

Pasumarthi Srinivas Vs. -----

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Court : Andhra Pradesh

Decided On : Feb-15-2017

Judge : Suresh Kumar Kait & U. Durga Prasad Rao

Appeal No. : CMASR No. 45531 of 2016

Appellant : Pasumarthi Srinivas

Respondent : -----

Judgement :

U. Durga Prasad Rao, J.

1. Perused the office objections and heard learned counsel for appellant.
2. This C.M.A is filed by the appellant aggrieved by the order dated 25.07.2016 in S.O.P (SR) No.2632 of 2016 passed by the Senior Civil Judge, Ramachandrapuram whereby the learned Judge dismissed the petition filed by the petitioner/appellant for granting succession certificate. Hence, the CMA.
3. The office took the objection that since the impugned order was passed by the Senior Civil Judge, how the CMA is maintainable before the High Court. It appears, the office view is that the appeal should have been filed before the concerned District Court.

4. Learned counsel would submit that the Senior Civil Judge entertained the Succession O.P as a delegate of District Judge by virtue of the powers conferred by the High Court under ROC No.40/SO/72.1 and ROC No.40/SO/72.2 and therefore, the order passed by the Senior Civil Judge shall be deemed to have been passed by the District Court and by virtue of Section 384 of the Indian Succession Act, an appeal shall lie to the High Court from an order of a District Judge whether granting or refusing or revoking a succession certificate and hence the appeal filed before the High Court is legally maintainable.

5. As per Section 371 of the Indian Succession Act, the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death or, if at the time he had no fixed place of his residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant a succession certificate. As per Section 2 (bb) of the said Act, the District Judge means the Judge of a Principal Civil Court of original jurisdiction. Hence, at the inception of the Act, the Judge of a Principal Civil Court of original jurisdiction alone was vested with the power to grant succession certificate under Section 371 of the Act.

6. Be that as it may, the High Court under the power conferred under Section 265 of the Act, appointed Subordinate Judges (now Senior Civil Judges) including the Additional Judges in City Civil Courts, ex-officio as District delegates under the Act. Further, as per ROC No.40/SO/72.2, the High Court, under Section 19(1) of Andhra Pradesh Civil Courts Act, 1972, authorized all the subordinate judges to take cognizance of any of the proceedings under Indian Succession Act, 1925, which cannot be disposed of by the District delegates. This aspect has been clarified by this High Court in CMA No.46 of 2010 dated 20.03.2010.

7. So, by virtue of the aforesaid conferment of powers, the Senior Civil Judges also have been entertaining the succession O.Ps as District delegates. As per Section 384 of the Act, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a succession certificate. The submission of learned counsel for appellant is that since the Senior Civil Judges have been issuing the succession certificates in the capacity as delegates to the

District Judge, the orders passed by them shall be deemed to have been passed by the District Judge and hence the appeal against such order shall lie before the High Court alone under Section 384 of the Indian succession Act.

8. The above argument though apparently sounds valid but the same cannot be accepted for the following reasons.

a) Following the letter Roc No.408/SO-3/2009, dated 01.11.2011 of the Registrar General, Andhra Pradesh High Court, Hyderabad, the Government of Andhra Pradesh issued G.O.Ms.No.11 dated 08.02.2012, which reads thus:

ORDER

The Registrar General, High Court of Andhra Pradesh, Hyderabad, in his letter read above, has forwarded the Draft Notification with regard to the Conferment of powers on Senior Civil Judge Courts to entertain Original Petitions filed under the Indian Succession Act, 1925.

2. The Government after careful examination of the matter have decided to approve the Draft Notification with regard to the Conferment of powers on Senior Civil Judge Courts to entertain Original Petitions filed under the Indian Succession Act, 1925.

3. Accordingly, the following Notification will be published in an Extraordinary issue of the Andhra Pradesh Gazette.

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 388 of the Indian Succession Act, 1925 (Central Act 39 of 1925) and of all other powers here unto enabling the Governor of Andhra Pradesh hereby confers powers on all the Principal Senior Civil Judges, where there are more than one Senior Civil Judges Court and Senior Civil Judges Court where only one Court is functioning at such station to entertain original petitions filed under the Indian Succession Act, 1925 and shall exercise the functions of District Judge under Part-X of the said Act within their respective jurisdictions.

So, by virtue of above G.O. the Government in concurrence with the High Court of Andhra Pradesh, by virtue of the powers conferred under Section 388(1) of Indian Succession Act, 1925, have issued notification conferring powers on all the Senior Civil Judges to entertain original petitions filed under Indian Succession Act, 1925 and to exercise the functions of District Judge under Part-X of the said Act within their respective jurisdictions.

For convenience, Section 388 of Indian Succession Act is extract below:

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 authorizes 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.

So, proviso to sub-section (2) specifically lays down that an appeal from any order of an inferior Court as mentioned in sub-section (1) shall lie to the District Judge and not to the High Court.

In view of the specific provision which creates forum for appeal which is the District Court in the instant case, the submission of learned counsel that the appeal shall lie before the High Court cannot be accepted.

b) For another reason also his argument does not hold water.

Section 384 of Indian Succession Act which speaks of appeal reads thus:

384. Appeal.

(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908).

(3) Subject to the provisions of sub-section (1) and 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, an order of a District Judge under this Part shall be final.

The above section no doubt lays down that against the order of a District Judge granting, refusing or revoking a certificate under Part-X of Indian Succession Act, an appeal shall lie to the High Court. However, Section 384 is subject to the other provisions of Part-X which means the said section is subject to Section 388 as per which, against the order passed by an inferior Court, an appeal shall lie before the District Judge and not before the High Court.

9. For the above reasons, the office objection is found valid and hence sustained. The office is directed to return the CMA to the appellant for filing before an appropriate Court.

10. The Registry is directed to verify and if found, return the appeals pending before the High Court against the orders passed by the Senior Civil Judge under Indian Succession Act, to the concerned District Courts for adjudication.

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