

Mt. Ehatishammunnisa and anr. Vs. Mir Hadi Ali and ors.

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Court : Allahabad

Decided On : Mar-28-1935

Reported in : AIR1935All735; 155Ind.Cas.1118

Appellant : Mt. Ehatishammunnisa and anr.

Respondent : Mir Hadi Ali and ors.

Judgement :

ORDER

1. This revision raises a question of a somewhat unusual character. The applicants applied in the Court of the District Judge, Budaun, for a succession certificate in respect Of debts due to their deceased mother, Mehdi Begum. It was stated in the application that the petitioners were paupers and had no funds to pay the fee prescribed for the grant of a certificate for collection of the debts of the deceased. In effect, the applicants prayed that they be exempted from the rule contained in Section 379, Succession Act, which requires the deposit of a sum equal to the fee payable under the Court-fees Act, in respect of the certificate on an application being made therefor. The learned District Judge dismissed the application holding that the provisions of the Civil Procedure Code, relating to suits and appeals in forma pauperis do not apply to proceedings for grant of a succession certificate under the Indian succession Act. The order of the learned District Judge is challenged in revision.

2. It is argued, on the authority of Section 141, Civil P.C., that the procedure-prescribed by the Code of Civil Procedure for suits is applicable to all proceedings in any Court of civil jurisdiction and that therefore Order 33, which; provides for pauper suits, is applicable to applications for grant of succession certificates. Assuming that : Section 141, Civil P.C., makes every part of the Code applicable to proceedings-in a Court of civil jurisdiction, seems to me that there is an insurmountable difficulty in acceding to the prayer of the applicants. Order 33, Rule 1, provides that, subject to certain provisions, any suit may be instituted by a pauper. The explanation appended to that rule defines a pauper as a person who

is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed, when he is not entitled to property worth Rs. 100 other than his necessary apparel and the subject-matter of the suit.

3. Assuming that proceedings for grant of a succession certificate can be taken, to be a suit under Order 33, read with. Section 141, the application for a succession certificate is the plaint. The applicants-can be considered to be paupers only if they are not possessed of sufficient means to enable them to pay the fee-prescribed by law for the application, for succession certificate. In other words, unless they can show that they were not possessed of even 8 annas, they cannot be considered to be 'paupers' as defined in the Explanation. This is not a case in which no court-fee is payable on the plaint in this, case the application for the certificate so that they may be treated as paupers-because they are not possessed of property worth Rs. 100. It was pointed out that under Section 379, Succession Act:

every application for a certificate...shall be accompanied by a deposit of a sum equal to the fee payable under the Court-fees Act, 1870, in respect of the certificate....

and an attempt was made to argue that if the applicants for a succession, certificate are not possessed of sufficient means to enable them to deposit the sum equal to the prescribed Court-fee, they should be treated as 'pauper' in terms of the explanation above referred to. Reference was also made to Order 33, Rule

8, which provides that, if the application for permission to sue as a pauper is granted, the plaintiff is not liable to pay any court-fee (other than fee payable for service of process) in respect of any petition, appointment of a pleader or other proceedings connected with the suit. According to Schedule 1, Court-fees Act, ad valorem fees are payable on a number of documents, including succession certificates. It is said that once the applicants are declared paupers, they will be exempt from payment of court-fee on the succession certificate. This contention may be correct; but the initial difficulty is that the applicants cannot be declared paupers, unless the requirements of the Explanation to Rule 1, Order 33, are strictly fulfilled. The deposit under Section 379, Succession Act, of a sum equal to the fee payable on a succession certificate cannot be considered to be court-fee payable on the application for a succession certificate (which corresponds to a plaint in a suit). This deposit is made necessary to ensure payment of court-fee when the succession certificate is to be issued. As a matter of fact, the court-fee on such certificate is payable under the Court-fees Act, Schedule 1, Article 12, and is paid when the certificate is issued, i.e., after the termination of proceedings under the Indian Succession Act. The test of pauperism, laid down by the Explanation to Rule 1, Order 33, Civil P.C., is therefore not that the applicants have no means of paying the sum required to be deposited under Section 379, Succession Act; but that they have no means of paying the court-fee on the application for a succession certificate, that is, a trifling amount of eight annas.

