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Court : Patna

Decided On : Jul-30-1993

Judge : S.N. Jha, J.

Appeal No. : Civil Revision No. 2072 of 1988

Appellant : Balbhadra Singh Alias Balbhadra Narain Singh

Respondent : Munaka Devi and ors.

Disposition : Application Dismissed

Judgement :

S.N. Jha, J.

1. The petitioner, caveator-opposite-party in the court below, challenged the jurisdiction of the Additional District Judge in seisin of the proceeding to grant probate of a will in a proceeding under the Indian Succession Act, 1925 (the 'Succession Act' in short). The objection having been rejected he has come to this Court in revision.

2. It is contended by the petitioner that by reason of the provisions contained in the Act, only the District Judge is competent to grant probate or letters of administration in contentious proceeding. Court other than that of the District Judge have jurisdiction only if the grant is not contested. The question for

consideration is whether the District Judge alone is competent to grant probate of letters of administration in contentious proceedings.

3. The provisions referred to by Mr. Balbhadra Singh, an Advocate of this Court appearing in person, in support of his contention are contained in Sections 2(bb), 264, 265, 286 of the Succession Act. The said provisions in so far as relevant may be noticed at one place at the very outset.

2(bb) 'District Judge' means the Judge of a principal Civil Court of original jurisdiction.

264(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all case within his district.

(2) * * * *

265(1) The High Court may appoint such Judicial Officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment shall not be without the previous consent of the State Government.

(2) Persons so appointed shall be called 'District Delegates.'

286. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that the probates or letters of administration ought not to be granted in his Court.

Explanation.--'Contention' means the appearance of any person, or by his recognised agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

288. In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the

petition with any documents which may have been filed therewith, shall be returned to the person by whom any application was made, in order that the same may be presented to the District Judge unless the District Delegate thinking it necessary, for the purpose of justice, to impound the same, which he is hereby authorised to do ; and, in that case, the same shall be sent by him to the District Judge.

4. From bare perusal of the aforementioned provisions it would appear that the proceedings for grant of probate or letters of administration have been broadly classified as contentious and non-contentious. So far as contentious proceedings are concerned, in terms of the provision of the Act, the District Judge is competent to grant probate or letters of administration, non-contentious proceeding may be disposed of by a special class of Judicial Officers known as District Delegates appointed in that behalf in manner laid down in section 265. It would also appear that provisions restricting the Power to grant probate or letters of administration only in non-contentious cases are applicable to District Delegates so appointed alone. These provisions are not applicable to such Judicial Officers to whom contentious proceedings may be assigned, otherwise than as District Delegates. In other words, Judicial Officers not being the District Delegates within the meaning of Section 265 do not come within the sweep of these restrictive provisions.

5. As is well-known, there is hierarchy of courts comprising the civil court in particular local area. The provisions in regard to classification, constitution, delegation of powers are contained in the local Civil Courts Act applicable to particular State or States. In the State of Bihar these provisions are contained in Bengal, Agra and Assam Civil Courts Act, 1887 (in short the Civil Courts Act). The other States have their own Act containing more or less similar provisions. It would be useful at this stage to notice some of the provisions of the Civil Court. Act, relevant to the points Section 3 of the Act provides for the following classes of civil Court :

(a) the court of the District Judge.

(b) the court of the Additional Judge,

(c) the court of the Subordinate Judge ; and

(d) the court of the Munsif

Section 6 of the said Act provides for appointment of Additional District Judge or Subordinate Judges. Section 8 having direct bearing on the point in issue may be quoted verbatim as hereunder :

8(1) When the business pending before any District Judge requires the aid of the Additional Judge for its speedy disposal, the State Government may, having consulted the High Court, appoint such Additional Judges as may be-requisite.

(2) Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in discharge of those functions they shall exercise the same powers as the

[illegible]

6. Way back in 1924 this Court in the case of *Mt. Daho Kuer v. Mt. Tural Dei* AIR 1924 Pat 593, dealing with the same question in the context of the provisions as contained in the Probate and Administration Act, 1881 referred to the provisions of Section 8 of the Civil Courts Act and held as follows :

When the Additional District Judge takes seisin of a case upon a transfer made to him he becomes principal civil court of original jurisdiction. Therefore, the Additional District Judge exercises the same power and in fact occupies the position of a District Judge in the sense that it is defined in the Probate and Administration Act.

It may be mentioned here that the term 'District Judge' has been assigned the same meaning under Section 2(bb) of the Act as assigned to it under Section 3 of the Probate and Administrations Act and the relevant provisions of the Successions Act are in part materta with those of the Probate and Administration Act,1881.

7. The view expressed by this Court finds support from the decisions of other High Courts as well. The earliest decision on the point on which I could lay my hands is

to be found in case of Ramasinha Rajput v. Murlibai AIR 1923 Nag 41. The same argument as is being advanced in the instant case was made there and repelled by the learned Judge in the following words :

This contention is based upon the premise that as a District Judge or a District Delegate alone can grant probate the Additional District Judge must have been exercising power as a District Delegate. There can be no Delegate except by appointment by the High Court and it is not known that the Additional District Judge was appointed such. He was exercising power as a District Judge and could grant probate or letters of Administration in all these cases whether there was contention or not.

The Nagpur High Court in Ganpat Pralhad v. Mahadeo Palkajee Kolhe AIR 1949 Nag 408 referred to the provisions of the Succession Act, General Clauses Act and the Central Provinces Civil Courts Act and made these observations :

It is evident that Judges of the District Court include not only the District Judge properly so termed but also all the Additional Judges appointed to that Court and that the jurisdiction of each of these Judges is co-extensive with that of the District Judge properly so-called unless such jurisdiction is specially curtailed by a general or special order.

