

Misc. Succession Case No. 10/2018

04.11.2019

1. Case record is put up today as the last date i.e. 02.11.2019 was a State Government Holiday.
2. The petitioner is represented by learned counsel Mrs. J.M. Deka.
3. The instant succession petition has been filed u/s 372 of the Indian Succession Act, 1925 by the petitioner namely, Smt Sabita Sarma Deka and Ms. Likhita Deka, seeking a succession certificate with regard to the debts and securities left behind by late Krishna Deka who is stated to have expired on 25.11.2015 at village Natun Bangalbori under Jagiroad PS, Morigaon.
4. The petitioner No.1 claims to be the 2nd wife of the deceased who is stated to have married her after the death of his first wife Adhani Deka and the petitioner No.2 is stated to be the minor daughter of the petitioner No.1 and the deceased, who is represented by her mother-petitioner No.1 and that they are the residents of village Natun Bangalbori under Jagiroad PS, in the district of Morigaon. It is stated that the deceased Krishna Deka was working as a Ex-Havildar/cook/GP Z in Defence Department of Army vide No. 13880717N.
5. The sole respondent Jayanta Deka @ Raju Deka is stated to be the son of the deceased through his first wife.
6. General notices were duly issued and served. Notice upon the sole respondent was issued twice and on both occasions, the same was received by his wife Pallavi Deka vide report dated 27.03.2019 and 08.05.2019. However, none, including the sole respondent, appeared to contest this petition.
7. The debts and securities with regard to which the Succession Certificate has been sought, are described in Schedule A to the

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petition comprising Service benefits by way of family pension, including an overpaid amount of Rs. 2,34,794/- (Rupees Two lakhs Thirty four thousand Seven hundred ninety four only) of Lt. Krishna Deka. The said Schedule A also states that monthly family pension is Rs. 7,795/.

8. Heard Sri U.C. Roy and J.M. Deka, the learned counsels for the petitioners.
9. The petitioner No.1 adduced evidence on affidavit as PW-1 in which she has stated that the deceased was her husband who died on 25.11.2015 at village Natun Bangalbori under Jagiroad PS, in the district of Morigaon. It is stated in para 2 of her evidence on affidavit that deceased left behind the petitioner, the sole respondent Jayanta Deka and the petitioner No.2 Likhita Deka as his legal heirs at the time of his death. It is stated that the petitioner No.1 is the living wife of the deceased who was working as Ex-Havildar/Cook/GP Z in Defence Department of Army vide No. 13880717N. The debts and securities narrated above and mentioned in Schedule A to the petition are reiterated in para 5 of the evidence on affidavit. It is stated in para 6 of evidence on affidavit that she is the surviving 2nd wife of the deceased and that his parents died before his death.

As part of the evidence on affidavit, the petitioner No.1 has exhibited the following documents after comparing and proving them in original:

The **death Certificate** of her deceased husband has been exhibited as **Ext.1**; a **Letter of Sena Seva Crops Abhilekh (Pashu Parivahan) ASC record (AT), C/o- 56APO PCDA (P) Allahabad to District Sainik Welfare Office, Morigaon** of her deceased husband has been exhibited as **Ext.2**; the **Death Certificate** of Adhani Deka has been exhibited as **Ext.3**; the **Marriage Certificate** of the Petitioner No.1 and the deceased Krishna Deka has been exhibited as **Ext.4**; the **Birth Certificate** of Likhita Deka has been exhibited as **Ext.5**.

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- 10.** It is stated in the petition by the petitioner side that Lt. Adhani Deka was the first wife of the deceased, who died on 30.11.2011 and that after her death, he solemnized marriage with Sabita Sarma-petitioner No.1 on 20.01.2013 and the same was registered at the Office of the Marriage Officer, Morigaon on 18.06.2015 and out of wedlock with the petitioner No.1, a daughter was born on 03.01.2014 named Likhita Deka-petitioner No.2.
- 11.** Upon perusal of the aforesaid exhibited documents, I find that Lt. Adhani Deka stated to be the first wife of the deceased expired on 30.11.2011. Further, as per the evidence narrated above and Ext.4-Marriage Certificate of the petitioner No.1 and the deceased, the petitioner No.1 and deceased registered their marriage under Special Marriage Act, 1954 on 18.06.2015 at the Office of the Marriage Officer, Morigaon and three witnesses are indicated in the Marriage certificate dated 18.06.2015 namely, Mohan Kalita, Shyamanta Kalita and Niru Sarmah apart from the signatures of Krishna Deka and Sabita Sarma Deka. It is stated in the marriage certificate about the marriage registered on 18.06.2015, having effect from 20.01.2013. As per Ext.5, the petitioner No.2 Likhita Deka daughter of Krishna Deka and Sabita Sarma Deka was born on 03.01.2014.
- 12.** On the basis of the aforesaid evidence and materials on record, it is clear that the petitioner No.1 Sabita Sarma Deka is the wife of the deceased Lt. Krishna Deka having married him on 20.01.2013 and the same was registered under the Special Marriage Act on 18.06.2015 as per the Marriage Certificate and her daughter Likhita Deka-petitioner No.2 was born on 03.01.2014. Further, Lt. Adhani Deka was the first wife of the deceased who expired on 30.11.2011. It is clear from the evidence adduced that the deceased had married the petitioner No.1 Sabita Sarma Deka in 2013 after the death of his first wife and that from the evidence adduced, I find that the petitioner No.1 is the living widow of the deceased.