4. The applicants claim as heirs of the deceased lady; and assuming that, for the purposes of succession certificate, their position as heirs alone has to be considered and their own means have to be disregarded, they must show that, as heirs of the deceased, they have no means of paying even eight annas. As a matter of fact, the application for grant of a succession-certificate was stamped, as required by the Court-fees Act. It is certainly conceivable that the legal representatives of a deceased person may not be in possession of assets equal to the value of the stamp payable on a mere application. In an ordinary case it will be difficult for an applicant for succession certificate claiming as an heir to satisfy the Court that, as person representing the estate of the deceased, he has no means of paying even that amount. In the matter of the will of Dawubai (1894) 18 Bom. 237 was strongly relied upon by learned advocate for the applicants. That was a case

in which a probate had been applied for in forma pauperis. Sterling, J reluctantly admitted the application and was greatly influenced by the equities of the case. He observed as follows:

I had, on a previous occasion, refused to accept such a petition, as no precedent was in existence for such a course being pursued, but in the present instance the matter was pressed upon me as one of great hardship, as the deceased had during her lifetime filed a suit to recover the property in question; and as she was a Christian, that suit must now be dismissed unless the applicant could obtain probate of her will. I therefore allowed the petition to be interpreted and affirmed gratis, so that the matter might be set down as a pauper petition and the points at issue be fully discussed.

5. The Judge then proceeded to discuss the question whether a person who has been allowed to apply for a probate in forma pauperis is exempt from payment of the court-fee prescribed for a probate, and answered it in the affirmative. He referred to Section 647, Civil P.C., (141 of the present Code), and applied Ch. 26 (Order 33) of the present Code. He then referred to Section 410 (Order 33, Rule 8), Civil P.C., which exempts a person allowed to sue in forma pauperis from payment of all court-fees, except those payable for service of process. The essential distinction between that case and the one before us lies in the fact that Sterling, J., accepted the application for probate as one made by a pauper, which implied that permission to prosecute it as a pauper had already been granted. The reasoning which followed on that assumption clearly flows from Section 647 (now Section 141) and from Section 410 (now Order 33, Rule 8), which were held to be applicable. In the present case, the learned District Judge had to consider at the threshold of the case whether the applicant could be permitted to apply in forma pauperis. Though he has not referred to the Explanation to Order 33, Rule 1, and has thrown out the application on the ground that the provisions of the Civil Procedure Code, relating to pauper suits do not apply to such applications, the operative part of his order can be supported on the grounds herein stated. It cannot be said that he failed to exercise a jurisdiction vested in him by law.

6. I have so far assumed that by virtue of Section 141, Civil P.C., all the provisions of that Code apply to proceedings for grant of succession certificates. There is some authority against that general assumption. A Division Bench of this Court held in *Kanhaiya v. Kanhaiya Lal* 1924 All. 376, that, except in so far as is expressly provided by the Act itself, the general provisions of the Code of Civil Procedure cannot be deemed to be applicable by virtue of Section 141 of the Code to a Court sitting as a Court administering the Succession Certificate Act. Accordingly it was held that no Receiver could be appointed in proceedings taken for the grant of succession certificates. Some legislative changes have taken place since this decision. The provisions for grant of succession certificates are now embodied in the Indian Succession Act and it may be that a different view is now permissible. I express no decisive opinion on this point and prefer to rest my decision on the assumption that the entire Civil Procedure Code is applicable, as is contended for by the applicants. As already held, that assumption does not enable the applicants to get over the difficulty created by the definition of 'pauper' given in the Explanation to Order 33, Rule 1, Civil P.C.

7. The result is that I would dismiss this application with costs.

Rachhpal Singh, J.

8. I agree.

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