

IN THE COURT OF SENIOR CIVIL JUDGE, N I L G I R I

Present : Sri Satyabrata Mishra,
Senior Civil Judge, Nilgiri,

(CODE-OD-0333)

Dated this the 8th day of April, 2019.

Succession Misc. Case No.1/2018

Smt. Nishamani Patra, aged 75 years,
W/o-Late Debendra Patra,
of village-Ghatgharsahi Samil Nizgarh,
P.O.-Raj Nilgiri, P.S.-Nilgiri,
Dist.-Balasore.

.....Petitioner.

(Versus)

Smt. Ramani Patra, aged 56 years,
W/o-Sashadhara Patra,
of village-Chilima, P.O.-Kuamara,
P.S.-Khunta, Dist.-Mayurbhanj.

.....O.Ps.

Date of Hearing : 02.04.2019.

Date of Order : 08.04.2019.

ORDER

This Misc. case arises out of an application U/s-372 of Indian Succession Act 1925 filed by the petitioner with a prayer for issuance of succession certificate of deceased Debendra Patra in her favour .

2. The plaintiff/petitioner's case in a nutshell is as follows:-

The deceased Debendra Patra S/o-Madan Patra of village Ghatgharsahi, P.O.-Raj-Nilgiri, P.S.-Nilgiri, Dist.-Balasore died on 03.11.2017 at the matrimonial house of his daughter at village Chilima in the district of Mayurbhanj leaving the petitioner as his widow and O.P as

his only daughter. The deceased was originally residing in his ancestral house located at village Ghatgharsahi which is under the jurisdiction of this court. Prior to 15 days of his death he was residing in his daughter's house for his better treatment and he died there. The petitioner obtained death certificate of the deceased from the office of Registrar birth and death C.H.C., Khunta. The deceased and the petitioner blessed with a son named as Niranjana Patra. While their son Niranjana Patra prosecuting his study, he failed in his H.S.C. Examination for which he absconded from his house for last 40 years. He has never returned to his native place since that date and his whereabouts is not known to any body. He is not heard in his locality for more than 40 years for which it is presumed he attained civil death. The deceased Debendra Patra was a freedom fighter and during his life time he was getting freedom fighter pension since 15.07.1978 and after his death petitioner is entitled to get family pension as per the rules. In order to obtain legal heir certificate, the petitioner filed a miscellaneous certificate case No.E-LHC/8 of 2018 in the Office of Tahasildar, Nilgiri. On 27.02.2018 the said application was rejected by the Tahasildar, Nilgiri and advised to approach proper forum to obtain succession certificate for which the petitioner has filed this misc.case with aforesaid prayer.

3. The O.P filed showcause and she admitted the facts of paragraph No.3,4,5,6,7 and 8 as true and correct. He averred that, the petitioner has no cause of action to file this proceeding and the same is not maintainable in the eye of law. The deceased Debendra Patra died on 03.11.2017 in the in-law's house of the O.P at village Chillima leaving behind petitioner as his widow and O.P as his only daughter. The petitioner is not entitled to get succession certificate alone.

4. Point for determination:-

Whether the petitioner is entitled to get succession certificate of deceased Debendra Patra U/s-374 of the

Indian Succession Act?

5. The petitioner in order to substantiate her case has examined herself as P.W.1 and another independent witness as P.W.2 and relied upon five documents which have been marked as Ext.1 to Ext.5. On the other hand the O.P examined herself as O.P.W.1 and has not adduced any documentary evidence.

6. The petitioner (P.W.1) in her affidavit evidence deposed that her husband deceased Debendra Patra died on 03.11.2017 in the matrimonial house of her daughter at village-Chilima under district of Mayurbhanj leaving behind petitioner as his widow and O.P. as his only daughter. She further deposed that the ancestral house of the deceased is located at village Ghatgharsahi, mouza-Nizgarh which is under jurisdiction of this court. Prior to 15 days of his death, the deceased was residing in the house of the O.P for better treatment and he died there. She obtained death certificate of the deceased from the office of Registrar, birth and death, C.H.C., Khunta vide **Ext.1**. She further stated that she was blessed with a son named as Niranjan Patra. While his son was prosecuting his study he failed in H.S.C examination for which he left the house for more than last 40 years and never returned to his native place. His whereabouts is also not known to his family members and any other outsiders and he is unheard in the locality for more than 40 years for which he attained civil death. She stated that her husband deceased Debendra Patra was a freedom fighter and during his life time he was getting freedom fighter pension since 15.05.1978. After his death she is entitled to get family pension as per the rule. She has filed the pension book of deceased Debendra Patra vide **Ext.3**. She further stated that she filed a miscellaneous certificate case No.E-LHC/8 of 2018 to obtain legal heir certificate in the office of Tahasildar, Nilgiri. But same was rejected on 27.02.2018 by the revenue officer and advised her to obtain succession certificate from proper forum. She has filed the

