

In Re: Rajendra Chandra Sen

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Court : Allahabad

Decided On : May-03-1934

Reported in : AIR1934All958; 152Ind.Cas.825

Appellant : In Re: Rajendra Chandra Sen

Judgement :

Mukerji, J.

1. Originally there was only one application before us, namely, for grant of a succession certificate. In our opinion, this Court has no jurisdiction to grant a succession certificate which can be granted only by the 'District Judge.' The definition of a 'District Judge' as put in by Act 17 of 1929 points to Judge of principal Civil Court of Original Jurisdiction. This definition would include High Courts, which have got original civil jurisdiction, a jurisdiction which this Court does not possess. Mr. Sen has cited before us Home cases in order to show that a High Court, which does not possess original civil jurisdiction, is entitled to grant a succession certificate. The first case cited by him is the case of *In the goods of Bholanath Pal* 1931 Cal 580. This is a Single Judge decision, and it, does appear that the learned Judge exercised jurisdiction although the matter came from a place which was not within the local limits of the original jurisdiction of the High Court. It was contended before the learned Judge that the High Court had no jurisdiction, but that objection was overruled. The ground on which, the objection was overruled was that as regards certain sections of the Succession Act, 1925,

the words 'District Judge' included a Judge of the High Court, The learned Judge disregarded as incorrect the argument that for the purposes of grant of a succession certificate the expression 'District Judge' would not include a Judge of the High Court.

2. In our opinion, the true solution to the question is to be found in the several sections of the Succession Act or 1925. Section 300 gives concurrent jurisdiction to the High Court and the District Judge in the matter of grant of Probate and Letters of Administration. But where the grant of succession certificate is dealt with the powers are given to the District Judge alone. As we have already mentioned, this definition of a 'District Judge' as inserted by the Act of 1929, would not include a High Court which has no original jurisdiction. We therefore with respect are not prepared to follow the decision of the Calcutta High Court cited above. A Rangoon case has been cited, namely, in *In Re: Indian Succession Act 1931 Rang 281*. In this case the learned Judge exercised the powers on the original side of the High Court. This was quite correct, according to our own interpretation.

3. There is yet another case decided by the Madras High Court, in *In Re: G.A. Kuppuswami Nayagar 1930 Mad 779*. In this case the jurisdiction was assumed on the original side of the Madras High Court and not on the appellate side. We are therefore definitely of opinion and hold that the application for a succession certificate is not maintainable in this Court. Mr. Sen, the learned Counsel for the applicant, has however put in another application on behalf of his client. In this application Mr. Gupta has joined as counsel for one Indu Bhusan Sen Gupta. It appears that the deceased to whose property a succession certificate is wanted, died with three children surviving him, namely, the applicant, an adult, Mihir Kumar Sen Gupta, a minor son, and Shri mati Pratibha Devi, an unmarried daughter. The last mentioned two heirs are minors. Mr Indu Bhusan Sen Gupta is the brother of the deceased. It is this Mr. Indu Bhusan who has joined in the application, and the application is to the effect that Letters of Administration might be granted to Shishir Kumar Sen Gupta. The procedure as to grant of Letters of Administration has not been followed so far. It is the practice of this Court to issue notice to all persons interested, and in proper cases to notify the application in newspapers. Ordinarily therefore a notice should go to the two minors, Mihir Kumar Sen-Gupta and

Pratibha Devi. The applicant states that they live under his guardianship. But no notice can be issued to the minors under the guardianship of the applicant himself. On being questioned by us, Mr. Sen told us that Mihir Kumar Sen Gnpta was about seventeen years of age. In that case the notice of guardianship should go to him also.

4. We accordingly dismiss the application for a succession certificate and allow the application for Letters of Administration to be proceeded with. The affidavit filed with the application for a succession certificate may be treated as a part of the subsequent application. Mr. Sen will put in an application supported by an affidavit for the appointment of a guardian of the two minors, and notice will go to these minors after the appointment of a guardian. It has been brought to our notice that the marriage of the minor girl, Pratibha Devi, is to be celebrated soon, and there is some urgency in this application. If the urgency of the application be brought to the notice of the learned vacation Judges, they will surely consider the application on its own merits as to whether it is urgent or not and whether they would care to hear it. Notice of this application for Letters of Administration will be sent to the Board of Revenue as required by the rules.

Sulaiman, C.J.

5. I quite agree. Before 1925 the proceedings under the Succession Certificate Act used to be taken in the Court of the District Judge and were treated as civil proceedings. The General Clauses Act, Section 3, Sub-section 15, defined a 'District Judge' as meaning a Judge of the principal Civil Court of Original Jurisdiction, not including a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. The result was that an application for the grant of succession certificate could not be made to a High Court Judge exercising its ordinary or extraordinary civil jurisdiction. This obviously caused some inconvenience in presidency towns where the High Court was the principal civil Court of original jurisdiction and there was no District Judge having such jurisdiction. In 1925 the provisions of the Succession Act, were incorporated in the Succession Act. In 1929 the Succession Act was amended and District Judge' was defined as meaning the Judge of the principal Civil Court of Original Jurisdiction.

Accordingly the bar contained in the General Clauses Act against a High Court Judge was removed and a High Court Judge could be a principal Civil Court of original jurisdiction.

6. It does not however follow that applications for grant of succession certificates in all cases can be made to a High Court. Even as regards Presidency High Courts only such applications would be cognizable by a High Court Judge as invoke his jurisdiction as a principal civil Court of original jurisdiction. For cases arising in territories outside presidency towns, where he has no such original jurisdiction, the application cannot be made to him. So far as the Allahabad High Court is concerned testamentary jurisdiction is conferred upon us by Clause 25, Letters Patent, and relates to the grant of probates of last wills and testaments, Letters of Administration of goods, chattels, credits and all other effects of persons dying intestate. No jurisdiction is conferred by that clause upon us for granting succession certificates.

7. The last mentioned proceeding is a civil proceeding and not a testamentary or intestate proceeding within the meaning of Clause 25 and our High Court has no ordinary original civil jurisdiction at all. Clause 9 only confers extraordinary original jurisdiction to try a suit by transferring it on to its own file. So far as the grant of probate or Letters of Administration in Part 9 of the Succession Act, is concerned, there is a specific provision in Section 300 that the High Court shall have concurrent jurisdiction with the District Judge in the exercise of such powers. But no such provision has been made in part 10 of the Act, which relates to the grant of succession certificates. On the other hand Ss, 384 and 388 clearly show that the High Court is distinct from the District Judge.

8. The position now is that although there is no longer any statutory bar against a High Court Judge granting a succession certificate, if he otherwise possesses the necessary jurisdiction. But he cannot grant it unless he is the Judge of a principal civil Court of original jurisdiction. A Judge of the Allahabad High Court is not such a Judge, but a District Judge is. An application for grant of the succession certificate cannot therefore be made to the High Court.

