

Khirod Chand Sikhdar vs Babu Lal Sikhdar on 2 June, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

C.R.P. 48/2021

KHIROD CHAND SIKHDAR

..... Petitioner

Through: Mr. Tarun Arora & Mr. Gopesh
Khandelwal, Advocates.

versus

BABU LAL SIKHDAR

..... Respondent

Through: Mr. Siddharth Khatana, Senior Panel

Counsel for R-5/UOI (M-
9811132326)

Mr. Naushad Ahmed Khan, ASC with
Mr. Zahid & Ms. Manisha Chauhan,
Advocates for R-6&7.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 02.06.2021

1. This hearing has been done through video conferencing. CM APPL. 17751/2021 (for exemption)
2. Allowed, subject to all just exceptions. Application is disposed of. CRP NO. 48/2021 & CM APPL. 17750/2021 (for stay), CM APPL. 17752/2021 (for calling lower court records)
3. The present revision petition has been filed by the Petitioner, challenging the impugned order dated 6th April, 2021 passed by the Id. Civil Judge (West), Tis Hazari Courts, Delhi, by which the Petitioner's Review application against the judgment dated 23rd August 2011, passed in Civil Suit No. 298/2008, titled Pushpa Rani v. UOI and Ors. has been dismissed.
4. The brief background is that a suit for declaration was filed by Smt. Pushpa Rani, Sh. Babu Lal Sikhdar, Ms. Dhriti Sikhdar and Ms. Anita Sikhdar - the wife and children of Sh. Khirod Chand Sikhdar before the Id.

Trial Court. It was claimed in the said suit that Mr. Khirod Chand Sikhdar, i.e. the Petitioner herein, had been untraceable for seven years, and accordingly a decree for declaration of "Civil Death" was sought from the ld. Civil Judge (West), Tis Hazari Courts.

5. In the said suit, the Defendants were Union of India, the Commissioner of Police and the SHO, P.S. Model Town. The judgment/decreed in the said suit was passed by the Trial Court on 23rd August, 2011, declaring Mr. Khirod Chand Sikhdar- dead. The said decree was based on the statements given by the first wife of Mr. Khirod Chand Sikhdar - Mrs. Pushpa Rani, who is now deceased.

6. On the strength of this declaratory decree, another proceeding is also stated to have been filed in Bareilly seeking declaration in respect of lands in Bareilly owned by Mr. Khirod Chand Sikhdar. According to ld. Counsel for the Petitioner, it is at that stage that the Petitioner came to know about the impugned judgment/decreed dated 23rd August, 2011, declaring him dead. Thereafter, a Review of the same was sought by the Petitioner. The Review application, which was filed in 2012 was decided vide order dated 6th April, 2021 by the ld. Civil Judge (West). It is this order, dismissing the Review application, which has been impugned in the present revision petition.

7. Ld. Counsel appearing for the Petitioner submits that Mr. Khirod Chand Shikhdar is very much alive, and is currently living in Delhi at D- 125, Gali No. 50, Mahavir Enclave, Part III, Delhi. He is stated to be living with his second wife - Mrs. Anjana Biswas, and two children - Mr. Rahul and Mr. Abhishek. Ld. Counsel further submits that the intention of the first wife and the children from the first marriage, was to grab the lands belonging to the Petitioner which are stated to be in Bareilly, and hence a Review of the declaratory decree was sought by the Petitioner, on the ground that there are various documents which prove that he is still alive.

8. Considering the nature of the matter, the first question that has been posed to ld. Counsel for the Petitioner, is as to whether he has independently challenged the judgment dated 23rd August, 2011. In response, ld. Counsel for the Petitioner submits that since the rejection of the Review Application is not appealable under Order XLVII Rule 7 CPC, a revision petition under Section 115 of the CPC, shall be maintainable before this Court. Insofar as the challenge to the original judgment/decreed by way of an appeal is concerned, ld. Counsel for the Petitioner wishes to reserve the rights of the Petitioner on the same.

9. Heard ld. Counsel for the Petitioner.

10. The original judgment/decreed dated 23rd August, 2011 was obviously passed without affording any hearing to the Petitioner herein, who was represented before the ld. Trial Court, to have already absconded and not found for seven years by the Plaintiffs therein. Thereafter, the Review application had been filed by the Petitioner before the ld. Trial Court placing on record various documents, to prove that he is still alive, which has been disbelieved by the impugned order. The impugned order primarily records that the documents which have been filed by the Petitioner are not of real value, and does not inspire the trust of the Court that Mr. Khirod Chand Shikhdar is alive. The Court also expressed doubt as to whether Mr. Khirod Chand Shikhdar and Mr. Khirod Chand

Biswas are the same person or not. At this stage, ld. counsel for the Petitioner submits that SHO, Model Town had in fact conducted an inquiry and provided a report on record stating that Mr. Khirod Chand Shikhdar is alive.

11. Accordingly, this matter accordingly requires consideration. Issue notice to the Respondents. Ld. Counsels for Union of India i.e Respondent No.5 and for Respondent Nos. 6 and 7 have entered appearance and accept notice. Let the remaining Respondents be served both by email as also on their mobile numbers.

12. There was an interim order which was passed on 10th December, 2020 by which the judgment dated 23rd August, 2011 was stayed during the pendency of the Review application. Accordingly, the judgment dated 23rd August, 2011 shall not be given effect to, till disposal of the present petition.

13. Ld. Counsel for the Respondent Nos. 5 and 6, who are appearing today, shall place on record the report of the SHO, P.S., Model Town which was filed before the Trial Court.

14. Let the record of lower court in respect of the suit no, being Civil Suit No. 298/2008, titled Pushpa Rani v. UOI and Ors. be also called for before the next date of hearing. CM APPL. 17752/2021 is accordingly disposed of.

15. List before the Registrar for completion of service on 28th July, 2021.

16. List before the Court on 31st August, 2021.

PRATHIBA M. SINGH, J.

JUNE 2, 2021 Rahul/Ak