

Vera D. Thackersey Vs. Bai Manekbai Annasaheb Thackersey

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Court : Mumbai

Decided On : Feb-11-1976

Reported in : AIR1977Bom419; (1976)78BOMLR543

Judge : Hajarnavis and ;Lentin, JJ.

Acts : [Indian Succession Act, 1925](#) - Sections 2, 264, 264(1), 265, 265(1), 266, 267, 268, 272, 283, 286, 288 and 299; [Bombay Civil Courts Act, 1869](#) - Sections 28-A and 28-A(1); Bombay High Court Orders; Bombay High Court Rules - Rules 55 and 255; Indian Succession Act, 1865; Probate and Administration Act, 1881; [Code of Civil Procedure \(CPC\), 1908](#); Madras Civil Courts Act - Sections 29(1); [Payment of Wages Act, 1936](#); Bombay City Municipalities Act, 1925; [General Clauses Act, 1897](#) - Sections 8(1)

Appeal No. : First Appeal No. 598 of 1975

Appellant : Vera D. Thackersey

Respondent : Bai Manekbai Annasaheb Thackersey

Advocate for Def. : M.V. Paranjape, ;S.S. Phadnis and ;P.M. Pradhan, Advs.

Advocate for Pet/Ap. : A.C. Agarwal and ;V.B. Joshi, Advs.

Judgement :

Lentin, J.

1. This appeal has been filed against the judgment and order dated 16th April 1975 passed by the learned 2nd Joint Civil Judge, Senior Division, Poona, returning to the petitioner, who is the appellant before us, her application for letters of administration together with all documents, for presentation to the District Judge, Poona, under Section 288 of the [Indian Succession Act, 1925](#).

2. On 6th October 1973, one D. A. Thakersey died intestate at Poona, leaving a large estate. His widow, namely the appellant, filed Application No. (146 of 1974) 376 of 1974 for letters of administration in the Court of the learned District Judge at Poona. This application was ordered to be registered on 20th June 1974. On 24th June 1974, the learned District Judge transferred the matter for disposal to the Court of the learned Civil Judge, Senior Division, Poona. Thereafter, the deceased's mother, one Manekbai, who is the respondent before us, filed a caveat, the contents whereof are not material for the purpose of this judgment. She also challenged the jurisdiction of the learned Civil Judge, Senior Division, Poona to hear and decide the application, on the ground that the latter was merely the District Judge's delegate and the matter having become a contentious one, by reason of the filing of the caveat, the learned Civil Judge, Senior Division, was liable to return the application for presentation to the Court of the learned District Judge, under Section 288 of the [Indian Succession Act, 1925](#). This contention of the respondent found favour with the learned Joint Civil Judge, Senior Division, Poona, who by her judgment and order dated 16th April 1975, ordered the application and documents to be returned to the appellant for presentation to the District Judge, Poona, Hence the present appeal.

3. In challenging the correctness of the impugned judgment and order, it was contended by Mr. Agarwal, the learned Counsel appearing on behalf of the appellant, that the learned Joint Civil Judge, Senior Division, Poona, misconstrued the provisions of Section 288 of the Indian Succession Act, as also that there was some misappreciation on her part as to her own powers to hear and decide the matter. Mr. Agarwal urged that the learned Joint Civil Judge, Senior Division, was not the District Judge's delegate and that she, viz. the former, had jurisdiction to hear and decide the application, irrespective of the fact that the same had become contentious by reason of the filing of the caveat by the respondent.

4. On the other hand, Mr. Paranjape, the learned Counsel appearing on behalf of the respondent, attempted to justify the correctness of the impugned judgment and order on several grounds. He contended that the learned Joint Civil Judge, Senior Division, was merely the delegate of the learned District Judge who alone had the jurisdiction to hear the matter as the same had become contentious by reason of the filing of the caveat. He further contended that the High Court had no power whatsoever to invest any Judge subordinate to the District Judge to try a contentious matter pertaining to letters of administration or probate. He also attempted to justify the impugned order on the ground that Section 264 of the Succession Act, 1925, was in direct conflict with Section 28-A of the [Bombay Civil Courts Act, 1869](#). He also contended that the High Court's power of delegation was circumscribed statutorily by Section 265(1) of the Succession Act, which factor was brought to the forefront by the provisions of Section 272 which dealt with delegation only in the case of non-contentious matters, Finally, Mr. Paranjape contended that the District Judge was persona designata, with the result that the delegation under Section 28-A(1) of the Bombay Civil Courts Act was bad in law. According to Mr. Paranjape, the High Court could appoint a District Delegate under Section 265 of the Succession Act in connection with non-contentious cases only, which was the only power which was vested in the High Court.

