

IN THE COURT OF THE DISTRICT JUDGE, LAKHIMPUR, NORTH LAKHIMPUR.

Present - M. A. Choudhury.
District Judge,
Lakhimpur.

MISC (S/C) CASE NO - 26 OF 2016.

Smti Mamoni Saikia ----- Petitioner.

Vs.

1. Smti Bibha Rani Chamuah.
2. Sri Ritu Parna Chamuah.
3. Miss Beethika Saikia.
4. Miss Reethika Saikia. ----- Respondents.

Advocates appeared in the case :

Ms. J. Doley, Advocate ----- For the Petitioner.

Mr. B. Gogoi, Advocate ----- For the Respondent nos-1 & 2.

Date of hearing Argument - 7.6.2019.

Date of delivery of Judgment -28.6.2019.

JUDGMENT

1. This case is filed under section 372 of the Indian Succession Act by the Petitioner Smti Mamoni Saikia praying for issuance of Succession Certificate in her name in respect of the debts and securities left behind by her husband deceased Gandhesh Kumar Saikia who was serving as S.D.O. (Sadar), Demaji who died on 4.12.2015.

2. The case of the Petitioner may describe in brief as follows

:

The Petitioner Smti Mamoni Saikia got married with Gandhesh Kumar Saikia as his second wife. Out of their wedlock, two female issues, namely, respondent no-3 Smti Beethika Saikia and respondent no-4 Smti Reethika Saikia were born. The respondent no-4 Smti Reethika Saikia is still minor. The both respondent nos-3 and 4 have been living under the care and custody of the Petitioner.

3. Gandhesh Kumar Saikia was passed away on 4.12.2015 while he was serving as S.D.O. (Sadar), Dhemaji, Dist - Dhemaji leaving behind the following including herself as his legal heirs and successors :

1. Smti Bibha Rani Chamuah----- First Wife.
2. Sri Ritu Parna Chamuah ----- Son.
3. Miss Beethika Saikia ----- Daughter.
4. Miss Reethika Saikia ----- Daughter.

4. The Petitioner stated that her husband Gandhesh Kumar Saikia was passed away leaving behind the following debts and securities:

- | | |
|-----------------------|----------------|
| 1. GIS Fixed Amount- | Rs-4,00,000/- |
| 2. GIS Saving amount- | Rs- 85,213/- |
| 3. GPF Amount- | Rs- 2,52,489/- |

	Total	Rs- 7,37,702/-
--	-------	----------------

5. The Petitioner stated that there is no impediment under section 370 of the Indian Succession Act or under any other provision of the Act in granting Succession Certificate in her favour. The Petitioner is entitled to Succession Certificate being the legally married wife of the deceased.

6. The Petitioner prays for granting Succession Certificate in her favour in respect of an amount of Rs-7,37,702/- that as been mentioned here in above.

7. The respondent no-1 Smti Bibha Rani Chamuah and respondent no-2 Sri Ritu Parna Chamuah contested the case by filing

their joint W.S. The Respondent no-3 Smti Beethika Saikia and respondent no-4 Smti Reethika Saikia did not contest the case and the case was proceeded exparte against them.

8. The Respondent no-1 & 2 in their joint W.S. besides denying all the averments made in the Petition for Succession Certificate stated that the Petitioner was not married with Gandhesh Kumar Saikia. As the Petitioner is not the wife of late Gandhesh Kumar Saikia, so she has no right to file this case for Succession Certificate.

In the W.S. it is stated that the respondent no-1 Smti Bibha Rani Chamuah is the legally married wife of late Gandhesh Kumar Saikia. Out of her wed-lock with Gandhesh Kumar Saikia, one male issue ie, the respondent no-2 and one female issue were born to her. But, the female issue named Joothika Chamuah was passed away at the age of 17.

The respondent nos-1 & 2 in their W.S. stated that the Petition for Succession Certificate filed by the Petitioner has not been in conformity with the provisions of Hindu Succession Act. As per Hindu Succession Act, the respondent no-1 is entitled to get Succession certificate to collect the debt and securities of her husband Late Gandhesh Kumar Saikia.

The Respondent no-1 prays for granting Succession Certificate in her name in respect of the debts and securities left behind by Late Gandhesh Kumar Saikia in order to provide the legal heirs of Late Gandhesh Kumar Saikia their respective share.

9. After hearing the learned advocate of both sides and perusing the pleadings of both sides, the following Issues were framed for adjudication :

(I) Whether there is any cause of action for the suit?

(II) Whether the Petitioner is entitled to get Succession Certificate as prayed for?

(III) To what relief or reliefs, if any, the parties are entitled to?

