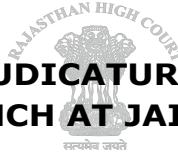




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Appeal No. 927/2019

Vimla D/o Shankar W/o Randhir Singh Jat, R/o Fatehpur, Tehsil
And District Shyopur (M.P.)

----Appellant

Versus

1. Sita W/o Shankar Lal, R/o Vill. Thingla, Tehsil & District
Sawai Madhopur (Raj)
2. General Public, R/o
3. State Bank of India, Branch Sawai Madhopur through its
Branch Manager, Bajariya, Sawai Madhopur
4. Narbda Devi W/o Jainarain, R/o Village Thingla, Tehsil &
District Sawai Madhopur (Raj)

----Respondents

Connected with

S.B. Civil Miscellaneous Appeal No. 930/2019

Vimla D/o Shankar W/o Randhir Singh Jat, R/o Fatehpur, Tehsil
And District Shyopur (M.P.)

----Appellant

Versus

1. Sita W/o Shankar Lal, R/o Vill. Thingla, Teh. And Dist.
Sawai Madhopur (Raj)
2. General Public, R/o
3. Sawai Madhopur Kendriya Sahakari Bank Ltd. Through
Its Branch Manager, Bajariya Sawai Madhopur
4. Narbda Devi W/o Jainarain, R/o Vill. Thingla, Teh. And
Dist. Sawai Madhopur (Raj)

----Respondents

For Appellant(s)	:	Mr. Vinod Kumar Tamoliya with Mr. Nitesh Panchauli
For Respondent(s)	:	Mr. Durgesh Kumar Jangid for Mr. Tarun Jain

HON'BLE MR. JUSTICE MANEESH SHARMA

Order

08/05/2026

1. The present civil miscellaneous appeals have been filed by
the appellants assailing the orders dated 22.01.2019 passed by



the learned District and Sessions Judge, Sawai Madhopur, in Civil Misc. Case Nos. 35/2016 and 36/2016 titled '*Sita vs. General Public & Ors.*', whereby the application of respondent No.1 was allowed and succession certificate under Section 372 of the Indian Succession Act, 1925, were granted in favor of the applicant, *Sita Devi*, and non-applicant, *Narbdha Devi* to the extent of 1/3rd share each, of the movable property left behind by late *Shri Shankar Lal*.

2. Brief facts giving rise to the present appeals are that the applicant/respondent No. 1, *Sita Devi*, filed an application under Section 372 of the Indian Succession Act, 1925, for the grant of a succession certificate on or about 13.05.2016, *inter alia* stating that the applicant's husband, *Shri Shankar Lal*, expired intestate on 01.12.2015. He left behind the applicant, who is his wife, and non-applicant No. 2/appellant, *Vimla*, who is his daughter. It was also stated that there is no other legal heir of late *Shri Shankar Lal* and that he had a bank account bearing No. 30006101130036757 in the *Sawai Madhopur Kendriya Sahakari Bank Ltd.*, containing an amount of Rs. 9,43,545/- (Civil Misc. Case No. 35/2016) as well as an account bearing No. 10604794221 in the State Bank of India, Sawai Madhopur, containing an amount of Rs. 2,88,089/- (Civil Misc Case No. 36/2016). It was also averred that the applicant approached the respective banks to withdraw the aforesaid amounts, but the banks refused to release the said amounts in the absence of a succession certificate; and therefore prayed that a succession certificate may kindly be issued in her favour.

3. The non-applicant No.2/appellant did not file any reply to the aforesaid application.



4. Non-applicant No. 4, *Narbda Devi*, initially filed an application under Order 1 Rule 10 of the CPC seeking impleadment in the said proceedings, being the mother and Class I legal heir of late *Shri Shankar Lal*. Upon being impleaded as a party non-applicant, non-applicant No. 4, *Narbda Devi*, filed a reply to the application for the grant of a succession certificate, inter alia stating that she is also entitled to receive a 1/3rd share in the estate of late *Shri Shankar Lal*, being his mother. She, therefore, prayed that a succession certificate for a 1/3rd share of the amounts in the bank accounts of late *Shri Shankar Lal* may also be issued in her favour.

