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Court : Karnataka

Decided On : Apr-19-1977

Reported in : AIR1977Kant201; 1977(1)KarLJ435

Judge : K. Jagannatha Shetty, J.

Acts : Succession Act, 1925 - Sections 371, 372 and 388

Appellant : Ananthamathi

Respondent : Ratnavathi and ors.

Advocate for Def. : K. Shivashankar Bhat, Adv.

Advocate for Pet/Ap. : P. Ganapathy Bhat, Adv.

Judgement :
ORDER

1. This petition under S. 115 of the Code of Civil Procedure is to revise the order of the Principal Munsiff, Puttur, granting a succession certificate to the 4th respondent on an application filed under S. 372 of the Indian Succession Act, 1925, (hereinafter referred to as 'the Act').

2. Shortly stated, the facts are these:

One B. T. Ariga died on 29th May, 1973, leaving behind the respondents as his legal representatives. They approached the Munsiff's Court for a succession

certificate in respect of the amount lying in the Bank account of the deceased, and also in respect of some shares held by him in certain Companies.

3. The petitioner opposed the application on the ground, among others, that the Court of Munsiff has no jurisdiction to grant succession certificate. He also contended that the deceased got properties under a settlement deed dated 29th Nov. 1916, and upon his death, the properties as per the terms of the deed would pass on to the petitioner and not to the legal representatives of the deceased as they claim it to be.

4. On the second contention, the learned Munsiff held that it is a matter to be litigated in a civil suit. This view, in the circumstances of the case, appears to be perfectly justified as the problem presented was not free from doubt. Section 373(3) of the Act provides that if the Judge cannot decide the right to the certificate without determining question of law or fact which seems to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

On the question of jurisdiction, the learned Munsiff overruled the objection raised by the petitioner, and held that he has got jurisdiction to grant the succession certificate and, accordingly, he granted the prayer of the legal representatives of the deceased. The primary question herein is whether the Court of the Munisff in South Kanara District has got jurisdiction to grant a succession certificate.

5. To understand the question, I must describe the legal background. Part X of the Act provides for the grant of a succession certificate. Section 371 therein provides:

'The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part.'

The Act thus confers jurisdiction on the District Judge in the Matter of succession certificate. Section 388 of the Act provides power on the State Government to

issue notification in the official gazette investing any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge. This section corresponds to S. 26 of the Succession Certificate Act 7 of 1889. It is undisputed that the State of Karnataka has not issued any notification under S. 388, investing the Munsiff's Court with power to exercise the functions of a District Judge. But similar notifications were issued by the erstwhile State of Madras under S. 26 of the Succession Certificate Act, 1889. The said Act has been repealed and re-enacted as Part X of the Succession Act, 1925. Those notifications are not easily traceable; but, fortunately found chronologically collated by Viswanatha Sastri, J., in N, Chinnakannu Pillai v. N. S. Sundaram, : AIR1951 Mad437 . I would helpfully quote the passage at page 438:

'Under S. 26(1), Succession Certificate Act, 1889, the Local Government by G. O. No. 391 dated 22-10-1921 notified that the Subordinate Judge of Tuticorin would have jurisdiction to issue succession certificates. In a later G. O No. 1731 dated 5-6-1924, the Local Government invested all Subordinate judges and District Munsiffs except those at the head quarters of districts (subject to a few exceptions) with the powers of a District Court under the Succession Certificate Act, 1889, within the local limits of their respective jurisdiction. By another notification, G. O. No. 24 dated 7-1-1925 superseding G. O. No. 1731 (wrongly printed as G. O. No. 371 at p. 274 of Vol. I of the Civil Rules of Practice) the Local Government invested all Courts of District Munsiffs in the Presidency except those situated at headquarters of districts, with jurisdiction to issue succession certificates. All these notifications were issued under S. 26, Succession Certificate Act, 1889, which has now been repealed and re-enacted as Part X of the Succession Act, 1925.'

The question that arose in the above case was whether the notifications issued under S. 26 of the Succession Certificate Act, 1889, have been saved and continued to operate after the enactment of the Succession Act, 1925. The learned Judge answered the question in the affirmative relying upon the provisions of S. 24 of the General Clauses Act.

If those notifications are in force today, the counsel for the petitioner does not dispute that the Munsiff's Court, in the instant case, has jurisdiction to grant the Succession Certificate.

6. Adroitly, the counsels for the petitioner did not dispute that the Succession Certificate Act, 1889, has been repealed and re-enacted as Part X of the Succession Act, 1925. S. 388 of the Succession Act, 1925, is similar to S. 26 of the Succession Certificate Act, 1889.Therefore, the notifications issued under S.26, must be held to have been saved upon the repeal of Succession Certificate Act, 1889, in view of the provisions of S. 24 of the General Clause. Apart from S. 24 of the General Clauses Act, I find one more sound reason to save the said notifications. The Succession Act, 1925, is an Act to consolidate the law applicable to the estate of the deceased and the object of its enactment was to consolidate the Indian law relating to succession, by the repeal of the Succession Certificate Act 1889, except S. 13 therein. The effect of such repeal is merely for the purpose of rearrangement, and there is no moment at which the substance of the older enactments ceases to be in force, although its ancient form is destroyed by the process of reproduction and repeal - (see Craies on Statute Law, VII Edition, page 362). In other words, by the process of repeal and reproduction, the substance of the repealed enactment does not cease to operate. This being the settled principle of law, the notifications issued under S. 26 of the Succession Act, 1889, continued to operate until revoked or rescinded undisturbed in that part of the erstwhile State of Madras till the States Reorganisation Act, 1956. Even thereafter, they still remain in force by the express provisions made to that effect under S. 119 read with S. 2(h) of the States Reorganisation Act, 1956. It must, therefore, be said that the Munsiff Courts in South Kanara District must be held to have the jurisdiction to grant a succession certificate.

7. The only other grievance of the petitioner is that since the parties are directed to the Civil Court to establish their legal title to the properties, the unconditional certificate ought not to have been granted to respondent 4.

I agree with that contention. Section 375 provides for requisition of security from grantee of certificate or for indemnity bond. The learned Munsiff having recognised

the rival claims of the parties, ought to have imposed certain conditions on the grantee. Having regard to the circumstances of the case it seems to me that it may be sufficient if respondent 4 is directed to furnish security for the indemnity of the objector.

8. In the result, the revision petition fails and is dismissed, but respondent 4 is directed to furnish security before the Court below for the indemnity of the objector to the extent of the share claimed by her.

9. In the circumstances, I make no order as to costs.

10. Petition dismissed

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