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13. The petitioner side in their petition as well as in her evidence on affidavit as PW-1 has stated that the deceased did not make any WILL or any other similar disposition of property and that there is no impediment under the law towards granting a succession certificate.

14. Though, the aforesaid facts and issues have been narrated, discussed and noticed above, the question now is whether there is any legal impediment towards granting of Succession Certificate with regard to the debts and securities mentioned in the Schedule A of the petition and evidence on affidavit. In this regard, I refer to a decision of the Hon'ble Gauhati High Court rendered in the case of *Musstt. Zubeda Ahmed v. Musstt. Fazlia Begum, (2015) 4 GLR 571*. In this judgment, the Hon'ble Gauhati High Court enunciated the following points with regard to a Succession Certificate under the Indian Succession Act, 1925.

a. As per the provisions of Sections 370,371,372 of the Indian Succession Act, 1925 succession certificate is available only in regard to 'debt and security' left behind by the deceased.

b. Family pension is neither a security within the meaning of Section 370 of the Indian Succession Act.

c. Family pension not being 'debt and security' within the meaning of Part-X of the Indian Succession Act, 1925, no succession certificate can be granted under Section 371 of the Act in respect of the benefit of family pension.

d. Whether a member of the family is entitled to the benefit of family pension or not is a matter within the province of relevant service rules and it cannot come within the sweep of succession certificate.

15. Thus, on perusal of the principles laid down in the aforesaid judgment, I find that it has been clearly laid down that the family pension is not a debt and security within the meaning of the Indian Succession Act, 1925 and therefore, no Succession Certificate can be granted or is required to be granted u/s 371 of the Act in respect of the benefit of the family pension.

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- 16.** Now, the petitioner has clearly stated in Schedule A of the petition that the purpose for which Succession Certificate has been prayed is for the family pension of the deceased stated to be her husband. It is also revealed from the evidence of the petitioner side that she is seeking Succession Certificate with regard to the family pension of the deceased.
- 17.** In the given facts and circumstances and in view of the aforesaid case law laid down by the Hon'ble Gauhati High Court, it would not be permissible in law to grant Succession Certificate to the petitioners as prayed for with regard to the family pension of the deceased husband Lt. Krishna Deka as described in Schedule A to the petition and in evidence on affidavit of the petitioner No.1
- 18.** Thus, in view of the above discussion, a succession certificate cannot be granted with regard to the family pension of the deceased. Moreover, in view of the position of law enunciated by the Hon'ble Gauhati High Court, the family pension does not come within the ambit of a succession certificate as per the settled law and such Succession Certificate is also not required to be issued. Further, as laid down in the decision of the Hon'ble Gauhati High Court in the case of *Musstt. Zubeda Ahmed v. Musstt. Fazlia Begum, (2015) 4 GLR 571*, it has been held that, whether a member of the family is entitled to the benefit of family pension or not is a matter within the province of relevant service rules and it cannot come within the sweep of succession certificate.
- 19.** Therefore, the instant petition filed by the petitioners seeking a succession certificate cannot be allowed in view of the aforesaid principles. Of course, it would be open to the petitioner to seek entitlement, if any, with regard to family pension by filing an application before the concerned Departmental Authority on the administrative side.
- 20.** Consequently, in the facts and circumstances and in view of the above discussion, the instant Succession petition being devoid of merit, is accordingly, dismissed. No costs.

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21. The instant Misc. Succession Case stands disposed of on the aforesaid terms.

District Judge,
Morigaon