5. After a careful examination of the pleadings of the parties, the learned Trial Court, vide order dated 22.01.2019, accepted the application for grant of succession certificate in favour of applicant-*Sita* (Wife) and non-applicant No.4-*Narbda Devi* (Mother) for 1/3rd share each. At the same time, the appellant-*Vimla*, was also held to be a Class I legal heir of late *Shri Shankar Lal*, but since she had neither filed a formal application for grant of succession certificate nor orally prayed for the same, thus the learned Trial Court declined to issue succession certificate in respect of the remaining 1/3rd share, in favour of the appellant-*Vimla*.

6. Aggrieved by the same, the appellant-*Vimla* has preferred the present civil miscellaneous appeals.

7. Learned counsel for the appellant submits that the learned Court below committed a serious illegality in denying appellant/non-applicant No. 2, *Vimla*, a succession certificate for the remaining movable property of late *Shri Shankar Lal*, as there



is no dispute with regard to the fact that the appellant, being the daughter, is also a Class-I legal heir of late *Shri Shankar Lal*. He further submits that although the learned Court below acknowledged that all three legal heirs are entitled to a 1/3rd share each in the movable property of late *Shri Shankar Lal*, but merely because no formal application or prayer was made in her behalf, the succession certificate has been granted only in favour of the applicant, *Sita*, and non-applicant No. 4, *Narbda Devi*.

8. He further submits that the aforesaid reasoning recorded by the learned Court below is contrary to the mandate of Section 8 of the Hindu Succession Act, 1956, as well as contrary to the judgment passed by the High Court of Gujarat in ***Ritinbhai Dilsukhbhai Baxi vs. Bidhin Manharbhai Baxi***¹. He therefore prays that the impugned orders may be modified to the extent of issuance of succession certificate to the appellant-*Vimla*.

9. Learned counsel for the respondent-bank submits that there is no dispute that the appellant, being the daughter, is a Class I legal heir of late *Shri Shankar Lal*. However, he opposes the submissions advanced by learned counsel for the appellant qua the grant of a succession certificate in respect of the movable property left behind by late *Shri Shankar Lal* for want of proper application or prayer.

10. Learned counsel for the applicant-*Sita* (respondent No.1) has also not disputed the fact that the appellant is daughter of late *Shri Shankar Lal*, however he supports the impugned orders.

1 (2012) 3 GLR 2724



11. Heard and considered the submissions advanced by the learned counsel for the parties and perused the impugned orders dated 22.01.2019.

12. From bare perusal of the impugned order, it is revealed that the application for issuance of succession certificate was filed by respondent No.1-*Sita* under Section 372 of the Indian Succession Act, 1925, in respect of movable property left behind by husband of the applicant-*Sita*, i.e., late *Shri Shankar Lal* and the same was allowed by the learned Trial Court while directing the issuance of the succession certificate in favour of the applicant, *Sita* (wife), and non-applicant No. 4, *Narbda Devi* (mother), for a 1/3rd share each, upon payment of court fees and fulfilling the requisites as mandated by the law. However, the learned Trial Court has held that although the appellant/non-applicant No. 2, *Vimla*, is the daughter and a Class I legal heir of late *Shri Shankar Lal*, but since she had neither filed a formal application for the grant of a succession certificate nor orally prayed for the same, thus she is not entitled issuance of a succession certificate in respect of the remaining 1/3rd share.

13. Before proceeding further it would be apt to reproduce Section 8 of the Hindu Succession Act, 1956, as well as the Schedule to the Hindu Succession Act, 1956, as under:

"8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and



(d) lastly, if there is no agnate, then upon the cognates of the deceased."

*"THE SCHEDULE
(See section 8)
HEIRS IN CLASS I AND CLASS II
Class I*

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son 1 [son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son]."

14. Thus, it is an undisputed fact that late *Shri Shankar Lal* was survived by three Class-I legal heirs, namely wife-*Sita*, daughter-*Vimla* and mother-*Narbda Devi*. Therefore, it is abundantly clear that the movable property left behind by late *Shri Shankar Lal* would devolve equally among the three Class-I legal heirs that survived him, i.e., applicant-*Sita* (Wife), appellant-*Vimla* (Daughter), and non-applicant No.4-*Narbda Devi* (Mother).

