



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED: 29th May, 2017

Single Bench : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI,
JUDGE

RFA No. 3 of 2016

- Appellants** : 1. Smt. Tulsa Devi Nirola, aged about 59 years,
W/o late Ram Chandra Nirola,
Resident of Kaputhang, Upper Taza,
Pakyong, East Sikkim.
2. Santosh Kumar Nirola, aged about 38 years,
S/o late Ram Chandra Nirola,
Resident of Kaputhang, Upper Taza,
Pakyong, East Sikkim.
3. Birendra Kumar Nirola, aged about 36 years,
S/o late Ram Chandra Nirola,
Resident of Kaputhang, Upper Taza,
Pakyong, East Sikkim.

versus

- Respondents** : 1. Smt. Radha Nirola,
W/o late Ram Chandra Nirola,
Resident of 5th Mile, Tadong,
Near Manipal Hospital,
P.O. Samdur & P.S. Ranipool,
East Sikkim.
2. Renuka Nirola,
D/o late Ram Chandra Nirola,
Resident of 5th Mile, Tadong,
Near Manipal Hospital,
P.O. Samdur & P.S. Ranipool,
East Sikkim.
3. Purnima Nirola,
D/o late Ram Chandra Nirola,
Resident of 5th Mile, Tadong,
Near Manipal Hospital,
P.O. Samdur & P.S. Ranipool,
East Sikkim.
4. Rajesh Nirola,
S/o late Ram Chandra Nirola,
Resident of 5th Mile, Tadong,
Near Manipal Hospital,
P.O. Samdur & P.S. Ranipool,
East Sikkim.

**Appeal under Section 384 of the Indian Succession Act, 1925.**

Appearance:

Mr. A. K. Upadhyaya, (Senior Advocate) Legal Aid Advocate with Ms. Gita Bista, Legal Aid Counsel for the Appellants.

Mr. Ajay Rathi, Legal Aid Counsel for the Respondents.

J U D G M E N T

Meenakshi Madan Rai, J.

1. This Appeal assails the Order dated 22.12.2015, passed by the learned District Judge, East Sikkim at Gangtok in Succession Case No. 88 of 2015, Smt. Tulsa Devi Nirola and Others vs. Radha Devi Nirola and Others, vide which the Petitioners were denied Succession Certificate and their Petition dismissed.

2. The parties herein shall be referred to in terms of their appearance before the learned Trial Court.

3. The Petitioners averred that late Ram Chandra Nirola, retired as Divisional Forest Officer, Forest Department, Government of Sikkim, on 30.6.2009 and passed away on 13.4.2015. He was the husband of Petitioner No.1 and the father of the Petitioners No.2 and 3. On 9.5.1987, he married the Opposite Party No.1 and Opposite Parties No. 2, 3 and 4 are children from the second wedlock. The Petitioners are residents of Kaputhang, Upper Taza, Pakyong, East Sikkim while the Opposite Parties reside in 5th Mile, Tadong, East Sikkim, in a four storeyed building, where the deceased had also resided with them till his



demise on 13.4.2015, at the Central Referral Hospital, Tadong. On his death, the Panchayat Members of Taza issued a "No Objection Certificate" to the Petitioners to obtain the Succession Certificate for the debts and securities left behind by the deceased, which include Rs.9,00,000/- (Rupees nine lakhs) only, in the Post Office, other bank deposits and Life Insurance. The deceased also left behind a four storied building at 5th Mile, Tadong, from where the Opposite Parties are now drawing a rent of Rs.20,000/- (Rupees twenty thousand) only, per month. As all relevant documents are lying with the Opposite Party No.1, the Petitioner No. 1 obtained information through RTI and came to learn that her name is not mentioned in the Family Pension Order while the name of the Opposite Party No.1 is entered. As no decree of divorce has been granted to her by any Court, she continues to be the legally wedded wife of the deceased and therefore, entitled to monthly pension as per norms, hence, the prayer for granting of Succession Certificate to the Petitioners and Opposite Parties pertaining to the amount specified in the Schedule to the Petition. That, monthly pension be granted in the name of the Petitioner No.1 only, and the Opposite Party be directed to produce all relevant documents pertaining to bank deposits of the deceased and original Sikkim Subject Certificate of the deceased.

4. The Opposite Parties filed their written statement and while admitting the relation between the deceased and the Petitioners, denied and disputed the other claims of the Petitioners. According to the Opposite Parties, on 30.6.2008, a



“Banda Patra” (Partition Deed) was executed between the Petitioners No.1, 2 and 3 and the Opposite Party No.1 and the deceased, duly scribed by one Dilli Ram Nirola, the surviving uncle of the deceased. The said document pertained to the division of movable and immovable properties between the Petitioners No. 1, 2 and 3 on the one hand and the Opposite Party No.1 and the deceased on the other. The Opposite Parties No. 2, 3, and 4 were minors and thus represented by the Opposite Party No.1. The Petitioners were fully satisfied by the division made and reflected in the Partition Deed and took over the plots of land located at Kabuthang, measuring 2.2240 hectares and cash amount of Rs.4,00,000/- (Rupees four lakhs) only, as full and final settlement of their share of movable and immovable properties with the understanding that there would be no claim of any nature whatsoever by them in future. Till the time the deceased was alive i.e. 13.4.2015, the Petitioners staked no claims for any pension or retirement benefits. That, the Opposite Parties incurred huge medical expenses on account of the treatment of the deceased and his retirement benefits were expended there. That during his life time, the deceased had personally entered in “APPENDIX 8 FORM 3” the details of his family by indicating the names of the Opposite Parties in terms of the Form mentioned in Appendix 5 of Rule 40(12) of the Sikkim Services (Pension) Rules, 1990 read with Sikkim Services (Commutation of Pension) Rules, 1985. The Petitioners No. 2 and 3 are teachers employed in the Government but failed to contribute towards the treatment of the deceased. That, in all the service documents of the deceased, he had