5. Our attention was invited to certain provisions of the [Indian Succession Act, 1925](#), Section 28-A of the Bombay Civil Courts Act. 1869 and R. 255 of the High Court Rules, Civil Manual Volume I, 1960, which it would be necessary to allude to in order to appreciate the rival contentions urged before us.

6. Section 2(bb) of the Indian Succession Act defines 'District Judge' as 'the Judge of a principal Civil Court of original jurisdiction.' Section 264(1) provides that a District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district. Section 265(1) confers power in the High Court to appoint Delegate of the District Judge to deal with non-contentious cases and reads as under:--

'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: x x x x x x x'

Sub-section (2) states that persons so appointed shall be called 'District Delegates.' Section 286 provides that 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 probate or letters of administration ought not to be granted in his Court. Section 288 lays down the procedure inter alia in the case of contentious proceedings before the District Delegate and reads thus:--

'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 the application was made, in order that the same may be presented to the District Judge.....'

7. Pausing here for a moment, it may be stated that while the learned Joint Civil Judge, Senior Division, Poona, was correct in holding that the matter before her was a contentious one (a caveat having been filed), she was obviously not correct in apparently proceeding on the basis that she was the District Delegate, for reasons we shall be stating hereafter.

8. Section 28-A of the [Bombay Civil Courts Act, 1869](#) empowers the High Court to invest Civil Judges with jurisdiction under certain Acts. Sub-clause (1) of that section, with which we are concerned is as follows:--

'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, 1865. The Probate and Administration Act, 1881, or paragraph 5 of Schedule III to the Code of Civil Procedure, 1908.'

9. Rule 255 of the High Court Rules (Civil Manual, Volume I, 1960), issued by the Bombay High Court, Appellate Side, comprises of sub-rules (i) and (ii). By Sub-

rule (i), it is provided that under Section 265 of the [Indian Succession Act, 1925](#), the High Court has appointed all Civil Judges to act for the District Judges as delegates to grant probate and letters of administration in non-contentious cases arising within the local limits of their respective jurisdiction. Sub-rule (ii) is important and hence we reproduce it as under:--

'In exercise of the powers conferred by Section 28-(1)A of the Bombay Civil Courts Act (XIV of 1869), the High Court has invested all Civil Judges (Senior Division) with all the powers of a District Judge to take cognizance of any contested proceeding under the [Indian Succession Act, 1925](#), arising within the local limits of their respective jurisdiction that may be transferred to them by their respective District Judges.'

Thus, while Sub-rule (i) refers to appointment of Civil Judges as delegates to act for the District Judge in non-contentious cases, by Sub-rule (ii), the High Court has invested all Civil Judges (Senior Division) with all the powers of a District Judge to take cognizance of contested matters as provided in that Sub-rule.

10. It is not in dispute, and rightly so, that by reason of the caveat having been filed, the matter before the learned Joint Civil Judge, Senior Division, Poona, became a contentious matter. The question that however, does arise is whether she, viz. the learned Joint Civil Judge, Senior Division, was correct in returning the application for presentation to the District Judge under Section 288 of the Succession Act, as done by her. It is not without significance that the order dated 24th June 1974 passed by the learned District Judge, Poona, transferring the matter to the learned Civil Judge, Senior Division, Poona, was not passed in the capacity of the latter being a Delegate of the former, This is amply brought to the forefront by the wording of that order which is clear and explicit, namely--

'Transferred to the file of the Civil Judge, S.D. poona for disposal according to law.'

11. Reading Section 28-A and Sub-rule (ii) of Rule 255, there can be no doubt that the learned Joint Civil Judge, Senior Division, Pune, was invested with the powers of the District Judge himself. If he could have decided the application, which he no doubt could, so could she, viz, the learned Joint Civil Judge, Senior Division. With

respect, this position does not appear to have been brought to her pointed attention. All that the learned District Judge did was to transfer simpliciter the matter to the learned Civil Judge, Senior Division, who by virtue of Section 28-A of the Bombay Civil Courts Act and Rule 255 of the High Court Rules, could and should have disposed of the same on merits, irrespective of the fact that a caveat had been entered and the matter had become a contentious matter.