15. A further perusal of the impugned orders dated 22.01.2019 reveals that although the learned Court below acknowledged all three legal heirs to be Class I legal heirs of the deceased and are entitled to a 1/3rd share each in the movable property of late *Shri Shankar Lal*, but merely because no formal application or prayer was made in this behalf by the appellant, a succession certificate was denied to the appellant, *Vimla* (daughter).

16. The relevant extract of the impugned order dated 22.01.2019, in this regard is reproduced as under:

"13.....हिन्दू उत्तराधिकार अधिनियम, 1956 की शिड्यूल प्रथम में माँ, पुत्री एवं पत्नी को प्रथम श्रेणी का वारिस माना गया है। अन्य किसी व्यक्ति द्वारा कोई आपत्ति प्रकरण में पेश नहीं की गई है। प्रार्थीया, अप्रार्थीया संख्या 2 व अप्रार्थीया संख्या 4 मृतक की पत्नी, पुत्री



एवं माँ है जो मृतक के विधिक वारिस होने से मृतक के खाते में जमा राशि को समान रूप से प्राप्त करने की अधिकारी हैं। चूंकि अप्रार्थी संख्या 2 विमला के द्वारा मृतक के उक्त बैंक खाते में जमा राशि के बाबत अपने पक्ष से उत्तराधिकार प्रमाण पत्र जारी करने हेतु कोई प्रार्थना नहीं की गई है और न ही उक्त खाते में जमा राशि में से अपने हिस्से की राशि प्रार्थीया या अन्य द्वारा प्राप्त करने हेतु उनके पक्ष में उत्तराधिकार प्रमाण पत्र जारी किये जाने में कोई आपत्ति नहीं होना प्रकट किया है। ऐसी स्थिति में मृतक शंकर लाल के भारतीय स्टेट बैंक शाखा सवाई माधोपुर के खाता संख्या xxxxxxxxxxxx में जमा राशि में से 1/3, 1/3 राशि प्राप्त करने हेतु प्रार्थीया एवं अप्रार्थीया संख्या 4 के पक्ष में उत्तराधिकार प्रमाण पत्र जारी किया जाना न्यायोचित प्रतीत होता है।"

17. The prime theme of Section 372 is that, prior to the issuance of a succession certificate, primarily four major aspects are to be examined by the Court, namely: (a) the time of the death of the deceased; (b) the ordinary residence of the deceased at the time of his death, to ascertain local jurisdiction; (c) the family or other near relatives of the deceased and their respective residences; and (d) the right in which the petitioner claims.

18. In the present case, from the evidence on record, the time of the death of the deceased, the ordinary residence of the deceased, and the family or other near relatives of the deceased are not disputed by any of the parties involved. It has also come on record that all three Class-I legal heirs of the deceased, i.e., the applicant-*Sita* (wife), the appellant-*Vimla* (daughter), and non-applicant No. 4-*Narbda Devi* (mother), were found to be entitled to the movable property left behind by the deceased. Yet, the learned Trial Court has only granted succession certificates in favour of two heirs, namely, the applicant-*Sita* (wife), and non-applicant No. 4-*Narbda Devi* (mother), but declined to issue the same in favour of the appellant-*Vimla*, on a technical ground as stated herein above.



19. Thus, while considering the peculiar facts and circumstances of the case, if the reasoning recorded in the impugned orders is accepted, it would mean that although the appellant, being a Class-I legal heir, is entitled to the remaining 1/3rd share, but due to the aforesaid technical reason, the remaining 1/3rd share left in the respective bank accounts would be lying dormant in the banks' sundry accounts until a fresh application under Section 372 of the Indian Succession Act, 1925, is filed. Furthermore, upon filing the said application, the entire long drawn and cumbersome process i.e. publication of notices, service, statements etc. as envisaged by Section 372 of the Indian Succession Act, 1925, would have to be repeated, which would be a mere futile exercise.

20. In light of the above discussion, this Court is of the considered view that the aforesaid technical reason for rejection given by the learned Trial Court is a bit harsh and cannot be countenanced rather to do complete justice to the parties in the present matter and further in order to avoid multiplicity of proceedings and to fulfill the procedural requisites, at the most, the learned Trial Court ought to have asked the present appellant to pay the requisite court fees and fulfill the statutory requirements mandated by Section 372 of the Indian Succession Act, 1925, and thereafter, issued succession certificate in favour of the appellant-*Vimla* as well.

