

P.L. Basappa Vs. Siddamma

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Court : Karnataka

Decided On : Jun-17-1965

Reported in : AIR1966Kant198; AIR1966Mys198; (1965)2MysLJ167

Judge : K.S. Hegde, J.

Acts : [Indian Succession Act, 1925](#) - Sections 214; Hindu Succession Act - Sections 8; Hindu Women's Rights to Property Act, 1937 - Sections 3

Appeal No. : Ex. Second Appeal No. 65 of 1963

Appellant : P.L. Basappa

Respondent : Siddamma

Judgement :

(1) The only question of law that arises for decision in this appeal is whether the respondent's Execution application in Execution No. 38 of 1962 on the file of the Munsiff at Arsikere cannot be proceeded with without the production of a succession certificate.

(2) Ningappa the husband of the respondent obtained a money decree against the appellant in O.S. No. 507 of 1957 on the file of the Munsiff at Hassan. But before he could recover the money decreed he died leaving behind him his widow the respondent and two sons. It is said that the two sons of Nongappa had released their right in the suit decree in favour of their mother, the respondent. The

respondent has now levied execution of the decree, the execution case being Ex. No. 38 of 1962 on the file of the Munsiff at Arsikere as mentioned earlier. The execution Applicant is resisted by the judgment debtor on the ground that the same cannot be proceeded without the production of a succession certificate as required by Section 214 of the [Indian Succession Act, 1925](#).

(3) It is not denied that the respondent had no right in the amount decreed during the life time of her husband. It is also not denied that she did not get the property in question by survivorship she acquired a right for a portion of the decree in view of Section 8 of the Hindu Succession Act, 1956(Central Act No. 30 of 1956). This section regulates succession to the estate of a male Hindu dying intestate. Because of the provisions contained therein the respondent became a legal representative to the deceased. That section says that the property of a male Hindu dying intestate shall devolve according to the provisions contained regulates the succession to the estate of a male Hindu dying intestate. It does nothing more.

(4) Section 214 of the Indian Succession Act 1925 prescribes that:

'No court shall--

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming 'on succession' to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming 'to be so entitled', to execute against such a debtor a decree or order for the payment of his debt, except on the production by the person so claiming, of-

x x x

(iii) a succession certificate granted under part X and having the debt specified therein'

(Underlining (here into ' ')is mine).

(5) There is hardly any doubt that the respondent's claim for a share in the decree amount to the estate of the deceased. Therefore she cannot proceed with the

execution without the production of a succession certificate. I see no conflict between S. 214 of the Indian Succession Act and S. 8 of the Hindu Succession Act. The former lays down that no execution petition shall be proceeded with without the production of a succession certificate when a person claims a right in a decree on the ground of succession, whereas the latter regulates the succession to the estate of a deceased male Hindu dying intestate. The courts below, in my opinion, erred in thinking that the requirements of S. 214 of the Indian Succession Act have been in any manner modified by S. 8 of the Hindu Succession Act.

(6) My view in this regard receives full support from the decision of the Division Bench of the Nagpur High Court in *Jadaobai v. Puranmal*, AIR 1944 Nag 243 wherein it is laid down that on the death of a Hindu, who had obtained a money decree, his widow obtains the right to execute the decree on succession and therefore a succession certificate is necessary to the extent of her interest in the property. Therein, their Lordships were considering the effect of S. 3 of the Hindu Women's Rights to property Act, 1937. That section to the extent relevant for our present purpose is similar to S. 8 of the Hindu Succession Act of 1956.

(7) For the reasons mentioned above this appeal is allowed. The orders mentioned above, the appeal is allowed. The orders of the courts below are set aside. The Execution Court is directed not to proceed with the execution unless and until the execution petitioner produces a succession certificate as required by S. 214 of the Indian Succession Act. Reasonable time may be given to the Execution Petitioner for the production of the succession certificate. In the circumstances of this case, there will be no order as to costs.

LI/MVJ/D.V.C.

(8) Appeal allowed