

(3) The learned counsel for the petitioner submitted that since the petitioner was a tenant on the suit land in equal shares with Smt. Ram Piari, he would be admitted to be a tenant on every parcel of the land and that being so he is entitled to a decree of the total land after the death of Smt. Ram Piari. In support of this contention, he referred to *Partap Singh and another v. Kalu Ram* (1).

(4) After hearing the learned counsel for the parties, I do not find any merit in this petition. Admittedly, in the plaint originally filed the plaintiffs claimed to be the tenants on the suit land in equal shares, i.e. one half each. If once the shares are determined then on the death of one tenant the other tenant would not claim to be the tenant on the whole land. As such, the judgment relied upon has no applicability to the facts and circumstances of the present case, as therein the shares of the tenants were not determined. In the circumstances, the petition fails and is dismissed with costs.

(5) Since further proceedings were stayed at the time of motion hearing, parties are directed to appear before the trial Court on 10th August, 1989.

(6) In the order to expedite the hearing of the case, the parties shall produce evidence at their own responsibility and for that purpose one opportunity will be given to each party.

P.C.G.

Before J. V. Gupta, J.

SMT. ANITA JERATH, WD/O LATE SHRI NIRMAL PARKASH
JERATH, AND ANR.,—*Petitioners.*

versus

MRS. PUSHPAWATI JERATH, WD/O LATE SHRI OM PARKASH
JERATH AND ORS.,—*Respondents.*

Civil Revision No. 904 of 1988.

Civil Procedure Code (V of 1908)—Section 35-B—Indian Succession Act, 1925—Section 372—Petition for grant of succession certificate—Cost imposed for adjournment during trial of such petition—Failure to pay cost—Dismissal of such petition under section 35-B—Applicability of Section 35-B to such petitions.

(2) 1969 Current Law Journal 829.

Smt. Anita Jerath wd/o late Shri Nirmal Parkash Jerath, and anr.
v. Mrs. Pushpawati Jerath wd/o late Shri Om Parkash Jerath and
Ors. (J. V. Gupta, J.)

Held, that application for succession certificate could not be dismissed under Section 35-B as such. In any case, when the costs were said to have been paid to the counsel for the respondents, a further date have been given by the trial Court.

(Para 5)

Petition Under Section 115 C.P.C. for revision of the order of the Court of Shri B. L. Singal, HCS, Senior Sub Judge, Faridabad, dated 3rd February, 1988 dismissing the application.

Claim.—Application for succession certificate under section 372 of the Indian Succession Act, 1925.

Claim in Revision.—For reversal of the order of the lower court.

H. L. Sarin, Sr. Advocate with R. L. Sarin, Ashish Handa and Jaishree Thakur, Advocates, for the Petitioner.

Nemo, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) This petition is directed against the order of the Senior Sub Judge, Faridabad, dated February 3, 1988, whereby he refused to extend the time for payment of cost and thus to recall his earlier order dismissing the application for succession certificate under section 472 of the Indian Succession Act, 1925 under section 35.B of the Civil Procedure Code for non-payment of costs,—*vide* order dated 24th August, 1987.

(2) The petitioners filed an application under section 372 of the Indian Succession Act for the grant of succession certificate with respect to a sum of Rs. 40,000 which was payable to the deceased Nirmal Parkash Jerath on account of the provident Fund, Gratuity, bonus etc. The said application was filed on May 4, 1983. This was being opposed by the mother-in-law of the petitioners as well as her brother-in-law. Issue was framed and the petitioners were directed to lead evidence. However, on August 24, 1987, the evidence of the petitioners was not present and the case earlier adjourned on payment of Rs. 35 as costs. Further adjournment was sought for production of evidence on payment of costs. This was not allowed by the learned Sub-Judge and the petition was dismissed under section 35-B, CPC.

(3) Later on when an application was filed for recalling the said order and extending the time for payment of costs, the same was declined by the impugned order. According to the learned counsel, the costs were paid to the counsel for the respondent but he failed to be present at the time of hearing and, therefore, the Court found that the costs were not therefore, the Court found that the costs were not paid.

(4) Moreover, argued the learned counsel, the provisions of section 35-B, CPC, did not apply to the proceedings under the Indian Succession Act.

(5) After hearing the learned counsel for the petitioner, I am of the considered view that the whole approach of the learned Senior Sub Judge, Faridabad, in this behalf was wholly wrong, illegal and mis-conceived. The application for succession certificate could not be dismissed under section 35-B as such. In any case, when the costs were said to have been paid to the counsel for the respondents, a further date should have been given by the trial Court. It has caused failure of justice by not recalling the said order. Consequently, this revision petition succeeds. Both orders i.e. the impugned order dated February 3, 1988 as well as the order dated August 24, 1987 are set aside on payment of Rs. 100 as costs.

(6) The parties are directed to appear in the Court of Senior Sub Judge, Faridabad on August 23, 1989 for further proceedings in accordance with law on payment of Rs. 100 as costs.

(7) Since the application has been filed in the year 1983, it is directed that the parties will lead their evidence at their own responsibility for which one opportunity will be given to each party.

S.C.K.

Before J. V. Gupta, J.

S. SIKANDER SINGH, SON OF LATE BHAYEE ARDAMAN SINGH, *Petitioner.*

versus

S. A. BUILDERS PVT. LTD. AND ANR.,—*Respondents.*

Civil Revision No. 1375 of 1988.

7th August, 1989.

Civil Procedure Code (V of 1908)—Section 2(10)—Section 55—Judgment Debtor—Definition of—Decree against Company—Arrest of M.D.—Validity of such arrest.