12. In arriving at this conclusion, we are fortified by a decision of a Division Bench of the Gujarat High Court in *Bai Zabu Khima v. Amardas*, : AIR1967 Guj214 , where also it had been contended that the learned Civil Judge had no jurisdiction to grant letters of administration, as the matter had become contentious. It was further urged that only if the case had been non-contentious, the learned Civil Judge could have had jurisdiction to entertain the application and to grant letters of administration as a District Delegate under Section 265 of the Indian Succession Act. Referring to Section 28-(1)A of the Saurashtra District and Subordinate Civil Courts Ordinance, 1948, which 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 further in exercise of the powers conferred under this section the High Court of Saurashtra having 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 Division Bench of Gujarat High Court repelled the contentions urged before it and held that the learned Civil Judge was competent to entertain the application and to grant letters of administration to the applicant despite the fact that the matter before him had become a contentious one by reason of the filing of a caveat.

13. No attempt was made by Mr. Paranjape to distinguish this authority, and no doubt rightly so, as it is on all fours to the facts of the matter before us.

14. However, Mr. Paranjape contended that the High Court had no power to invest any Judge subordinate to the District Judge to try a contentious matter pertaining to letters of administration or probate. According to Mr. Paranjape, Section 264 of

the Indian Succession Act was in direct conflict with Section 28-A of the Bombay Civil Courts Act, which section was enacted in the statute book in 1912, namely much prior to the coming into force of the Indian Succession Act of 1925.

15. We do not agree with any of these contentions urged by Mr. Paranjape. We fail to see why the High Court would have no power to invest any Judge subordinate to the District Judge to try contentious cases pertaining to letters of administration or probate. We do not subscribe to the contention that Section 264 of the Indian Succession Act is in conflict with Section 28-A of the Bombay Civil Courts Act. Section 264 gives jurisdiction to the District Judge to grant or revoke probates or letters of administration in all cases within his district, whereas Section 28-A empowers the High Court to invest Civil Judges with all or any power of a District Judge or a District Court.

We see no conflict or even incongruity between the one and the other. Mr. Paranjape inadvertently did not take into account the provisions of Section 8(1) of the [General Clauses Act, 1897](#) which provides that:--

'Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.'

16. There is also no merit in Mr. Paranjape's contention that the High Court's power of delegation was circumscribed statutorily by Section 265(1) of the Indian Succession Act or that this was brought to the forefront by Section 272 of that Act. As already stated earlier, Section 265(1) empowers the High Court to appoint judicial officers to act for the District Judge as delegates for the grant of probate or letters of administration in non-contentious cases. We see no force in the contention urged before us, that hence the High Court could not by virtue of Section 28-A of the Bombay Civil Courts Act invest a Civil Judge with all or any of the powers of a District Judge, including the jurisdiction to decide a contentious matter, Section 272 which provides for grant of probate and letters of administration by a Delegate in non-contentious cases, carries the matter no

further. It is nobody's case that a Delegate could do otherwise.

17. Mr. Agarwal, the learned Counsel appearing on behalf of the appellant, invited our attention to the decision of the Full Bench of the Madras High Court in the case of Rama Subbarayalu v. Ren-gammal, : AIR1962 Mad450 (FB), where it was held that the jurisdiction of a subordinate Judge in the Madras State invested with the power under Section 29 (1) of the Madras Civil Courts Act to take cognizance of any proceedings under the Succession Act, which cannot be disposed of by the District Delegate, is that of a District Judge and not that of a District Delegate under the Succession Act and he is competent to dispose of a contentious application for probate. It was further held that the subordinate Judge invested with a power under a notification issued by the High Court will have jurisdiction to hear and dispose of not merely contentious proceedings relating to the issue of probate or letters of administration, but other matters under the Act as well.

18. We are in respectful concurrence with this decision of the Full Bench of the Madras High Court.

19. Mr. Paranjape, however, attempted to distinguish the Full Bench decision of the Madras High Court on three counts. Firstly, that it was not decided in that case that the District Judge is a persona designata. Secondly, that the amendment to the Madras Civil Courts Act was subsequent to the enactment of the Indian Succession Act of 1925 whereas in the matter before us, the enactment of Section 28-A of the Bombay Civil Courts Act was prior to the enactment of the [Indian Succession Act, 1925](#). And thirdly, that it was not decided by the Full Bench of the Madras High Court that the right of the High Court to confer power upon the lower judiciary was severely restricted by Section 265(1) of the Indian Succession Act.

