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sl. No	Date	reports, orders or proceedings or directions and	COURT'S OR JUDGES'S ORDERS
		Registrar's order with Signatures	
		with Signatures	WPMS No.384 of 2019
			Hon'ble Sharad Kumar Sharma, J.
			Mr. Devesh Upreti, Advocate, for the petitioner.
			Mr. T.S. Fartiyal, Deputy Advocate
			General, for the State of
			Uttarakhand/respondent Nos.1 and 2. Mr. Lalit Sharma, Advocate, for the respondent.
			The petitioner to the present writ petition
			has agitated his grievance as against the order
			of 30.12.2018, which was passed by the
			respondent No.1, whereby the survival
			certificate No.UK02UTJ0638/18000211, dated
			22.01.2018, which was issued to the petitioner
			on the basis of the report of 05.01.2018, of the
			Revenue Sub Inspector, was rejected. The issue
			which would be a subject matter of
			consideration, is as to whether the petitioner
			who claims himself to be the brother-in-law
			(Devar) of respondent No.3, of the present writ
			petition, would at all be entitled to be awarded
			with the survival certificate, so far it relates to
			the estates of the deceased brother – Mohd.
			Aslam.
			The record shows that the petitioner had
			already instituted a civil suit being Suit No.01
			of 2017, "Mohd. Akram Vs. Shaiby
			Mumtaz", which is presently pending

consideration before the Civil Judge, (Senior Division), Kashipur, District Udham Singh Nagar, which entails a consideration of the issue of entitlement of the petitioner to succeed the estates of his late brother.

In that eventuality, in case if this Court ventures upon the issue of grant of survival certificate to the petitioner of his deceased brother, it would obviously affect the merits of the proceedings of the civil suit itself, where the matter has to be decided on appraisal of evidence to be adduced by the parties.

Since the petitioner has already chosen a forum by filing a succession suit being Suit No.01 of 2017, before the Civil Judge, (Senior Division), Kashipur, District Udham Singh Nagar, all the controversies pertaining to the succession, which obviously will be based upon the appreciation of evidence has to be decided by the said court itself, and not by the writ courts by the grant of the survival certificate because if any orders are passed by this Court, considering the aspect of the grant of survival certificate, it will obviously be bound to have an adverse bearing on the pending civil suit, which has been preferred by the petitioner.

Since now the controversy of being declared as a successor or a consequential sole survivor of the deceased brother, who was the husband of respondent No.3, is a subject matter

of the suit itself.

This writ petition looking to the nature of the relief sought would not be sustainable before this Court, because all the issues and the controversies, are yet to be decided on the merits of the said pending suit. Hence, all the rights *inter se* between the parties would be determined by the Suit No.01 of 2017, itself.

In that view of the matter, since the suit is pending for the grant of succession rights, no adjudication as such on merits of the writ petition, would require by this Court pertaining to the issue of the grant of survival certificate. Hence, this writ petition is dismissed, subject to the condition that all the rights, which the petitioner contends to claim on the basis of being sole survival of the deceased brother, is yet to be adjudicated by the civil court, no merit adjudication is called for in the present writ petition.

Hence, the writ petition is dismissed, on this ground, leaving all the contentions left open to be decided by the civil court, where the succession suit of the petitioner is pending consideration.

(Sharad Kumar Sharma, J.)

28.09.2021