10. To prove the case, the Petitioner side examined one witness. The Respondent side examined no witness.

11. Heard Argument from the learned advocate of both sides. Perused the materials on record and after considering the same, the Issues are decided as under :

12. DECISION AND REASONS:

ISSUE NO-II

-

For the sake of convenience, the Issue No-II is taken up first for consideration.

The Petitioner Smti Mamoni Saikia has been examined as Petitioner witness no-1. She in her evidence stated that the deceased Gandhesh Kumar Saikia was her husband. Gandhesh Kumar Saikia was passed away on 8.2.2015 while he was working as S.D.O. (Sadar), Dhemaji, Dist- Dhemaji. She has submitted the death certificate of deceased Gandhesh Kumar Saikia issued by the S.D.M.& H.O., Ghilamara P.H.C. -cum - Birth & Death register and proved the same as Ext-1. She in her evidence stated that she is the second wife of the deceased Gandhesh Kumar Saikia. The deceased Gandhesh Kumar Saikia at the time of his death, left behind herself, his first wife Smti Bibha Rani Chamuah, one son and two daughters. She in her cross-examination stated that when she got married with Gandhesh Kumar Saikia, then Gandhesh Kumar Saikia had his first wife named Smti Bibha Rani Chamuah. She in her evidence stated that no divorce had taken place between Gandhesh Kumar Saikia and his first wife Smti Bibha Rani Saikia. From the evidence of the Petitioner, it is found that Gandhesh Kumar Saikia married her when the first marriage of Gandhesh Kumar Saikia with the Respondent no-1 Smti Bibha Rani Saikia had been in

subsistence. As per her evidence, she is the 2nd wife of the deceased Gandhesh Kumar Saikia.

The respondent no-1 in her W.S. stated that the petitioner was not married with Gandhesh Kumar Saikia. But, the respondent no-1 has not adduced any evidence to prove the fact that the Petitioner was not married with Gandhesh Kumar Saikia. The respondent in her W.S. stated that the respondent no-2 is her own son and she had a daughter named Joothika Chamuah who was passed away at the age 17 years while she was reading in college. She in her W.S. did not deny the respondent nos-3 & 4 being the daughters of deceased Gandhesh Kumar Saikia. The petitioner neither in the petition for succession certificate nor in her evidence specifically claimed the respondent nos-3 & 4 are her own daughters. As the respondent nos-3 & 4 being the daughters of deceased Gandhesh Kumar Saikia and as they are not the daughters of respondent no-1, so they are the daughters of the Petitioner. The respondent no-1 in her W.S. did not say that respondent nos-3 & 4 are the illegitimate daughters of Gandhesh Kumar Saikia through the Petitioner. The Petitioner by adducing evidence has submitted the Next of Kin certificate of the deceased Gandhesh Kumar Saikia issued from the Office of the Deputy Commissioner, North Lakhimpur and proved the same as Ext-2. From the Next of Kin Certificate Ext-2, it is found that deceased Gandhesh Kumar Saikia at the time of his death, left behind the following as his Next of Kins:

1. Smti Bibha Rani Chamuah ----- First wife
2. Sri Ritu Parna Chamuah ----- Son.
3. Smti Mamoni Saikia ----- Second wife.
4. Smti Beethika Saikia ----- Daughter.
5. Smti Reethika Saikia ----- Daughter.

From the aforesaid Next of Kin certificate, it is further found that the
Petitioner is the second wife of deceased Gandhesh Kumar Saikia.

From the aforesaid facts and circumstances, it is established that the deceased Gandhesh Kumar Saikia had married the Petitioner as his second wife.

13. It is pertinent to note that section 5 of the Hindu Marriage Act, 1955 lays down the conditions for solemnisation of a valid marriage between two Hindus.

Section 5 of the Hindu Marriage Act, 1955 is reproduced as follows:

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

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

(ii) at the time of marriage, neither party ____

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind, or

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.”

14. Section 11 of the Hindu Marriage Act,1955 lays down the marriages which are void. Section 11 of the Hindu Marriage Act,1955 is reproduced as under:

“11. Void marriages - Any marriage solemnised after the commencement of this Act shall be null and void

and may on a petition presented by either party thereto (against the other Party), be so declared by a decree of nullity if it contravenes any of the conditions specified in clauses (i), (iv) and (v) of section 5.”

On a conjoint study of section 5 (i) and section 11 of the Hindu Marriage Act,1955, it is clearly indicated that a marriage solemnised between two Hindus after the commencement of the Act of 1955 would be void, if any of the Parties, at the time of solemnisation of the marriage, has a spouse living.

