

Chander Kumar Jain Vs. Anand Kumar Jain and Another

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Court : Allahabad

Decided On : Jul-29-1999

Reported in : 1999(4)AWC2785

Judge : P.K. Jain, J.

Acts : [Indian Succession Act, 1925](#) - Sections 2, 264 (1), 265 (1) and 269 (1); [Bengal, Agra and Assam Civil Courts Act, 1887](#) - Sections 8 and 8 (2); [Arbitration and Conciliation Act, 1996](#) - Sections 2 and 42

Appeal No. : Civil Revision No. 260 of 1999

Appellant : Chander Kumar Jain

Respondent : Anand Kumar Jain and Another

Advocate for Pet/Ap. : B.D. Mandhyan and ;Satish Mandhyan, Advs.

Judgement :

P.K. Jain, J.

1. In Civil Misc. Case No. 2 of 1995, Anand Kumar Jain v. Chander Kumar, an application for issuing probate was moved by the applicant in the Court of District Judge, Bulandshahr. The District Judge transferred the same for disposal to the Court of Additional District Judge, Bulandshahr. The present revisionist moved an application 36C-2 raising preliminary question that the transferee Court had no

jurisdiction on the ground that in view of the definition of the District Judge as contained in Section 2(fab) of the Indian Succession Act. 1925 (hereinafter called as the Act) the transferee Court is not a principal civil court of original Jurisdiction. That application has been rejected by the learned Additional District Judge.

2. The present revision has been filed against the order dated 21.4.1999.

3. Sri B. D. Mandhyan, learned counsel for the revisionist has been heard at length.

4. His submission is that the definition of District Judge as contained in Section 2(bb) of the Act does not include the Additional District Judge and therefore, the Court below was in error in holding that it has jurisdiction. In support of his submission learned counsel has placed reliance on the case of M/s.I.T.I. Ltd., Allahabad v. District Judge. Allahabad and others, AIR 1998 All 313.

5. Section 264(1) of the Act provides that the District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

6. Section 265(1) provides as follows :

'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 :

Provided that, the case of High Court not established by Royal Charter, such appointments shall not be without the previous sanction of the State Government.

(2) Persons so appointed shall be called 'District Delegates.'

Section 2(bb) of the Act reads as follows :

"District Judge' means the Judge of a principal civil court of original jurisdiction.'

7. Even though Section 2(bb) of the Act provides that the 'District Judge' means the Judge of the principal civil court of original jurisdiction, Section 265(1)

empowers the High Court to 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.

8. Besides the above provisions of law, provisions of Section 8 of the [Bengal, Agra and Assam Civil Courts Act, 1887](#), are also applicable to the State of Uttar Pradesh which are reproduced below :

'Additional Judges (1) when the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, State Government may, having consulted High Court, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them and in the discharge of those functions they shall exercise the same power as the District Judge.'

9. The expression 'in the discharge of those functions they shall exercise the same power as a District Judge' used in sub-section (2) of Section 8 of the Bengal. Agra and Assam Civil Courts Act, 1887. means the Additional District Judge is competent to dispose of the matter transferred to it. Neither the definition of the District Judge as contained in the Indian Succession Act nor any other provisions contained in the Act inhibits the Additional District Judge from exercising the powers of the District Judge. The decision in M/s. I. T. I. Ltd.. Allahabad, referred to by the learned counsel for the revisionist related to [Arbitration and Conciliation Act, 1996](#), where Section 42 of the said Act provided that any application was made in a Court in respect of an arbitration agreement, that Court alone had jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and no other Court. That was a case in which an application for setting aside the award was moved which was transferred to the Court of Additional District Judge. This Court has held that in view of the specific provisions contained in Section 42 of the said Act and in view of the restricted definition of the expression Court as contained in Section 2(e) of the [Arbitration and Conciliation Act, 1996](#), the Court of Additional District Judge had no jurisdiction to dispose of the application for setting

aside the award. Thus, the case referred to by the learned counsel for the revisionist is not applicable to the facts of the present case. There is no error in the order of the learned Additional District Judge.

10. The revision is hereby dismissed.

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