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HIGH COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION NO. 22 OF 2007

APPLICANT

: Smt. Sudama Bai, wife of late Mehi Lal, aged about 51 years, resident of village Pendri, Post Ghutra, Tehsil Manendragarh, District Korea (CG).

Versus

**NON-
APPLICANTS**

- : 1. Smt. Kismatiya Bai, widow of late Mehi Lal, aged about 45 years.
2. Ku. Lalita, daughter of late Mehi Lal, aged about 19 years.
3. Dinanath son of late Mehi Lal, aged about 16 years.
4. Shyam Sunder son of late Mehi Lal, aged about 14 years.
5. Naveen Kumar son of late Mehi Lal, aged about 10 years.

Non applicant No. 2 to 5 are minor, through their natural guardian mother Smt. Kismatiya Bai (Non-applicant No. 1) widow of Mehi Lal, all resident of village Kathautiya, Tehsil Manendragarh, District Korea (CG).

6. Chief General Manager, SECL, West Chirmiri Colliery, District Korea (CG).
7. Colliery Superintendent, SECL West Chirmiri Colliery, District Korea (CG).
8. Regional Commissioner (Koyla Khan Evam Bhavishya Nidhi) Shakti Nagar, Gupteshwar, Jabalpur (MP).

(REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE)

(Single Bench: Hon'ble Mr. N.K. Agarwal, J.)

Present : Shri Sunil Sahu, Advocate for the applicant.
Ms. Sharmila Singhai, Advocate for respondent No. 1 to 5.
Shri Pushkar Sinha, Advocate for respondent No. 6 & 7.
Shri Vinay Harit, Sr. Advocate with Shri Suryakant Mishra, Advocate for respondent No. 8.

N^v

ORAL ORDER
(Passed on 31.10.2012)

1. The instant revision filed under Section 115 of CPC is directed against the order dated 11.01.2007 passed by the Ist Addl. District Judge, Manendragarh, Distt. Korea in Misc. Civil Appeal No. 02/05 affirming the order dated 30.07.2005 passed by the Civil Judge, Class I, Manendragarh, in Civil Suit No. 17/2001.
2. Brief facts of the case are that : Mehi Lal died on 12.06.2000 due to illness. Late Mehi Lal was working as DC Driver in West Chirmiri Colliery, SECL.
3. Non applicant No. 1 to 5 claiming themselves to be wife and children of deceased Mehi Lal filed an application under Section 372 of the Indian Succession Act, 1925 (for short, 'the Act') for grant of Succession Certificate in their favour to receive retiral dues of late Mehi Lal.
4. The applicant herein preferred an application stating that she is the first and legally married wife of deceased Mehi Lal.
5. Civil Judge, Class-I, Manendragarh, allowed non applicants application holding: non applicants are wife and children of deceased Mehi Lal, and rejected the applicant's claim.
6. Applicant herein preferred first appeal there-against which was also dismissed vide impugned order. Hence this Revision.
7. Shri Sunil Sahu, learned counsel appearing for the applicant would submit both the courts below have not appreciated the evidence in its proper perspective in holding : applicant is not

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legally married wife of deceased Mehi Lal, and in ignoring the nomination papers filed by the deceased Mehi Lal before SECL in applicant's favour.

8. On the other hand, Ms. Sharmila Singhai, learned counsel appearing for respondent No. 1 to 5 supported the order impugned.
9. Shri Vinay Harit, learned Sr. counsel appearing for respondent No. 8 would submit : under Coal Mines Provident Fund Scheme, nominee of the deceased is entitled for amount of retiral dues, illegitimate children are not children within the meaning of para 2(d) of the above scheme.
10. I have heard the counsel appearing for the parties and perused the order impugned including record of court below.
11. Both the courts below on appreciation and re-appreciation of evidence available on record, have reached to the conclusion that applicant is not married wife of deceased Mehi Lal. The above finding is essentially finding of fact, does not call for interference of this court in exercise of its revisional jurisdiction unless it is shown that the above findings are perverse, illegal or based on no evidence, in which the applicant counsel utterly failed.
12. A bare perusal of document (Ex. D/2C) would reveal, deceased Mehi Lal has shown non-applicant/Kismatiya Bai as his wife in the form for the purpose of availing Leave Travel Concession. Further, the Supreme Court in case of Shipra Sengupta v. Mridul



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Sengupta and others¹ has held in para 19 : nomination does not confer any beneficial interest on the nominee.

13. Moreover, summary proceedings for grant of Succession Certificate are dealt with under Sections 372, 373 and 387 and Succession's Act, 1925. The proceedings for grant of Succession Certificate are summary proceedings. In view of Section 387 any decision in such proceeding in respect of the rights do not preclude the parties to litigate the same in a regular suit. A decision in a proceeding for grant of Succession Certificate is not conclusive and the same question may be tried in any other suit or proceeding between the same parties.
14. The Supreme Court in case of Pandurang Dhondi Chougule and others v. Maruti Hari Jadhav and others, reported in AIR 1966 SC 153, while dealing with exceptional power of High Court, has held : the High Court cannot while exercising its jurisdiction under Section 115 of CPC, correct errors of fact, however, gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the court to try the dispute itself. It is only in cases where the subordinate court has exercised as jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked.

¹ 2010 (2) MPHT 327 (SC)

15. The Supreme Court in case of M/s DLF Housing and Construction Co. (P) Ltd. v. Sarup Singh and others, reported in AIR 1971 SC 2324, has held in para 8 of its judgment as under :

"8. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal."

16. The Supreme Court in case of The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and Another v. Ajit Prasad Tarway, Manager (purchase & Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad, reported in AIR 1973 SC 76, has held in para 5 of its judgment as under :

"5. In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate court. It is not the conclusion of the High Court that the first appellate court had no jurisdiction to make the order that it made. The order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction under Section 115 of the Civil Procedure Code: See the decisions of this Court in *Pandurang Dhondi Chougule v. Maruti Hari Jadhav, D.L.F. Housing and Construction Company Private Ltd. v. Sarup Singh.*"

17. For the forgoing, I do not find any jurisdictional illegality in the order impugned warranting interference of this court in exercise of its revisional jurisdiction.
18. Accordingly, the revision fails and is accordingly dismissed. No order as to costs.

Sd/-
N. K. Agarwal
Judge