In the face of what is contained in section 5(i) read with section 11 of the Act of 1955, it logically follows that in so far as the marriage between the said deceased and the respondent no-1 Smti Bibha Rani Chamuah is concerned, the same is a valid marriage. But, the marriage which was solemnised between the petitioner and Gandhesh Kumar Saikia was void and the question of treating the Petitioner as a widow of the deceased does not arise as the marriage was solemnised in contravention of the provisions of section 5(i) of the Hindu Marriage Act,1955. Therefore, it is established that the marriage of the petitioner with the deceased Gandhesh Kumar Saikia was void from the very inception and have to be ignored as not existing in law at all. Now, it is inferred that the Petitioner is not the wife of the deceased Gandhesh Kumar Saikia. As the Petitioner is not the wife of the deceased Gandhesh Kumar Saikia, so, she is not a legal heir of the deceased Gandhesh Kumar Saikia and thus the Petitioner is not entitled to Succession Certificate to the debts and securities left behind by the deceased Gandhesh Kumar Saikia.

15. From the case record, it is found that deceased Gandhesh Kumar Saikia at the time of his death, left behind two daughters namely, respondent no-3 Smti Beethika Saikia and respondent no-4 Smti Reethika Saikia through the Petitioner. It is at this point to note that section 16 of the Hindu Marriage Act,1955 makes the children of a void or voidable marriage legitimate so far their right of succession is concerned. Viewed from that angle, so far the respondent nos-3 & 4 are

concerned, these two girls having been born admittedly out of the illegitimate co-habitation between the deceased Gandhesh Kumar Saikia and the Petitioner, are legitimate as far as their right of Succession to the properties left by their father deceased Gandhesh Kumar Saikia is concerned. Respondent nos- 3 & 4 are entitled to succeed to the properties of Gandhesh Kumar Saikia by virtue of sections 11 read with section 16 of the Hindu Marriage Act and Rule 2 of section 10 of the Hindu Succession Act,1956 to the extent of one share each._

-

16. The respondent no-1 Smti Bibha Rani Chamuah being the first wife of the deceased Gandhesh Kumar Saikia and the respondent no-2 Sri Ritu Parna Chamuah being the legitimate son of the respondent no-1 and the deceased Gandhesh Kumar Saikia, so, they are entitled to succeed to the properties of the deceased Gandhesh Kumar Saikia in equal proportion of one share each. **Hon'ble Apex court in the case of Rameswari Devi v. State of Bihar reported in AIR 2000 SC 735 held thus:**

“ it can not be disputed that the marriage between Narin Lal and Yogmaya Devi was in contravention of Clause (i) of section 5 of the Hindu marriage Act and was a void marriage. Under section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in class (i) which include widow and son. Among the widow and son, they all get shares (see sections 8,10 and the schedule of the Hindu Succession Act, 1956). Yogmaya devi can not be described as a widow of Narain Lal, her marriage with narain Lal being void.”

What crystallises from the above discussion is that while respondent nos-1, 2, 3 and 4 are entitled to one share each in to the debts and securities of deceased Gandhesh Kumar Saikia as mentioned here in above and the petitioner is not entitled to any share in the aforesaid property.

17. ISSUE NO-I

In view of my discussion and decision made in Issue No-II, I am of the opinion that there is cause of action for this case. Hence, this Issue is decided in favour of the Petitioner side.

18. ISSUE NO-III

In view of my discussion and decision made in Issue nos-I and II, I am of the opinion that the petitioner is not entitled to any share in the debts and securities mentioned here in above as left behind by the deceased Gandhesh Kumar Saikia. Respondent nos-1,2,3 & 4 are entitled to one share each to the debts and securities as mentioned here in above left behind by the deceased Gandhesh Kumar Saikia.

19. ORDER

I order that the suit is partly allowed on contest with out cost. The debts and securities left behind by the deceased Gandhesh Kumar Saikia aforementioned shall stand divided in to four (4) shares, the respondent nos-1,2,3,& 4 shall be entitled to receive one share each.

Succession Certificate be issued accordingly on payment of requisite court fees.

20. Given under my hand and the seal of this court on this the 28th day of June, 2019.

Typed by

(M. A. Choudhury)
District Judge.
Lakhimpur.

(M. A. Choudhury)
District Judge.
Lakhimpur.

APPENDIX

1. WITNESSES EXAMINED BY THE PETITIONER SIDE:

P.W.1 - Smti Mamoni Saikia, the Petitioner of the case.

2. WITNESSES EXAMINED BY THE RESPONDENT SIDE :

Nil.

3. DOCUMENTS PRODUCED BY THE PETITIONER SIDE :

Ext-1 - Death Certificate of deceased Gandhesh Kumar Saikia.

Ext-2- Next of Kin Certificate of deceased Gandhesh Kumar Saikia.

4. DOCUMENTS PRODUCED BY THE RESPONDENT SIDE :

Nil.

(M. A. Choudhury)

District Judge,

Lakhimpur.
