

Gurmit Singh etc. v. Ajit Singh, etc. (O. Chinnappa Reddy, J.)

complete, the nomination paper of the petitioner rejected, the election conducted, what useful purpose it could have served for the petitioner to have adopted the course suggested by the learned counsel for the respondents. Even if the Registrar on having been approached would have amended the bylaw, then also the petitioner could not have got the relief claimed as mere amendment of the bylaw would not have forthwith given the relief claimed in the petition. It may be observed at this stage that this discussion has proceeded on the premises that alternate remedy under section 10-A could have been resorted to, though the proposition was contested by the learned counsel for the petitioner that a private person had no *locus standi* to approach the Registrar under section 10-A for the amendment of the bylaw. Thus viewed from any angle, the preliminary objection raised by the learned counsel for the respondents has no merit.

(10) No other point was urged on either side.

(11) For the reasons recorded above, I allow this petition with costs, set aside the order of the Assistant Registrar, respondent No. 3, rejecting the nomination paper of the petitioner and direct the Registrar to proceed to hold the election of the committee afresh in accordance with law and in the light of the observations made in the judgment. Counsel's fee Rs. 250.

R. S. Narula, C. J.—I agree.

H. S. B.

APPELLATE CIVIL

Before O. Chinnappa Reddy, J.

GURMIT SINGH, etc.,—Plaintiff-Appellants

versus

AJIT SINGH and others,—Defendant-Respondents.

Civil Regular First Appeal No. 74 of 1967

May 4, 1977.

Fatal Accidents Act (XIII of 1855)—Sections 1-A and 4—Illegitimate child—Whether entitled to compensation under the Act.

Held, that there is no justification for holding that illegitimate children are not entitled to sue for compensation under the Fatal Accidents Act 1855. Section 1-A provides that an action for compensation shall be for the benefit of 'the wife, husband, parent and child if any' of the deceased. Section 4 defines child as including 'son and daughter and grandson and grand-daughter and step son and step daughter'. If the expression 'child' is defined to include child not born of the loins of the deceased, there is no reason to exclude a child born of the loins of the deceased. Under the Hindu Law an illegitimate child is entitled to be maintained by the father as much as a legitimate child. The Hindu Adoption and Maintenance Act applies to 'any child', legitimate or illegitimate. Section 125 of the Code of Criminal Procedure provides for an order of maintenance against any person neglecting to maintain his legitimate or illegitimate child. Thus if a parent is under an obligation to maintain his illegitimate child there is no reason why the illegitimate child should not be entitled to compensation from the person responsible for the death of the parent. There is no justification whatever for introducing the qualifying word 'legitimate' to prefix the word child in section 1-A of the Act. Any illegitimate child is therefore entitled to sue for compensation under the Act.

(Para 4

Regular First Appeal from the decree of the Court of Shri Shamsher Singh, Sub-Judge 1st Class, Jullundur dated the 25th day of October, 1966 dismissing the suit of the plaintiffs with costs and directing that the Court fee of Rs. 2,100 be paid by Balwant Singh their next friend to the plaintiffs and the costs to the defendants as minors will not be able to pay the costs of the suit.

B. D. Mehra, Advocate, for the Appellants.

N. K. Sodhi, Advocate, for the Respondents

JUDGMENT

O. Chinnappa Reddy, J.

(1) Jawand Singh was murdered by the defendants-appellants. His children, Gurmit Singh and Desho, filed the suit to recover compensation under the Indian Fatal Accidents Act. The lower Court dismissed the suit on the ground that they were not the legitimate children of Jawand Singh. Their mother Udham Kaur was a Muslim lady who had been abducted by Jawand Singh from Pakistan and had lived with him and borne him the children, Gurmit Singh and Desho. She was never legally married to Jawand Singh.

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(2) In this appeal by Gurmit Singh and Desho, the finding regarding their illegitimacy is attacked. It is also urged that, even so, they are entitled to compensation under the Indian Fatal Accidents Act.

(3) Balwant Singh, a cousin of Jawand Singh, deposed that Udham Kaur was married to Jawand Singh in 1947 and lived with him for seven years. Gurmit Singh and Desho were the children of Jawand Singh and Udham Kaur. In cross-examination he stated that Jawand Singh had kidnapped Udham Kaur, brought her to India, and married her. He admitted "the marriage was not recorded". In India very few marriages are 'recorded' and, therefore, nothing can turn on that circumstance. Desho, the daughter, was also examined as a witness. She deposed that she was the daughter of Jawand Singh. The lower Court commented that the plaintiff's counsel deliberately did not question Desho about her relationship with Jawand Singh. It is difficult to understand the comment. The defendants had the opportunity to cross-examine her on her statement in chief examination that she was the daughter of Jawand Singh. It was not suggested to her that her mother Udham Kaur was not married to Jawand Singh. I see no reason to reject the testimony of Balwant Singh in the absence of any rebuttal evidence. I hold that Gurmit Singh and Desho are proved to be the legitimate children of Jawand Singh.

(4) Even otherwise, I do not see any justification for holding that illegitimate children are not entitled to sue for compensation under the Indian Fatal Accidents Act. Section 1-A provides that an action for compensation shall be for the benefit of 'the wife, husband, parent and child, if any' of the deceased. Section 4 defines child as including 'son and daughter and grandson and grand-daughter and step-son and step-daughter'. The learned counsel for the respondents argued that the inclusion of step-son and step-daughter in the definition of 'child' showed that the expression 'child' was meant to include only legitimate off-spring and exclude illegitimate off-spring. I do not agree. If the expression 'child' is defined to include a child not born of the loins of the deceased, I see no reason to interpret the expression so as to exclude a child born of the loins of the deceased. Under the Hindu Law an illegitimate child is entitled to be maintained by the father, as much as legitimate child: *vide* Vellayappa v. Natarajan, (1). The Hindu Adoption and Maintenance Act applies to 'any child' legitimate or illegitimate: *vide* section 2(1) Explanation, Section 125, Criminal Procedure Code, provides for an order for

(1) 58 I.A. 402-A.I.R. 1931 P.C. 294.

maintenance against any person neglecting to maintain his legitimate or illegitimate child. Thus if a parent is under an obligation to maintain his illegitimate child there is no reason why the illegitimate child should not be entitled to compensation from the person responsible for the death of the parent. There is no justification whatever for introducing the qualifying word 'legitimate' to prefix the word child in section 1-A of the Fatal Accidents Act.

(5) The learned Subordinate Judge assessed the damages at Rs 7,000 in case the plaintiffs were to be held to be entitled to damages. No argument was advanced before me regarding the assessment of damages. The judgment and decree of the learned Subordinate Judge are set aside. There will be a decree in favour of the plaintiffs for Rs. 7,000 with interest at 6 per cent from the date of suit. The plaintiffs will receive proportionate costs from the defendants both here and in the lower Court. The Court fee due to the Government will be paid by the plaintiffs.

K. T. S.

APPELLATE CRIMINAL

Before S. S. Sandhwalia and S. P. Goyal, JJ.

The STATE OF PUNJAB,—Appellant.

versus

RAM PARKASH,—Respondent.

Criminal Appeal No. 1276 of 1973

May 17, 1977.

Opium Act (13 of 1857)—Section 9—Criminal Procedure Code (II of 1974)—Section 100—Failure of raiding party to join independent witnesses—Whether makes the prosecution case suspicious or unreliable.

Held, that there being no provision of law requiring the attendance of any independent witness at the time of the search of the person of a suspect, the recovery proceedings cannot, therefore, be held to be suspicious or unreliable merely because no independent witness was opted to join the raiding party. At best, it would be