certified copy of the order sheet dtd. 13.01.2018 passed by Revenue Officer in the miscellaneous certificate case No.E-LHC/8 of 2018 vide **Ext.2**, the original voter I.D. Card of deceased Debendra Patra vide **Ext.4** and voter I.D. Card of the petitioner vide **Ext.5**. P.W.2 stated that deceased Debendra Patra died on 03.11.2017 in the house of his daughter in the district of Mayurbhanj. Niranjana Patra who is the son of the petitioner and the deceased was his class mate and due to his failure in H.S.C examination, he absconded from his house for last 40 years. He has never returned to his native place and he is unheard in the locality. The deceased was a freedom fighter and during his life time he was getting freedom fighter pension. O.P. No.1 stated in her affidavit evidence that his father died on 03.11.2017 in her in-laws house at village-Chilima and his father was a freedom fighter and getting freedom fighter pension since 1978. She further stated that her brother Niranjana Patra due to failure in H.S.C. Examination left their house and he is unheard for last 40 years. This court validly issued notice inviting objections from any objector to the N.A.C., Nilgiri, Notice Board of the Court of Senior Civil Judge, Nilgiri, House of Late Debendra Patra at village Ghatgharsahi and at the conspicuous part of the village i.e. Bhagabat Tungi in the village Ghatgharsahi in compliance with the provision U/s-373 of the Indian Succession Act. However no objector has appeared in the mean time before the court to file any objection.

From the scrutiny of the aforesaid evidence on record it is found that the petitioner and the O.P both averred that the deceased Debendra Patra was a freedom fighter and getting freedom fighter pension during his life time. He died on 03.11.2017 at village Chilima in the district of Mayurbhanj in the house of the O.P which is well evident from the death certificate vide Ext.1 and the pension book vide Ext.3. The petitioner claimed that she is the legally married wife of the deceased and the O.P is the daughter of the deceased. Son of the

deceased namely Niranjana Patra his whereabouts is not known to the family members of the petitioner for last 40 years for which he attained civil death. Now the legal question arises whether petitioner is entitled to obtain a succession certificate in her favour in order to receive family pension.

Section 372 of Indian Succession Act reads as follows :-

(1) The application for succession certificate shall contain following particulars namely :

(a)

(f) the debts and securities in respect of which the certificate is applied for.

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

Section 370 of Indian Succession Act reads as follows :

Restriction on grant of certificates under this part-----

(1)

(2) Security means--

(a) Any promissory note, debenture, stock, or other security of the central Govt. or of a State Govt.

(b) any bond, debenture or annuity charged by Act of Parliament on the revenues of India

(c) Any stock or debenture of, or share in a company or other incorporated institution

(d) any debenture or other security for money issued by or on behalf of, a Local authority

(e) any other security which the State Govt. may by notification in the official gazette declare to be a security for the purposes of this part.

Section 377 of Indian Succession Act reads as follows:-

Forms of certificate and extended certificate-

Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the form set forth in schedule VIII .

In this case the petitioner prayed for issuance of succession certificate in order to receive family pension. But as per the provision of section 370 and 372 of Indian Succession Act, the succession certificate shall only be issued in respect of debts and securities for which application has been made. There is no provision under Indian succession Act for issuance of succession certificate to obtain family pension. **In a reported case Pabitra Mohan Pradhan Vrs. Damayanti Pradhan AIR 2003 Orissa-1. Where our Hon'ble High Court held that:-** family pension is neither “debt” nor “security”, therefore, grant of succession certificate is not necessary to receive family pension. However, when composite application was made for grant of succession certificate to receive family pension and also provident fund , certificate can be granted as provident Funds Act itself envisages that a succession certificate may be issued by the court in respect of provident fund money.

The ratio of the decided is squarely applicable to the facts of the present case. Here in this case the petitioner only sought to get succession certificate in order to receive the family pension which is not tenable as per the provision of Indian Succession Act. Besides that, as per the section 377 of the Indian Succession Act **form in schedule VIII** has been appended to grant succession certificate and in the said form only the debts and the securities have been mentioned to grant succession certificate. Therefore, in view of the aforesaid provision of law as lays down in the Indian Succession Act, the petition is not maintainable and the petitioner is not entitled to get

any succession certificate to obtain family pension. Hence, order.

ORDER

The succession Misc. Case filed by the petitioner be and the same is dismissed on contest against the O.P without any cost.

The order is pronounced in the open Court with my signature on this the **8th day of April, 2019** being typed out to my dictation & corrected by me.

Senior Civil Judge
Nilgiri.

List of witnesses examined on behalf of the petitioner.

P.W.1 : Nishamani Patra.
P.W.2 : Ajay Kumar Parichha.

List of documents admitted in evidence by the petitioner.

Ext.1: Death Certificate of deceased Debendra Patra.
Ext.2: Certified copy order sheet dtd.13.01.2018
passed by Revenue Officer, Nilgiri in Misc.
Case No.E-HLC 8 of 2018.
Ext.3: Pension book of deceased Debendra Patra.
Ext.4: Original voter I.D. Card of deceased Debendra
Patra.
Ext.5: Votor I.D. Card of Nishamani Patra.

List of witnesses examined on behalf of O.P.

O.P.W.1: Ramani Patra.

List of documents admitted in evidence by the O.P

-Nil-

Sr. Civil Judge, Nilgiri.