

Shanti Devi Vs. State and ors

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Court : Delhi

Decided On : Aug-12-2014

Judge : A. K. Pathak

Appellant : Shanti Devi

Respondent : State and ors

Judgement :

§~24 * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO4182013 Decided on 12th August, 2014 SHANTI DEVI Through: Appellant Mr. Bhavook Chauhan, Adv. versus STATE & ORS Through: Respondents Mr. Vishal Bakshi, Adv. for R-2. Mr. Aditya Sharma, Adv. for R-3. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.(ORAL) 1. Appellant has challenged the order dated 19th September, 2013 passed by the Administrative Civil Judge, Tis Hazari Courts, Delhi on a petition under Section 372 of the Indian Succession Act filed by the respondent no.2 for grant of succession certificate in respect of debts and securities of Late Shri Sant Singh and Late Smt. Karmo Bai, parents of respondent no.2. Respondent nos. 2 and 3 are sisters of appellant. Respondent no.2 had taken a plea before the trial court that appellant was not entitled to succeed the estate of Late Shri Sant Singh and Late Smt. Karmo Bai since she was adopted by her unclce, that is, Justice Gopal Singh. Trial court has granted succession certificate to respondent nos. 2 and 3 excluding the appellant.

2. That is how appellant is before this Court. In my view, appeal against the order passed by the Administrative Civil Judge is not maintainable in this Court as competent court to deal with such appeals is that of a District Judge.

3. Part X of the Indian Succession Act, 1925 deals with the succession certificates. Section 384 provides that an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part. However, Section 388 vests power in the State Government to invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under Part X, by issuing a notification in the Official Gazette. It further provides that any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge, in the exercise of all the powers conferred by Part X upon the District Judge and the provisions of said Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge. Provisio to Section further envisages that an appeal from any such order of an inferior Court, as is mentioned in subsection (1) of section 384, shall lie to the District Judge, and not to the High Court and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

4. Relevant it would be to reproduce Section 388 of the Act for the sake of ready reference, which reads as under :388. Investiture of inferior courts with jurisdiction of District Court for purposes of this Act

(1) The State Government may by notification in the Official Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge: Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section

(1) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Part from an inferior Court, and may either himself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section

(1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a Court inferior in grade to a District Judge.

5. Chapter 6 Part B of Delhi High Court Rules (Original Side) Volume II deals with the issue of succession certificates. Rule 2 provides that all subordinate judges of the first and second class have been invested with the functions of a District Court for the purposes of granting succession certificates by Punjab Government Notification No.781, dated 15 th July, 1914, which continues to be in force. It further envisages that an application under Part X of the Indian Succession Act, 1925, will usually be dealt with by subordinate Judges and appeals from their orders granting, refusing or revoking certificates will lie in the District Judge. When a District Judge finds it necessary to deal with any application under the Act as an original Court the appeal will lie to the High Court under Section 384, sub-section (1) of the Act.

6. In view of the above legal position, which emerges from a conjoint reading of Section 388 of the Act and Rule 2 of Chapter 6 Part B of the Delhi High Court Rules, application under Part X of the Act is to be dealt with by subordinate judges and appeals from their orders granting, refusing or revoking succession certificates will lie before the District Judge. Accordingly, present appeal is not maintainable in this Court and would lie before the District Judge.

7. Appellant may file an appeal before the concerned District Judge within one week which shall be heard by the District Judge on merits in accordance with law without going into the question of limitation.

8. Appeal is disposed of in the above terms.

9. Dasti. A.K. PATHAK, J.

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