

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA

PRESENT :-

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

Dated this the 25th day of September, 2014

INTEST CASE No. 03 OF 2014.

Gitanjali Panda, aged about 51 yrs, W/o- Late Dharanidhar Panda
of Vill./P.O.- Rameswar, P.S.- Nirakarpur, Dist- Khordha.

.....Petitioner.

Verses

1. Dharendra Kumar Panda, aged about 31 yrs, S/o- Late Dharanidhar Panda, of Vill./P.O.- Rameswar, P.S.- Nirakarpur, Dist- Khordha.
2. Niranjan Panda, aged about 27 yrs, S/o- Late Dharanidhar Panda, of Vill./P.O.- Rameswar, P.S.- Nirakarpur, Dist- Khordha.
3. Jyostnamayee Panda, aged about 25 yrs, D/o- Late Dharanidhar Panda, at present W/o- Ramesh Chandra Rath, Plot No. 200/200, Khandagiri Bihar, Bhubaneswar, P.S.- Khandagiri, Dist- Khordha.
4. Sasmita Panda, aged about 35 yrs, Second wife of Late dharanidhar Panda (2nd Claimant), At present C/o- Chintamani Mohapatra, At- Rajabazar Gajapatinar, P.O./P.S.- Jatni, Dist- Khordha.
5. Anupama Panda, aged about 14 yrs, D/o- Late Dharanidhar Panda (minor) represented through her mother guardian Sasmita Panda, At- Rajabazar, Gajapatinar, Jatni, P.O./P.S.- Jatni, Dist- Khordha.

.... ... Opp. Parties.

Counsel for the petitioner Sri H. N. Swain & associates,
Advocates, Khordha.

Counsel for the opp-party Nos.1 to 3 Sri D.K. Samantaray & associates,
Advocates, Khordha.

Counsel for the opp-party Nos. 4 & 5.... Sri S. K. Das & associates,
Advocates, Khordha.

.....
Date of argument - 16.08.2014
Date of Judgment - 25.09.2014
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Judgment

The present application has been filed by the petitioner for issuance of a succession certificate to her as per the provision U/s 372 of Indian Succession Act, 1925, in order to release of the claim amount of Rs. 5,29,497/- (herein after called as case amount) of her deceased husband Dharanidhar Panda, in her favour.

2. The petitioner's case is that her husband was working as L.M.A Under East-Coast Railway, Ghantikhala branch railway station. He died on 20.11.2007 in his service place. She is the wife and the Opp. Party Nos. 1 to 3 are the sons and daughter of Late Dharanidhar Panda. The petitioner's further case is that during life time, her husband Dharanidhar Panda adopted a second wife namely Sasmita Panda, who is the Opp. Party No. 4 in this case. Out of their wedlock, Opp. Party No. 5 namely Anupama Panda took barth. The said Sasmita Panda was residing with deceased Dharanidhar in his service place. The petitioner's specific case is that her husband died leaving the case amount in his different accounts such as Provident fund of Rs. 1,03,964/-, CGE-GIS of Rs. 41,163/-, Leave Salary of Rs. 1,03,400/-, Death Gratuity of Rs. 2,32,122/- and 6th pay Commissioner arrear of Rs. 48,848/-, in total of Rs. 5,29,497/-, which is the subject matter of the case. Herself and

her children such as opp-parties No-1,2 and 3 are entitled for the same. The petitioners further case is that she initially approached the concerned railway authority for retaining the case amount but in the mean time the opp-party No-4 objected the same by claiming herself to be the wife of Dharanidhar Panda and as such the railway authority advised the petitioner to obtain a succession certificate in support of her claim and accordingly she preferred the present case. The petitioner has prayed that the succession certificate shall be issued in her favour to retain the case amount.

3. The Opp. Party Nos. 1 to 3 have filed their joint written show cause by admitting the claim of the petitioner and thereby saying that they have no objection if the succession certificate will be issued in favour of the petitioner.

The Opp. Party Nos. 4 & 5 have also filed their joint show cause. They have to say that Opp. Party No. 4 is also the legally married wife of deceased Dharanidhar Panda and their marriage was solemnized with the knowledge and consent of the petitioner. Opp. Party No. 5 born out of their wedlock and as such the Opp. Party No. 4 & 5 have equal interest over the case amount as the petitioner and Opp. Party Nos. 1 to 3 have. It is again contended by the Opp. Parties No-4 and 5 that after death of Dharanidhar Panda, they have participated in his funeral. On mutual understand she was residing with Dharanidhar as his wife in the railway quarter at Ghantikhala since the date of their marriage. Opp. Party No. 4 had made a claim before the railway authority to get her share so also the share of her daughter, Opp.

Party No. 5 out of all service benefits of her deceased husband. But the railway authority directed them to produce the succession certificate. Their specific claim is that if the succession certificate will be issued in favour of the petitioner then she shall be directed to distribute the case amount among all the parties equally including Opp. Party Nos. 4 & 5.

04. In order to prove its case the petitioner only examined herself as P.W. 1 and Opp. Party No. 4 has also examined herself as O.P.W. 1. The petitioner has relied upon three documents. The Letter from Office of the Senior Divisional Personnel officer bearing No. P/Bills/Optg..02-645/Sott./Tdp./ Lma/ Chnh/ dt. 16.05.2012 is marked as Ext. 1, Copy of Legal heir Certificate as Ext. 2 and Copy of death certificate of Dharanidhar Panda as Ext. 3.