21. The above reasoning is further fortified by the judgment passed in ***Ritinbhai Dilsukhbhai Baxi*** (*Supra*), wherein the High Court of Gujarat has held as under:

"20.....In my view, the purpose and intent of Legislature for incorporating the phraseology "having regard to the extent of interest and the fitness in other respects of the applicants" would mean that in a given case if the Judge finds that having



regard to the extent of interest of the objector and other criteria of fitness such objector could be the best person to have a succession certificate, he could also be made entitled to receive succession certificate in absence of separate application because in the very proceedings pending before the Judge, at the instance of the objector, the details, particulars, facts as regards the extent of interest and fitness in other respects of the parties would be scanned and the Judge would be deciding ultimately on the basis of claims of the parties and evidence led by them. Therefore, even if no application was made by the objector, his claim could be considered like applicant for the purpose of grant of succession certificate in his favour. Such view would be, in fact, in furtherance of the object to curtail multiplicity of proceedings."

22. Further, following the above principle propounded in **Ritinbhai Dilsukhbhai Baxi** (Supra), and expounding on the object of Section 373 (4) of the Indian Succession Act, 1925, the High Court of Jharkhand in **Suresh Kumar Agarwal Vs. Naresh Kumar Agarwal**² has held under:

"12. Having considered the submissions advanced on behalf of both sides, a close reading of the legislative scheme as provided under chapter-X of the Succession Act, 1925 that there is no embargo to issuance of joint succession certificate which will be evident from Section 373 (4):

"When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants."

13. From the above provision it is apparent that when all the parties are equally entitled to the succession certificate, it cannot be issued to one, to the exclusion of others. To interpret the provision that it proscribes joint succession certificate, will be against the legislative scheme to grant succession certificate to the extent of interest and fitness. The provision for taking security while issuing succession certificate under Section 373 (3) & (4) is for such cases where there are multiplicity of persons who are entitled to the succession certificate, and it will not be convenient for issuing succession certificate. It is for the reason that in Daw Ohn Bwint; M/s Kone International (P) Ltd. (supra) and Ritinbhai Dilkhusbhai Baxi Vs. Bidhin Manharbhai Baxi , 2012 Supreme (Guj) 494 it has been held that joint succession certificate can be issued."

23. This Court is in respectful agreement with the above position of law propounded by the High Court of Gujarat and the High Court of Jharkhand, that, even if no formal application is made by



any non-applicant or objector, and such non-applicant/objector is found to be equally entitled to the issuance of a succession certificate (such as in the present case), such non-applicant/objector's claim may be considered akin to that of an applicant for the purpose of granting a succession certificate in their favour. Such a view is, in fact, aligned with the objective of curtailing a multiplicity of proceedings.

24. Considering the relevant provisions of law and the judgment cited above, as well as looking to the fact that the appellant is a Class-I legal heir of the deceased and was entitled to a 1/3rd share in the movable property of late *Shri Shankar Lal*, the impugned orders dated 22.01.2019 deserve to be modified.

25. Thus, in order to do complete justice between the parties and to avoid a multiplicity of proceedings, this Court is of the view that the succession certificates for the remaining 1/3rd share of the movable property left behind by late *Shri Shankar Lal* required to have been issued to the appellant, *Vimla* as well, subject to payment of court fees and fulfilling other requisite formalities.

26. In that view of the matter, the impugned orders dated 22.01.2019 stand modified to the extent that the present appellant is also held entitled for issuance of succession certificate in respect of the remaining 1/3rd share in the movable property left behind by late *Shri Shankar Lal* in the respective bank accounts, subject to payment of necessary court fee and requisite formalities as mandated under section 372 of the Indian Succession Act, 1925.

27. With the aforesaid observation and modification, the present civil miscellaneous appeals stand allowed, and accordingly the



appellant-*Vimla* is directed to approach the learned District and Sessions Judge, Sawai Madhopur (Raj.) for necessary action and compliance.

28. The stay application and all other pending application(s), if any, shall stand disposed of.

(MANEESH SHARMA),J

Deepa/47-48