

HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

...  
MA no.139/2015

*Reserved on: 05.04.2021*

*Pronounced on: 22.06.2021*

Mohammad Syed Allie and another

.....Petitioner(s)

Through: Mr G.N.Sofi, Advocate

**Versus**

Mst Zeeba and others

.....Respondent(s)

Through: None

**CORAM:**

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. Aggrieved of Order dated 30<sup>th</sup> May 2015, passed by Principal District Judge, Anantnag, (for brevity "*court below*") on a Petition for grant of Succession Certificate, bearing File no.398/2013 titled *Hajira v. Zeeba and others*, appellants seek its setting aside on the grounds mentioned in the present memo of appeal.
2. Heard and considered.
3. A petition for grant of Succession Certificate was filed by one Mst Hajira D/o Assadullah Allie R/o Shamsipora, Anantnag (mother of respondents 6 to 14) before the court below. Abovenamed Mst Hajira and Mst Zeeba were found to be real sisters of deceased, Ghulam Mohammad Allie, and petitioners herein were found remoters. According to the court below, brother's son cannot claim inheritance in presence of a brother or sister and consequently, the court below held respondent no.2 and mother of

- respondents 6 to 14 entitled to the amount in question in equal shares. It is this order of which petitioners are aggrieved.
4. Petitioners claim that deceased, Ghulam Mohammad Allie, died issueless on 19<sup>th</sup> September 2013. It is averred that court below has passed impugned order without taking into account the Shariat Act and that no evidence of any Scholar or Mufti was taken on record, who would have given opinion on the subject and that opinion of one of Muftis was taken by appellants on record before the court below and as per Shariat Act, they are entitled to 1/3<sup>rd</sup> share and respondents 1&2 are entitled to two shares of debts and securities of deceased but the same has not been taken into consideration by court below.
  5. Grant of succession certificate is governed and regulated by the Succession Certificate Act, Svt. 1977 [1920 A.D.] (for short "*Act*"). It has been enacted aiming at facilitating collection of debts on succession and afford protection to parties paying debts to the representatives of deceased persons. Section 4 of the Act says that no court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of deceased person or to any part thereof or proceed upon an application of a person claiming to be so entitled to execute against such a debtor a decree or order for the payment of his debt except on the production by the person so claiming of a probate or letters of administration evidencing the grant to him of administration to the estate of deceased or a certificate granted under the Act. Section 5 of the Act provides that District Court, within the jurisdiction, of which deceased ordinarily resided at the time of his death or if at that time he had

no fixed place of residence, then within jurisdiction of which any part of the property of deceased may be found, may grant a certificate under the Act. An application for a certificate, as is envisioned in Section 5 of the Act, must be made to District Court by a petition signed and verified by or on behalf of applicant in the manner prescribed by the Code of Civil Procedure, for signing and verification of a plaint by or on behalf of a plaintiff and setting forth the particulars, like the time of death of deceased, ordinary residence deceased, family or other near relatives of deceased, right in which petitioner claims, absence of any impediment under any other provision of the Act or any other enactment, to the grant of certificate or to the validity thereof if it were granted. If the District Court is satisfied that there is ground to entertain application, it shall fix a day for hearing thereof and cause notice of application and of the day fixed for hearing to be served on any person to who, in the opinion of the Court, special notice of application should be given and to be posted on some conspicuous part of courthouse and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit, and upon the day fixed, or as soon thereafter as may be practicable shall proceed to decide in a summary manner the right to the certificate; it is so provided in Section 7(1) of the Act. Subsection (2) of Section 7 of the Act says that when the court decides the right thereto to belong to applicant, it shall make an order for grant of certificate to him.

6. It is pertinent to mention here that Subsection (3) of Section 7 of the Act envisages that if the court cannot decide the right to certificate without determining questions of law or fact, which seem to be too intricate and

difficult for determination in a summary proceeding, it may nevertheless grant a certificate to application if he appears to be the person having prima facie the best title thereto. Thus, provisions of Subsection (3) of Section 7 of the Act provides that even if the District Court would not be in a position to decide the right to certificate without determining question of law or fact, which appear to be intricate and difficult for determination in summary proceeding, yet it may grant certificate in favour of applicant.

7. In the present case, prima facie entitlement has been rightly found by the court below in favour of Mst Hajira and Mst Zeeba. It is evident from impugned order that Mst Hajira and Mst Zeeba were/are real sisters of deceased whereas other persons/claiming persons, including appellants herein, have been found sons of predeceased brother/sister of the deceased, Ghulam Mohammad Allie inasmuch as court below has correctly placed reliance upon the law of the land that predeceased brothers of a deceased-Muslim have no right to property of deceased, which exclusively devolves on surviving brother. In that view of matter impugned order need not be interfered with and consequently appeal on hand is liable to be dismissed.
8. For the reasons discussed, the Appeal is **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.
9. Copy be sent down.

(Vinod Chatterji Koul)  
Judge

Srinagar  
22.06.2021  
Ajaz Ahmad, PS

Whether the order is reportable: Yes/No.