There are indication in the Act that when the term 'District Judge' is used it has reference not to a persons designated but to a Court is the principal civil court or original Jurisdiction.

It may be mentioned that the learned Judges noticed with approval the decision in Mt. Daho (supra) and Ramasinhna Rajput (supra). A Full Bench of Madras High Court in R. Rama Subbarayalu Reddiar v. Rengammal : AIR1962 Mad450 had the occasion to consider the same question. It was observed :

A District Delegate appointed under Section 265 owes his authority to that source, but a sub-Judge who is invested with Jurisdiction under a notification under Section 29(1) of the Madras Civil Courts Act has a different jurisdiction. Thus, there is a distinction between the two authorities. The latter jurisdiction, therefore,

cannot be the same as that of a District Delegate.

The Court overruled a Division Bench decision in the case of *P.J. Francis v. P.J. Varghese* AIR 1956 Mad 680 which has held that the notification of the Madras High Court vesting the subordinate Judges the power to decide proceedings under the Succession Act could not clothe him the power to decide contested cases. Similar view was expressed in *Hans Raj Mittal v. Khuse Ram Ganga Ram* AIR 1964 Punj 485 and *Bat Zabu Khima v. Amardas Balakdas* : AIR1967 Guj214 . The following observations occurring in the latter may be noticed :

Reading Sections 265 and 288 together it is manifest that a civil judge, senior division, cannot grant letters of administration in a case where a contention raised against the grant of letter of administration. But the Saurashtra District and Subordinate Civil Courts Ordinance, 1948 by Section 28A Sub-section (1) provided that the High Court may by general or special order invest any civil judge within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court, as the case may be under the Indian Succession Act, 1925 and in exercise of the powers conferred under this Section the High Court of Saurashtra issued a Notification dated 30th July, 1948 empowering all Civil Judges, Senior Division within their territorial limits to exercise all the powers of a District Judge. The result was that although the Civil Judge, Senior Division Surendra Nager, had no power under the Indian Succession Act to grant letters of administration in contentious cases, such power was conferred on him under the High Court Notification dated 30th July, 1948 issued under Section 28A(1) of the Saurashtra District and Subordinate Civil Courts Ordinance, 1948.

The last in the line of cases is the case of *Sugar Chaudhary v. Navin Chand Chaudhary* AIR 1970 Assam 111. A Division Bench of the Court adopted the observations made by Nagpur High Court in *Ganpat Pahlad* AIR 1949 Nag. 408 and held that the Additional District Judge has jurisdiction to grant probate of will as 'Division Court of the Court of District Judge.'

8. The case law on the point would not be complete without making reference to *Kuldip Singh v. The State of Punjab* : 1956 CriLJ781 . Their Lordships referred to

Section 18 of the Punjab Courts Act, 1910, which is in pari materia Section 3 of the Civil Courts Act applicable in the State of Bihar and observed as follows :

The court of the Additional Judge is therefore constituted a distinct

class of Court, and it is to be observed that the Act speaks of the

Court of Additional Judge and not of the Additional District

Judge as is the case with certain other Acts in other parts of

India.

9. As against the decisions referred to above, the decisions relied upon by the petitioner are *Ram Kishore v. Nand Kumar* AIR 1934 Oudh 442, *Kallash Chandra v. Nanda Kumar* AIR 1944 Cal 385, *Mathoram Boro v. Mt. Sundarl Kachartnl* AIR 1954 Ass 54 and *P.J. Francis v. P.J. Varghese* AIR 1956 Mad 680. The question for consideration in these cases, except the last one was whether District Delegate appointed under Section 265 can grant probate or letters of administration in contentious cases. As noticed above, there is a clear distinction between the District Delegates appointed under Section 265 of the Succession Act and the Judicial Officers vested with Jurisdiction by virtue of the provisions of the respective Civil Courts Act. The question as to whether a Judicial Officer not being District Delegate within the meaning of Section 265 was competent to grant probate or letters of administration in contentious cases was neither canvassed nor considered. These decisions, therefore, are clearly distinguishable and of no avail to the petitioner. The case of *P.J. Francis* (supra), no doubt, lends some support to the plea but the same stands overruled by the Full Bench in the case of *R Rama Subbarayalu Reddiar* : AIR1962 Mad450 (supra) and therefore need not be discussed.

10. The whole argument of the petitioner rests on the premise that the District Judge alone is competent to grant probate or letters of administration in contentious cases. 'District Judge' is not a term of art. It does not refer to a persona designata. It refers to a Court, namely, the principal Civil Court of original jurisdiction. An Additional Judge appointed under Section 8 of the Civil Courts Act

while discharging the functions of a District Judge, which the District Judge assigns to him, has the same power as a District Judge. On transfer of the particular case for grant of probate or letters of administration he thus becomes the principal Civil Court of original jurisdiction. Said in different words the provisions of the Civil Courts Act provide and confer the Judicial Officer, not being District Delegate, the jurisdiction which he may otherwise be lacking in under the Succession Act, to grant probate or letters of administration in contentious cases. For these reasons, it has to be held that the jurisdiction to decide contentious cases for grant of probate or letters of administration is not limited to the District Judge alone but may also be exercised by Judicial Officers authorised to discharge function of the District Judge by virtue of appointment made in that behalf.

11. It is not the case of the petitioner that Shri A.C. Das, in seisin of the instant proceeding, was a District Delegate within the meaning of Section 265. It is also not the case of the petitioner that Shri Das was not duly appointed Additional Judge or that the proceeding had not been duly assigned to him by the District Judge. It would accordingly, follow that Shri Das was fully competent to entertain the proceeding and take it to its logical conclusion notwithstanding the contest offered by the caveator-petitioner.

12. This revision application has, thus, no merit and is accordingly dismissed but without any order as to cost.