

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Miscellaneous Appeal No. 172 of 2019

In the matter of:

Birza Rani Shil being dead now her heirs Bina
Rani Shil and another

... Appellants

-Versus-

Birendra Chandra Shil and others

... Respondents

Mr. Md. Ozi Ullah, senior, Advocate

...For the appellants

No one represented

...For the respondents

**Heard on 03.12.2024 10.12.2024
and Judgment on 10.12.2024**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the successor-in-interest of the plaintiff namely, Bina Rani Shil and Runa Rani Shil this appeal is preferred against the judgment and order dated 23.05.2017 passed by the learned Joint District Judge, Khagrachari in succession case no. 24 of 2012 dismissing the same.

The short facts leading to preferring this appeal are:

The predecessor of the present appellants, Birza Rani Shil claiming herself to be the only wife of her deceased husband, Dharendra Chandra Shil filed the said case contending *inter alia* that, she got married to the deceased, Dharendra Chandra Shil 40 years back upon performing all religious Hindu ritual and out of their wedlock two daughters were born

who had already been married-off. Dharendra Chandra Shil had been serving as a teacher of a primary school and retired from the service on 16.10.2006 and during the course of enjoying retirement benefit, he died on 08.10.2010. After the demise of her husband, the plaintiff then approached to the primary education officer and Upazilla *Shikkha* officer for getting the retirement benefit of her deceased husband from those office when they asked the plaintiff to obtain a succession certificate for determining the nominee/ beneficiary of that retirement benefit. It has though been stated that, the husband of the plaintiff without informing her took a second wife, the defendant no. 2 namely, Khorok laxmi and out of the wedlock, they got one daughter, who was also married. However, when a dispute arose about the second marriage, then an arbitration was held on the basis of a complaint made by the said second wife and then the ward commissioner of ward no. 3 and 6 of Ramgar Pourashova made a meeting when it was resolved by paying taka 35,000/- to the defendant no. 2 and taka 20,000/- to the daughter of defendant no. 2 and in accordance with that arbitration an agreement/ no objection (নাদাবী) was issued by the defendant no. 2. On that statement the plaintiff finally prayed for obtaining a succession certificate by filing the case claiming to be only nominee/ beneficiary of the deceased.

The present respondent no. 1 who is the full brother of the deceased and respondent no. 2, the second wife the deceased and respondent no. 3, the son of the defendant no. 2 also filed separate written statement to contest the case and the learned Joint District Judge after taking into consideration of the evidence and materials on record ultimately

dismissed the case finding that it has been proved by the plaintiff herself that apart from her, the deceased, Dhirendra Chandra Shil got second marriage that is, defendant no. 2 on whose wedlock. defendant no. 3 was born. It is at that stage, the heirs of the sole plaintiff as appellants preferred this appeal.

Mr. Md. Ozi Ullah, the learned senior counsel appearing for the appellants submits that since it has been found that the predecessor of the appellants is the first wife of the deceased, Dhirendara Chandra Shil so they are only entitled to get the pension benefit on the demise of Dhirendra Chandra Shil and then after the death of their mother dated 26.05.2015.

The learned counsel further contends that, since there has been no provision in the Hindu Law either to get second marriage or to give divorce so on that aspect, the defendant no. 2 and his son was not entitled to get any pension benefit on the demise of their predecessor, Dhirendra Chandra Shil. When we pose a question to the learned counsel for the appellants since the plaintiff in her plaint as well as deposition clearly asserted to have also a second wife of the deceased, so how the predecessor of the appellants, could claim to be the sole nominees vis-a-vis claim pension benefit as of the only heir of the deceased, the learned then then finds it difficult to answer the said query which has duly asserted by the learned judge of the trial court against the plaintiff of the case in his judgment.

However, the learned counsel finally prays for allowing the appeal by setting aside the impugned judgment and order.

None represented for the respondents in the appeal.

We have considered the submission so placed by the learned counsel for the appellants and perused the memo of appeal and the impugned judgment and order vis-à-vis the copy of the plaint as well as the photocopies of the written statement filed by the defendant nos. 1-3 so supplied at the time of hearing of the appeal by the learned counsel for the appellants.

There is no gainsaying the fact that the case was filed only for obtaining succession certificate. It is also not denying that the predecessor of the appellants claimed to be the sole beneficiaries/ nominees or the successors-in-interest of the deceased, Dharendra Chandra Shil. But fact remains, in the plaint as well as in the deposition, the plaintiff herself admitted to have another wife of the deceased that is, defendant no. 2 and a daughter and a son. So, the principal assertion so made by the plaintiff claiming to be the only nominee or beneficiary of the deceased and seeking to obtaining a succession certificate in her name cannot be sustained on the basis of assertion so made by the plaintiff herself. Whether the plaintiff or the defendant no. 2 will get the pension benefit from the respective office of the deceased, it will only be determined by issuing a succession certificate to that effect by the court as to whoever will be entitled to be the successor of the deceased and then only he /she will get the pension benefit from the respective office according to the pension rules of the department, the deceased had been serving. Since the plaintiff who claimed to be the only nominee/ beneficiary of the deceased

has not been proved on her own admission so we don't find any illegality in the impugned judgment and order by dismissing the succession case.

Accordingly, the appeal is dismissed however without any order as to costs.

The impugned judgment and order is hereby by sustained.

Let a copy of this judgment and order along with the lower court records be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.