

IN THE COURT OF THE DISTRICT JUDGE, DHUBRI

PRESENT : Shri A. Chakravarty, M.A., LL.M., AJS

Misc. (S/C) Case No. 17 of 2015

Smt. Manjulata Roy ... Petitioner

-Versus -

1. ShriSatyajit Roy
2. ShriSamendra Roy ...Respondents

Petition filed on : 31-03-2015
Evidence recorded on : 06.08.2016, 08.12.2016
Arguments heard on : 06-02-2017
Judgment delivered on : 15-02-2017

Advocates who appeared in this case are:-

Shri Amrit Lal Bairagi, advocate for the petitioner
Shri Sushil Kr. Das, advocate for the respondent

J U D G M E N T

1.This is an application filed under section 372 of the Indian Succession Act, 1925 (hereinafter referred to as "the Act") by the petitioner Smt. Manjulata Roy praying for granting her a succession certificate in respect of the debts and securities left behind by her deceased husband Ranjit Kumar Roy.

2.The case of the petitioner in brief is that her deceased husband Ranjit Kumar Roy was working at the BRPL Limited, Dhaligaon and on 07-05-2000, he died in a motor vehicle accident. The ordinary place of residence of her deceased husband was at village-Upartari, P.S. Bilasipara, District-Dhubri, within the local limits of the jurisdiction of this Court. He has left behind her and his minor son Kuldip Roy

as his legal heirs and representatives. The father and the mother of her deceased husband died in the year 2006 and on 13-12-2014, respectively. Her deceased husband died intestate. At the time of his death, her deceased husband had three Life Insurance Policies as follows:-

1. L.I.C.I., Money due on L.I.C.I. of the deceased Rs. 40,000/-
Bongaigaon being Policy No. 480292147, Nominee-Nitendra Ch. Roy.

2.L.I.C.I., Money due on L.I.C.I. of the deceased Rs. 55,000/-
Bongaigaon being Policy No. 480782774, Nominee-Nitendra Ch. Roy.

3.L.I.C.I., Money due on L.I.C.I. of the deceased Rs. 30,000/
Bongaigaon being Policy No. 480109015, Nominee- Debi Bala Roy.

Total= Rs. 1,25,000/-

(Rupees one lakh twenty five thousand) only.

3. She being the lawfully married wife of the deceased, is entitled to a succession certificate to collect the said amount of Rs. 1,25,000/- (Rupees one lakh twenty five thousand) only, due under the said Life Insurance Policies. There is no any impediment in granting a succession certificate to her. Therefore, she has prayed for granting her a Succession Certificate to enable her to collect the said amount of Rs. 1,25,000/- (Rupees one lakh twenty five thousand) only.

4. During pendency of the case, on 10-12-15, the brothers of the deceased Ranjit Kumar Roy, namely Satyajit Roy and Samendra Roy appeared before this court and prayed for impleading them as opposite parties and my learned predecessor allowed their prayer and they contested the case by filing a joint written statement.

5. In their written statement, they have averred that the deceased RanjitKumar Roy died leaving behind their mother Debi Bala Roy (since deceased), as has

been stated by the petitioner in the para-4 of her petition. Their deceased mother Debi Bala Roy had filed the Misc. (S/C) case No. 225/2000 before this Court praying for granting her a succession certificate in respect of the aforesaid Life Insurance Policies of the deceased Ranjit Kumar Roy. The said petition was dismissed by this Court on 13-12-2002 directing the parties to approach the Civil Court to ascertain their respective shares. They have further stated that as the mother of the deceased Ranjit Kumar Roy was entitled to a share in the debts and securities left behind by the deceased Ranjit Kumar Roy, being her sons, they are entitled to inherit her share. Suppressing the said fact, the petitioner has filed this second succession petition praying for granting her a succession certificate in respect of the same debts and securities left behind by the deceased Ranjit Kumar Roy for wrongful gain. They have further averred that the instant petition is barred by limitation and the principle of res-judicata? Therefore, they have prayed for dismissal of the succession petition.

6. My learned predecessor did not frame any issue in this case. As non-framing of issue has not caused any prejudice to the parties and as the petition can be decided by framing an issue now, the following issue is framed for adjudication:-

- I) Whether the petition is maintainable?
- II) Whether the petition is barred by limitation?
- III) Whether the petition is barred by the principle of res judicata?
- IV) Whether the petitioner is entitled to a succession certificate in respect of the Life Insurance Policies of the deceased Ranjit Kumar Roy?

7. During the course of hearing, the petitioner examined two witnesses including herself. The opposite parties did not examine any witness.

DECISION AND REASONS THEREOF

8. I have carefully examined the evidence and the documents on record, perused the pleadings of the parties and after hearing the arguments advanced by the learned counsel for both the sides, give my decision on the above issue as follows:-

ISSUE NO. I

9. Admittedly, the instant petition for granting a succession certificate filed by the petitioner is a second petition. The first petition was filed by the mother of the deceased Ranjit Kumar Roy, and admittedly the mother of the deceased has expired. Therefore, the petition filed by the mother of the deceased Ranjit Kumar Roy lapsed and as the widow of the deceased Ranjit Kumar Roy has filed the instant succession petition, the same is maintainable. The issue No. I is decided in the affirmative, accordingly.

ISSUE NO. II

10. The opposite parties have averred that as the petitioner did not file the instant succession petition within the period of limitation from the date of disposal of the earlier succession petition, the instant petition is barred by limitation and hence is not maintainable. I do not agree with this contention of the opposite parties. Because, with the death of the petitioner of the earlier petition, the said petition lapsed and hence the petitioner has the right to file the instant succession petition and hence, the same is maintainable. The issue No. II is decided in the negative, accordingly.