mentioned the names of the Opposite Parties as his family under Rule 40(1)(b) of Sikkim Pension Rules, 1990. The term family includes only widow and children, sons who have not attained the age of 25 years, similarly unmarried daughters who have not attained the age of 25 years. That, in the first instance, as the Petitioners No.2 and 3 are employed and aged above 25 years, they do not fall within the meaning of family, therefore, the findings of the learned Trial Court ought not to be disturbed.

5. It was vehemently, contended by learned Senior Counsel for the Petitioners before this Court that the bigger share of the immovable property was given to the second wife which included a building, while the first wife received some land and Rs.4,00,000/- (Rupees four lakhs) only. That, for pension, there can be no nomination and nominations are only for the purposes of savings in General Provident Fund and Gratuity. That, in terms of Rule 40(6) of the Sikkim Services (Pension) Rules, 1990, it is laid down that where the family pension is payable to more widows than one, it shall be paid in equal shares. Therefore, the question of nomination for family pension does not arise and hence, the Petitioner No.1 is entitled to an equal share of the pension.

6. Resisting the arguments of the Petitioners, it was contended by learned Counsel for the Opposite Parties that Rule 38 of the Sikkim Service Pension Rules, 1990, provides for nomination for the purposes of pension. Reliance was also placed on Rule 40(12) of the Sikkim Services (Pension) Rules, 1990, wherein it is prescribed that as soon as the Government Servant



enters service, he shall give details of the family in the prescribed form (Appendix 5) to the Head of the Department, in terms of which the nomination had been made. That, Appendix 5 deals with proforma for details of the family. This has been duly entered by the deceased in Form 3, Appendix 8 in terms of Rule 43(c)(1), which prescribes that six months prior to the date of retirement of the Government servant, the Head of Office shall obtain particulars from the retiring government servant. This was complied by the deceased indicating the Opposite Party No.1 as his wife and therefore, in view of the condition of the 'Banda Patra' and the arguments placed hereinabove, it is clear that the Petitioners have no right to the pension.

7. I have heard learned Counsel for the parties at length and considered their submissions. I have also carefully perused the records of the Case.

8. Undisputedly, the deceased was married to the Opposite Party No.1 on 9.5.1987 and started residing with her at 5th Mile, Tadong. For all purposes, this was accepted by the Petitioner No.1 as she continued to live alone with her children devoid of the company of the deceased, although allegedly the deceased used to come and visit her. The 'Banda Patra' dated 30.6.2008 reveals that a cash amount of Rs.4,00,000/- (Rupees four lakhs) only, and land measuring 2.2240 hectares at Kabuthang had been made over to the three of them. Thereafter, it was agreed that no further claims to any other property of the deceased would be made by them.



9. In the Judgment relied on by learned Senior Counsel for the Appellants/Petitioners, being ***AIR 2008 Chhattisgarh 53 : Smt. Pushpa Bai & Ors vs. Aasbati Laleshwar Naag & Another***, the facts therein were that the deceased had nominated his mother and not his second wife, the Applicant No.1 for receiving the death benefits. The Court held that although Applicants 3 to 5 were children borne by his second wife, the Applicant No.1, whom he had married during the subsistence of his first marriage, they are his legitimate children and Class 1 heirs along with the mother of the deceased. It was ordered that besides the first wife of the deceased, the Applicant No.2, his second wife and Applicants No.3, 4 and 5 were also entitled to 1/5th share each in the death benefits of the deceased. The facts therein are distinguishable from the Case at hand. There appears to be no prior family settlement between the parties with regard to any property of the deceased, whereas in the instant matter vide the 'Banda Patra', it was agreed between the Petitioners and the Opposite Parties that as the Petitioners had received their share of movable and immovable properties from the deceased, they were satisfied and would have no grievances whatsoever in future. Apart from which, it is an admitted fact that the Opposite Party No.1 and the deceased were married as far back in 9.5.1987 and had been living together, while the Petitioners had nothing to do with the Opposite Parties, herein. Therefore, as pointed out by the learned Trial Court, the deceased was taken care of throughout by the Opposite Parties and therefore, it would not be proper to permit the Petitioners to suddenly appear after the death of Ram Chandra Nirola and stake



a claim over his properties/securities and pension. The deceased was not found mentally infirm when he made the nomination and no suspicion should rear its head on this count.

10. Hence, in consideration of the entirety of the facts and circumstances hereinabove, I find that the impugned Order of the learned Trial Court is a reasoned Order and therefore, brooks no interference.

11. Appeal dismissed and disposed of accordingly.

12. No order as to costs.

13. Records of the learned Trial Court be returned forthwith.

Sd/-

(**Meenakshi Madan Rai**)
Judge
29-05-2017

Approved for reporting : **Yes**
Internet : **Yes**

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