

Smt. Usha and ors. Vs. State

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Court : Madhya Pradesh

Decided On : Nov-26-1991

Reported in : AIR1993MP41

Judge : T.N. Singh, J.

Acts : [Succession Act, 1925](#) - Sections 372 and 379; Court-fees Act, 1870 - Sections 6 - Schedule - Articles 1 and 12

Appeal No. : Civil Revision No. 22/91

Appellant : Smt. Usha and ors.

Respondent : State

Advocate for Def. : V.G. Khot, Dy. Government Adv.

Advocate for Pet/Ap. : U.K. Jain, Adv.

Disposition : Revision allowed

Judgement :

ORDER

T.N. Singh, J.

1. The order impugned is in a sense a peculiar order. Legislature's language has apparently misled the learned Judge and confounded his wits, but what I have

failed to appreciate is his approach in dealing with a reported decision of a Division Bench of Allahabad High Court.

2. At the threshold the revisionists, applying for a Succession Certificate to recover the debts of deceased Ganeshan (whose legal representatives they are) are told that their application is not entertainable/triable as requisite court-fees did not 'accompany' the application. That order, passed on 4-1-1991 by learned 7th Additional District Judge, Gwalior, is challenged in this revision.

3. The question is of interpretation of Section 379 of Part X of the Indian Succession Act, which I extract:--

'379. Mode of collecting Court-fees on certificates. (1) Every application for a certificate or for the extension of 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 or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under Sub-section (1) and not expended under Sub-section (2) shall be refunded to the person who deposited it.'

Part X of the said Act deals exclusively with grant of a 'Succession Certificate' and its Section 372 contemplates 'application for such a Certificate' to be made; relevant portion of Sub-section (1) thereof also has a material bearing on the question mooted and that too is extracted ;--

'372. Application for certificate.-- (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:--'

4. It is true, on a plain reading of Section 379 one is apt to be misled by the language used but the purport of the provision provides a valuable clue to its real object. The marginal note or section-heading is significant --'Mode of collecting Court-fees on certificates.' It is trite law that when there is any ambiguity, it is legitimate to refer to section heading/marginal note to seek intrinsic evidence of Legislative intent (See Bhinka, AIR 1959 SC 960 : (1959 Cri LJ 1223) K. M. Nanavati, AIR 1961 SC 112 : (1961 (1) Cri LJ 173). It appears clear to me that the provision is not contemplated as a bar for any application for Succession-Certificate to be entertained unless the deposit contemplated therein is made beforehand for the purpose of court-fees subsequently to be used when the certificate applied for is issued. What is also manifestly clear is that requirement of filing along with the application any court-fees, for the certificate which may or may not be eventually issued, is not at all contemplated. The language of Section 379 does not admit any ambiguity about that. In that regard the Court below is obviously wrong in stretching the language used in the provision. That is certainly impermissible because that tanta-mounts to judicial legislature.

5. The provision of deposit accompanying the application, evidently, is not mandatory and it does not constitute any condition precedent to be satisfied for the application to be entertained and tried. It purport is procedural and it does not affect the applicant's substantive right to make the application contemplated under Section 372 aforequoted, which is not saddled by any other requirement except the that of setting forth in the application the enumerated particulars. It really serves the purpose for which it is enacted, to provide the 'mode of collecting court-fees on certificates' to be issued if and when the application is allowed. Whether any statutory provision is directory or mandatory is the question to be determined by applying the well-settled tests. What consequence ensue from non-compliance with the provision in question is an important factor to be considered along with the other usual norms such as purpose of the statute and object of the particular provision. See in this connection Dalchand, AIR 1983 SC 303 : (1983 Cri LJ 448); M. V. Valipero', AIR 1989 SC 2206; Karnal Litter Karmachari Sanghthan, AIR 1990 SC 247 : (1990 Lab IC 301). About the object of the provisions, very little is to be added. About the consequence, few words I would still say. If the deposit contemplated does not accompany the application, no impediment would be

created thereby for the Court to entertain the application, try the same and decide if case is made out for issuance of certificate prayed. On the other hand, the purpose of the Act would be defeated creating special jurisdiction in Part X which is to be regarded as Special Law laying down special procedure in accordance with which the application is to be heard and disposed of. The object of the provision being merely collection of Court-fees before a certificate is issued, that is fulfilled when requisite deposit is made before the certificate is issued upon holding the applicant entitled thereto.

6. In my view the provisions of Section 379 aforequoted are to be read as supplemental to those of Article 12 of Schedule I of the Court-fees Act. It is clearly contemplated in Article 12 that court-fees ad valorem is to be paid, not on the application filed making prayer for issuance of a Succession Certificate, but on the 'Certificate under Part X of the Indian [Succession Act, 1925](#)'. For the application, the Court-fees Act makes separate provision in Schedule II and under Article 1 fixed court-fees of Rupees Two is prescribed in respect of an application or petition filed in any Court for which specific provision has not been made in the said Schedule. Section 6, Court-fees Act contemplates the threshold requirement for invocation of jurisdiction of any Court other than High Court by providing that the documents specified in the Schedules of the Act shall not be received by such a Court. Unless in respect thereto the prescribed court-fees is paid, there is no other provision in the said Act prohibiting any application for succession Certificate to be entertained and decided unless ad valorem court-fees is paid in advance for the 'certificate' which may or may not be issued in future. It is obvious that liability to pay court-fees under Section 6 is contemplated in respect of the 'application' read with Article I of Schedule II while in respect of the 'certificate' that arises when the applicants' entitlement in that regard is decided, not before that.

7. I am fortified in the view taken, perusing the earlier referred decision of Allahabad High Court in the case of Mt. Ehatishammunnisa v. Mir Hadi Ali, AIR 1935 Allahabad 735. In that case clearly and categorically the Court has taken the view that court-fees is to be paid when certificate is issued after termination of the proceedings under the Succession Act because that is what is required in terms of Article 12 of Schedule I of the Court-fees Act. With that view I express my

respectful agreement. I reiterate that that the trial Court was not justified in holding obiter dictum and refusing summarily to accept the law laid down in that decision. Perhaps, the right which the court below required to enliven its vision could be provided by the rules framed by the Court, but those were not brought to its notice. True, those are applicable to proceedings in the High Court but there are still illuminating in so far as scope of Section 379 is concerned. Rules 8 and 10 of the said Rules, 'testamentary and intestate rules' candidly demystify the crisis of interpretation.

8. Norms of 'purposive' and 'harmonious' interpretation go hand in hand. Between relevant provisions of Court-fees Act and Succession Act and also between the provisions inter se of those enactments harmony must be secured and purpose of those provisions are to be kept in view only. Sections 372 and 379, Succession Act are to be read conjointly with Section 6 of the Court-fees Act along with Article 12 of Schedule I and Article I of Schedule II of that Act. The right to apply for succession certificate is not to be whittled down by saddling on the applicant onerous burden not statutorily contemplated, and it is also not to be confused with the procedure prescribed for issuance of the certificate on the said right being duly established in the course of the trial of the application.

9. For the reasons aforesaid the impugned order is set aside and the trial Court is directed to proceed with the trial of the application made for Succession Certificate which shall be heard and disposed of in accordance with law. If and when the revisionists/ applicants are found to have established their case and are held entitled to the certificate prayed, an order may be then made specifically for filing of the court-fees of the requisite amount as prescribed under Article 12, Schedule I, Court-fees Act, for issuance of the certificate in accordance with the judgment passed.

10. Before parting with the records I would like to express my appreciation of the valuable assistance rendered by Deputy Government Advocate, Shri Khot, in the disposal of the matter which has been listed today in regard only to default in steps.