05. This court has also gone through the evidence adduced by both the parties. Admittedly there is no dispute between the parties regarding issuance of succession certificate. Gitanjali Panda is the legally married wife of deceased Dharanidhar Panda. Opp. Party Nos. 1 & 2 are the legitimate sons and Opp. Party No. 3 is the legitimate daughter of Gitanjali Panda and deceased Dharanidhar. Here the Opp. Party No. 4 has entered into the scene by claiming that she is another legally married wife of deceased Dharanidhar. No dispute that Opp. Party No. 5 is also the daughter of deceased Dharanidhar and Sasmita Panda (Opp. Party No. 4). Even if the opp-party No-4 is accepted to be the legitimate or illegitimate daughter of Dharanidhar, in any way she is entitled for a share over the case amount.

But, the factual question before this court is that whether the Op. Party No. 4, Sasmita Panda is the legally married wife of Dharanidhar Panda or having an interest over the case amount.

6. Dealing with the above question it is worthwhile to mention that the petitioner is the legally married wife of Dharanidhar Panda and their marriage was not dissolved till the death of Dharanidhar. In the mean time Dharanidhar accepted another lady Sasmita Panda, who is the opp-party No-4 in this case. She has claimed an interest over the case amount by imposing herself as the wife of deceased Dharanidhar Panda. The evidence of both the parties are nothing but just the repetition of their pleading.

Before moving in to the deep, it is quite desirable for the court to note down that this is not the appropriate proceeding where a legality of marriage of a person can be decided. But the court in the present proceeding cannot ignore ones claim, if he succeeded to prove his prima-facie marital status by providing concrete, cogent and legally admissible evidence pertaining to his case. But except an oral statement nothing has been adduced by opp-party No-4, Sasmita Panda to prove herself to be the legally married wife of Dharanidhar. It is absolutely right that the petitioner has admitted that Dharanidhar has accepted Sasmita (O.P-4) as his second wife. But such an admission cannot provide a legal status of a lady to be a wife of another as the same is contrary to law. In order to explain the same, this court would like to quote section 5 of Hindu Marriage Act which provides the conditions for a Hindu Marriage, as surfaced bellow:-

“S.5. Conditions for a Hindu Marriage.- A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled.

(i) neither party has a spouse living at the time of the marriage.

x x x x x x x x x”

The opp-party No-4 is not also coming within any exception to the above rule or any provision relating to “The Special Marriage Act 1954.”

07. It is also the settled law that a male Hindu cannot marry another woman during the life time of his legally married wife unless they have been separated by virtue of divorce. In this case the petitioner Gitanjali Panda and Dharanidhar Panda were united till death of Dharanidhar. Now, Sasmita Panda has claimed to be the legally married wife of Dharanidhar and for that reason the onus definitely lies on Opp. Party No. 4 to establish that she is the legally married wife of Dharanidhar Panda and to that effect she may provide her marriage certificate or any decree of the court or any other relevant document to substantiate her case. Otherwise there is no scope for the court even to presume existence of any such fact. In this case not a single document has been submitted by Opp. Party No. 4 that she is the legally married wife of deceased Dharanidhar. Even though it is admitted that she was residing with Dharanidhar, nothing can be inferred by this court from her pleading that the marriage between Dharanidhar and Sasmita had been solemnized at any point of time. At best it can only be inferred either both

Dharanidhar and Sasmita had been in live in relation with each other or she was a concubine of Dharanidhar Panda.

As per the Hindu Law, marriage is a sacrament. Staying together by two different sexes with each other never recognized as a marital relationship. If the female is recognized as a concubine or kept, she can claim for maintenance from her husband, but so far as marriage is concerned, the person who claims marriage, is to substantiate the same before the court of law. In the present case there would be much opportunity for the Opp. Party No. 4 to substantiate their date and place of marriage as well as the nature and form of marriage and rituals observed therein. She can adduced the evidence of other witnesses, who were present at the time of solemnized on marriage. If she desired to prove her status as a married wife, that can only be decided in a separate suit, but in this case the court has to see the existing status of a person to assert whether she is a legal successor of deceased or not. Here the Opp. Party No. 4 cannot be termed as the legally married wife of deceased Dharanidhar Panda as she is unable to substantiate the said fact at this right stage. Therefore she is not entitled for any share out of the case amount. The Opp. Party Nos. 1 to 3 are the legitimate issues of Gitanjali Panda and Dharanidhar Panda and Opp. Party No. 5 is the illegitimate daughter of Dharanidhar Panda. Therefore, Gitanjali Panda and Opp. Party Nos. 1 to 3 & 5 have equal share over the case amount and as such the present succession misc. case is allowed to the extent as discussed

above. No order can be passed towards the claim of the petitioner pertaining to family pension through succession certificate. Hence it is order.

ORDER

1) The Succession Misc. Case is allowed in part on contest 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 case amount of Rs. 5,29,497/- of deceased Dharanidhar Panda. The petitioner being not entitled for any exemption, has 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 after deducting only the court fees paid in this case, and she shall pay 1/5th share of the case amount to the Opp. Partie 5 in term of Bank Draft, through her mother guardian, Opp. Party No. 4.

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 25th day of September, 2014.

Senior Civil Judge, Khurda.

List of witnesses examined on behalf of Petitioner :-

P.W.1 Gitanjali Panda.

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

O.P.W. 1 Sasmita Panda.

List of documents admitted on behalf of the Petitioner :-

Ext. 1 Letter from Office of Senior Divisional Personel officer No.
P/Bills/Optg..02-645/Sott./Tdp./Lma/Chnh/dt. 16.05.2012

Ext. 2 Copy of Legal heir Certificate.

Ext. 3 Copy of death certificate of Dharanidhar Panda.

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

Nil.

Senior Civil Judge, Khurda.