi and sustained injury. He was immediately admitted to the Candi Hospital, wherein the medical officers of the hospital declared Jagannath Sahoo to be dead due to “Cranio Cerebral injuries by fall”. Accordingly, the death certificate was issued by the Government Hospital, Candi vide letter No. 9089 dt. 28.02.2011, counter signed by the Assistant High Commissioner of India. After the death of Jagannath Sahoo, the Petitioner and Opp. Parties are entitled to the settlement of the said arrear amount as they are the class –1 surviving heirs and successors of the deceased Jagannath. It is further contended by the petitioner that the Opp. Parties are not able to present personally to receive the said amount and as such she took the responsibility to receive the same over which both the parties to the present petition are entitled to get equal share. Making more clarification the petitioner again contended that the deceased before death has not executed any will in respect of his estate and as such he died intestate and for which the parties are entitled for equal share over the case amount.

3. The Opp. Party Nos. 1, 2, 3 & 6 have not participated in the proceeding and as such the case against them set ex-parte. The Opp. Party Nos. 4 & 5 have participated in the proceeding and submitted their respective show causes/ rejoinder assailing the claim of the petitioner and also by imposing their specific claim over the case amount. P.W. 4 is the daughter of the deceased Jagannath and as such her relationship with other parties to the

case needs no further clarification. Her specific claim is that she is the unmarried daughter of deceased Jagannath. The amount deposited by her father, which is the subject matter of the petition has been deposited by Jagannath only for the purpose of her marriage expenses. Apart from that her deceased father Jagannath has also expressed the said fact in presence of the petitioner and all the Opp. Parties and he has also expressed his willingness regarding deposit of the case amount in favour of the Opp. Party No. 4. Therefore, the petitioner and other Opp. Parties are not entitled for any share out of the case amount and only she is entitled for the whole amount.

04. The Opp. Party No. 5 has in his rejoinder has imposed another claim by saying that the petitioner in collusion with other Opp. Parties has suppressed the real amount lying in other banks, so also about other movable and immovable properties. It is specifically contended by the Opp. Party No. 5 that he has spent Rs. 1, 45,440/- for the SUDHI ceremony of his deceased father Jagannath Sahoo. The petitioner and Opp. Party No. 6 have assured him to pay back the amount after completion of all the rituals, but they have not paid a single pie to him. The Opp. Party No. 5 again contended that he has also paid Rs. 1, 28,700/- towards the hotel expenses of his deceased father and Opp. Party Nos. 1 to 3, who had stayed at Puri in a hotel called 'Ranger Marine Drive' to avoid arrest in a criminal case filed by their daughter in law. Therefore, the Opp. Party No. 6 has claimed a total sum of Rs. 2, 74,140/- out of the case amount.

05. In order to prove her case the petitioner examined herself as P.W. 1 and one Sagar Das as P.W. 2. Similarly Opp. Party No. 5 has examined himself as O.P.W. 1. On the other hand Opp. Party No. 5 examined none.

Five documents have been exhibited on behalf of the petitioner, out of which the legal heir certificate of deceased Jagannath is marked as Ext. 1, the death certificate issued by the Government Hospital, Candi, Srilanka as Ext. 2, the information of the C.M., SBI, Khordha Branch regarding the amount deposited in the name of deceased Jagannath as Ext. 3, the letter of C.A., Orissa regarding the deposit of the total arrear of deceased Jagannath as Ext. 4 and Original pass book of the deceased Jagannath as Ext. 5.

06. It is not under dispute that the petitioner and the Opp. Parties are the legal heirs/ successors of deceased Jagannath Sahoo and as such they have equal interest each over the case amount. But while dealing with the disputes as raised by opp-parties No-4 and 5, it must be kept in mind that the succession certificate issued by the court as per the above provision of law is meant for a specific purpose and the same cannot be utilized for any other co-lateral purposes. In the present case P.W. 1, who is the petitioner has specifically admitted in her pleading as well as in her evidence in chief that Opp. Party No. 4 is her unmarried daughter, who is aged about 44 yrs and leading a bachelor life. The opp-party No-4 while cross-examining the witnesses from the side of the petitioner has tried to establish that the amount

which is the subject matter of this case has been deposited by her deceased father to meet her marriage expenses and on that basis Opp. Party No. 4 has claimed to receive the whole case amount. On the other hand the Opp. Party No. 5 also cross-examined the petitioner's witnesses and tried to establish that he has spent a lot of money for the SUDHIKRIYA of his deceased father and also for food, boarding and clothing of his deceased father and other family members during their stay in a hotel at Puri. It has been advanced by the Opp. Party No. 5 during cross-examination that the daughter in law/ wife of Opp. Party No. 5 has filed a criminal case against the family members of deceased Jagannath Sahoo and as such they fled away and started residing in a hotel at Puri, along with the Opp. Party Nos. 1 to 3 as well as the present petitioner. All the expenses was incurred by the Opp. Party No. 5. The total amount incurred by Opp. Party No. 5 regarding SUDHIKRIYA and their stay at Puri to be Rs. 2,75,140/-.

