

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 972(M/S) OF 2006

(Miscellaneous Application No.9423 of 2006)

Smt. Cynthia Johan W/o Barnad Johan,
R/o Mission Compound College Road, Ropar Punjab.

.....Petitioner

Versus

1. Cyril H. Joseph S/o Late Rive Herbert Joseph, R/o 57/14, Rajpur Road, Dehradun.
2. Mrs. Samuel H. Joseph S/o Late Rive Herbert Joseph, R/o 270 Vijay Colony New Cantt. Dehradun.

..... Respondents

3. Smt. Catharine w/o Philip Malhan
R/o 222/165 Kali Das Road, Dehradun.

.....Performa Respondents

Sri Arvind Vashist, Counsel for the petitioner

Sri Rajendra Dobhal, Counsel for the respondents.

31.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Arvind Vashist, Counsel for the petitioner and Sri Rajendra Dobhal, Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned order dated 25.05.2006 passed by A.D.J./F.T.C. VI, Dehradun in O.S. No.11 of 1999.

Briefly stated, petitioner has filed an application for seeking succession certificate of the properties on 26.03.1997 and the case was registered as Misc. Case No.55 of 1997. Earlier vide order dated 04.06.1999, the court directed that the said application for succession certificate may be registered as O.S. No.11 of 1999. Following order was passed :-

"04.06.1999

Parties present. Heard 100 D. let total cost be paid by next date. 101D is also allowed so heard on 57E.

This is contested case for probate, so it should be tried and registered as a Original Suit.

So let the record be sent to the court of District Judge for registry it as a Original suit. Parties to appear there on 18.06.1999."

Petitioner has submitted that he has filed only application for succession. In case there is a dispute between the parties either granting or not granting, he could not be sent to the Civil Court for his grievances.

Sri Rajendra Dobhal appearing on behalf of the respondents has submitted that het order has been passed in the year 1999 and it was not open to recall the order by way of review application.

Considering the facts, the application under section 372 of the Indian Succession Act, 1925 is directed to be decided after framing the issue with regard to the maintainability of the application under section 372 of the Indian Succession Act.

In view of the aforesaid fact, both the parties are agreed let the suit be decided by the Court concerned under section 372 of the Indian Succession Act, 1925 by framing the issue with regard to its maintainability while deciding the application under section 372 of the Indian Succession Act, 1925.

Subject to the above, writ petition is disposed of.

31.07.2006
Jain

(Rajesh Tandon, J.)