ISSUE NO. III

11. The opposite parties have averred that as the succession petition was filed by the mother of the deceased and the same was disposed of by this Court directing the parties to establish their rights in civil court and as neither the mother of the deceased nor the present petitioner approached the civil court for the same, the instant succession petition is barred by res-judicata. I do not agree with this plea of the opposite parties. Because, after the death of the mother of the deceased, the petition filed by her lapsed and the same will not operate as res-judicata on any subsequent petition filed by any other legal heir of the deceased. The issue No. III is decided in the negative, accordingly.

12. Further, I fail to understand as to why the opposite parties have taken these pleas. Because, if the instant petition is dismissed as barred by res-judicata or limitation, they will gain nothing. But the same will cause pecuniary loss and hardships to the petitioner and her son, who are entitled to the debts and securities left behind by the deceased. It seems, knowing that they are not entitled to any share in the debts and securities left behind by their deceased brother Ranjit Kumar Roy, the opposite parties have taken these pleas for sadistic pleasure to cause pecuniary loss and hardships to the petitioner and her son, who are entitled to receive the debts and securities left behind by the deceased.

13. The learned counsel for the opposite parties has relied upon: 1. Civil Appeal No.1967 of 2009, arising out of SLP (C) No.16110 of 2007, Krishna Kumar Sharma vs. RajeshKumar Sharma, decided on March 27,2009; 2. Gulabchand Chhotalal Parikh vs State of Bombay (now Gujarat), reported in AIR 1965 SC 1153; 3.RamjiGoala vs. District Judge, Dhubri, reported in 2015 (5) GLJ 663; 4. RajmataGayatri Devi vsDistt. Judge and Ors., reported in RLW 2008 (2) Raj 1197 and 5. LIC vs.NirmalaAdi Reddy and Ors., reported in AIR 1985 AP 58. The facts and circumstances of the said cases are different from the facts and circumstances of the case in our hand. Hence, the same are not applicable to the case in our hand.

ISSUE NO. IV

14. PW-1 Smt. Manjulata Roy, the petitioner has stated in the affidavit of her examination-in-chief that her deceased husband Ranjit Kumar Roy was working at the BRPL Limited, Dhaligaon, District-Bongaigaon and he died in a motor vehicle accident at Palwal (Haryana) on 07-05-2000. The ordinary place of residence of her deceased husband was at village-Upartari, P.S. Bilasipara, District-Dhubri, within the local limits of the jurisdiction of this Court. He has left behind her and his minor son Kuldip Roy as his legal heirs and representatives. The parents of her deceased husband are since dead. During his life time, her husband procured three LIC policies as mentioned in the petition and his parents were made nominees. After the death of her husband, her mother-in-law Debi

Bala Roy filed a Successions Case before this Court, the No. being Misc.(S/C) 225/2000 and she contested the said case. After hearing both the sides, this Court directed them to establish their rights by filing regular civil suit before the competent civil court. But her mother-in-law did not file any civil suit and in the meantime, she expired. Therefore, she has filed the instant petition praying for granting her a succession certificate in respect of the said life insurance policies of her deceased husband. She has further stated that the opposite parties are not Class-I heirs of her deceased husband and hence, they are not entitled to any share in the debts and securities left behind by her deceased husband. She being the lawfully married wife and Class-I heir of her deceased husband, is entitled to receive a succession certificate. Her deceased husband died intestate. There is no any impediment in granting a succession certificate to her in respect of the said Life Insurance Policies of her deceased husband. By cross examining her, the opposite parties have failed to shake her evidence and as the opposite parties did not adduce rebuttal evidence, it is crystal clear that the deceased died leaving behind the petitioner and his minor son Kuldip Roy as his Class-I heirs and representatives.

15. As can be seen from the discussion made above, the contesting opposite parties, who are brothers of the deceased Ranjit Kumar Roy, have no right to claim any share in the debts and securities left behind by him. The right of their mother to inherit any share in the undivided debts and securities of the deceased also ceased to exist with her death, as the same was not decided till then and hence, was not part of her estate. Therefore, they have no right to any share in the debts and securities left behind by their deceased brother. The petitioner, being the widow of the deceased, is entitled to a succession certificate to collect the debts and securities left behind by the deceased, along with their son, to the exclusion of all others, as there is no other Class-I heir and the opposite parties are Class-II heirs. Therefore, the petitioner, along with the son of the deceased, is entitled to a succession certificate to enable them to collect the money due under the aforesaid Life Insurance Policies of the deceased Ranjit Kumar Roy, with interest, if any.

16. There is also no impediment u/s 370 of the Successions Act in granting a succession certificate to the petitioner and her son. Therefore, the petition is allowed. The issue No. IV is decided in the affirmative, accordingly.

ORDER

17. In the result, the case is allowed on contest with cost. Issue a succession certificate in respect of the Life Insurance Policies of the deceased Ranjit Kumar Roy mentioned in the schedule of the succession petition to the petitioner Smt. Manjulata Roy and her son Kuldip Roy jointly, to enable them to collect the amount of Rs. 1,25,000/- (Rupees one lakh twenty five thousand) only, due under the aforesaid Life Insurance Policies of the deceased Ranjit Kumar Roy, along with interest, if any, on payment of requisite stamp duties.

18. Signed, sealed and delivered in the open Court on this the 15th day of February, 2017, at Dhubri.

(Shri A. Chakravarty)
District Judge, Dhubri

Dictated & corrected by me.

(Shri A. Chakravarty)
District Judge, Dhubri