Taking account of the above rival claims and before passing any order regarding the succession certificate, this court would like to convey the opp-parties No-4 and 5 regarding their right and duty ought to be exercised while making such a claim as well as the approach of law to that extent.

07. It has already been mentioned that the scope of the court in a proceeding U/s- 372 of Indian Succession Act, 1925 is limited being guided as per the provisions of Sec. 370 to 381 of the Act. The court while exercising it's jurisdiction as per the above provision of law, constraint to

decide only the legal heir/heirs of a deceased and who is entitled for the succession certificate in accordance to his legally approved relationship with the deceased and claim thereto. The court has to issue the succession certificate to the proper party, after deciding his legal status and if not, the court has to restrain itself to pass any positive order in favour of the party/ parties seeking a succession certificate. This is not the appropriate forum or stage to declare the right, title, interest or possession of the parties over any property movable or immovable. Similarly, the nature of the claim of the Opp. Parties Nos. 4 in this case coming within the purview of a 'civil suit for declaration' and the claim of the Opp. Parties Nos. 5 for 'recovery of money' and for the same, they have to adopt the proper recourse to law and their purpose can only be served if they will come with independent suits for the above purpose. But, this is not the right proceeding, wherein the claim of declaration and recovery of money can be ventilated and adjudicated by assessing the evidence of the parties. Those questions deserve strict proof for an useful and effective adjudication. In case this court will start deciding the right, title, interest and possession as well as recovery of money while deciding a case of issuance of succession certificate, any order to that effect will be deemed to be a nullity in other subsequent proceedings and will not be executed at all. Therefore, whatsoever the claim of the Opp. Party No. 4 & 5 is, they have to approach the proper forum by adopting the proper procedure to law. Therefore, this court cannot pass any order with regards to the claim of Opp. Party Nos. 4 & 5.

08. This being the factual dispute between both the parties and taking account of the admitted position of the case, it is the opinion of this court that the succession certificate cannot be issued in favour of all the parties. The intention of the legislature was that the Judge should select or appoint the fittest person, to whom the single certificate could be granted in order to collect the whole of the debt on behalf of all the persons entitle to receive it and should take security from such person that he would give their dues to all the other persons entitle to share in the distribution of the money. In the present case the petitioner being the eldest person in their family and the Opp. Parties are none else, but her sons and daughters, is entitled for the sole succession certificate. She has to distribute the legitimate share to all the Opp. Parties to this case, who are entitled for equal share out of the case amount including the petitioner herself. Hence it is order.

**ORDER**

1) The Succession Misc. Case is allowed in part on contest against the Opposite parties No- 4 and 5 while Ex-parte against opp-parties 1,2,3 and 6, but in the circumstances there is no order as to cost.

2) Accordingly a Succession certificate be issued in favour of the petitioner to receive the arrear LTA amount of Rs. 5,82,080/- of deceased Jagannath Sahoo deposited in the account No. 11276625904, SBI, Khordha Branch, Khordha. The petitioner and the opp-parties being not entitled for exemption, have to deposit the court fees on the interest incurred during

pendency of the case on the amount deposited in the name of the deceased, if any.

3) Taking account of the nature of the dispute, the petitioner is hereby directed to submit an indemnity bond of Rs. 1,00,000/-before the court to the effect that she shall distribute the case amount equally among the Opp. Parties and herself within one month from receiving the case amount and she shall pay the share to the Opp. Parties in term of Bank Drafts.

Advocates fees are at contested scale.

Senior Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 6th day of September, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Petitioner :-

P.W.1 Padmabati Sahoo.

P.W. 2 Sagar Das

List of witnesses examined on behalf of Opp. Parties :-

O.P.W. 1 Jitendra Kumar Sahoo.

O.P.W. 2 Sailabala Lenka.

O.P.W. 3 Satyamanjari Pallai.

O.P.W. 4 Sujata Mohapatra.

List of documents admitted on behalf of the Petitioner :-

Ext. 1 Legal heir certificate of deceased Jagannath issued by  
Tahasildar, Khordha.

- Ext. 2 This is the death certificate issued by the Government Hospital, Kurli, Srilanka.
- Ext. 3 Information of C.M., SBI, Khordha regarding deposit of pension amount.
- Ext. 4 Letter of C.A., Orissa regarding deposit of total arrear amount.
- Ext. 5 Pass book bearing No. 01190035345 corresponding to old A/c- No. PP 169.

List of documents admitted on behalf of the opp-parties :-

Nil.

Senior Civil Judge, Khurda.