20. We regret that this attempt at distinguishing the Madras decision is somewhat feeble and must meet with failure.

21. It was next urged by Mr. Paranjape that under Section 264, the power conferred on the District Judge was as persona designata and hence investing any civil Judge with the powers of the District Judge by the High Court under Section 28-A of the Bombay Civil Courts Act, was bad in law. According to Mr. Paranjape,

the High Court was competent only to appoint a Delegate of the District Judge under Section 265 of the Indian Succession Act and that too only to deal with non-contentious matters. This, emphasised Mr. Paranjape, was the only power which the High Court could exercise. Mr. Paranjape invited our attention to certain sections of the Indian Succession Act, viz. Sections 264, 266, 267, 268, 283 and 299. According to Mr. Paranjape, the fact that in these sections the words used are, 'the District Judge,' and not 'the District Court,' indicates that the District Judge acts as persona designata and in no other capacity.

22. We do not find it difficult to repel this contention. There is nothing in the scheme, ambit or scope of the Indian Succession Act to warrant our coming to the conclusion which Mr. Paranjape 'invites us to do. On the contrary, a bare glance at the definition, which is important, of 'District Judge' in Section 2(bb), is sufficient to negative this contention of Mr. Paranjape. If the District Judge had been persona designate, he would not have in that definition been defined as the Judge 'of a Principal Civil Court of original jurisdiction'. It is these words which are revealing and lay at rest any controversy on this aspect. It is in this light, and in no other, that the words, 'District Judge,' as defined in Section 2(bb), have been used in the sections relied upon by Mr. Paranjape. Thus when reference is made in these sections to 'District Judge,' it must necessarily mean a judge of a principal Civil Court of original jurisdiction. The question of the District Judge being a persona designata, therefore, does not arise.

23. On this aspect, in Ganpat v. Mahadeo it, was observed by the Division Bench of the Court that-

'.....in interpreting Section 264 we have to substitute the definition given in Section 2(bb) and when that is done Section 264(1) reads as follows: 'The Judge of a principal Civil Court of original jurisdiction shall have jurisdiction in granting probates... in all cases within his district.' '

It was held by the Nagpur High Court that an Additional District Judge at Yeotmal could exercise the powers of a District Judge in the matter of granting probate of a will except that his jurisdiction is limited to cases arising out of the Yeotmal Revenue District.

24. 'In Sagar v. Nabin AIR 1970 Ass 111, it was held by a Division Bench of that Court, that the term 'District Judge' used in the Indian Succession Act, has reference not to a persona designata, but to a Court, and that Court is the principal Civil Court of original jurisdiction. Hence probate and letters of administration under the Indian Succession Act which could be issued by the Court of District Judge could also be issued by the Additional District Judge in Assam.

25. These decisions are a complete answer to Mr. Paranjape's contentions. We respectfully agree with the ratio of these decisions which fortify the conclusion arrived at by us, namely, that from the scope and ambit of the Indian Succession Act, there is nothing to indicate that the expression, 'District Judge,' refers to a persona designata in the matters of errant or revocation of probate or letters of administration but, on the contrary, that this expression means the Judge of a principal Civil Court of original jurisdiction as defined in 6. 2 (bb) of the Indian Succession Act.

26. In support of his contention that the District Judge is a persona designata Mr. Pranjape invited our attention to a decision of the Division Bench of the Bombay High Court in the case of Spring Mills, Ltd. v. Ambekar 51 Bom LR 148: AIR 1949 Bom 188 and also to an earlier decision of a Division Bench of the Bombay High Court in Sholapur Municipality v. Tuljaram Krishnasa ILR 55 Bom 544 : AIR 1931 Bom 582. The Spring Mills case was under the [Payment of Wages Act, 1936](#). The Sholapur Municipality case was under the Bombay City Municipalities Act, 1925. In view of the fact that there are direct authorities under the Indian Succession Act itself which lay down that the District Judge is not a persona designata, it is unnecessary to take recourse to authorities under other Acts. In neither the Spring Mills case nor the Sholapur Municipality case, was the Court required to construe the provisions of the Indian Succession Act, much less the definition of 'District Judge' as appearing in Section 2(bb) of the Indian Succession Act.

27. The ratio laid down by the Division Bench of the Assam High Court and the Nagpur High Court, and the Full Bench of the Madras High Court, fortify the view which we have taken, and negative the contentions urged to the contrary on behalf of the respondent.

28. Mr. Paranjape finally urged, though somewhat faintly, that Section 388 of the Succession Act postulated that power could be delegated only by the State Government, and that too by a notification. This contention was, however, abandoned, when it was brought to his notice that Section 388, which is under the Chapter, 'Succession Certificates,' would have no application in the facts and circumstances of the matter before us.

29. In the result, the impugned judgment and order are set aside and the appeal is allowed with costs.

30. Appeal allowed.

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