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Court : Delhi

Decided On : May-05-1986

Reported in : 1986RLR426

Judge : Jagdish Chandra, J.

Acts : Succession Act - Sections 264

Appeal No. : Probate Case Appeal No. 30 of 1984

Appellant : Devender Nath Malik

Respondent : State

Advocate for Pet/Ap. : M.L. Sachdev and; B.N. Nayar, Advs

Judgement :

Jagdish Chandra, J.

(1) This is a petition for the grant of Succession Certificate moved u/s. 372 of the Indian Succession Act, 1925 (the Act) in respect of the properties detailed in annexures C and D of the petition which were left by the petitioner's wife Mrs. Manju Malik (deceased) at the time of her demise. An objection has been taken by the respondents that this petition for the grant of succession certificate is maintainable only before the District Judge, Delhi and that this High Court has no jurisdiction to entertain the same.

(2) On the other hand, it is contended On behalf of the petitioner that the definition of 'District Judge' given in Section 2(bb) of the Act means the Judge of a Principal Civil Court of original jurisdiction', and that Delhi High Court having been invested with ordinary original civil jurisdiction under S. 5(2) of the Delhi High Court Act, 1966, in every suit the value of Which exceeds Rs. 1 lac, this High Court shall mean the Principal Civil Court of original jurisdiction and, thus, the petition for the grant of succession certificate which is made u/s. 372 of the Act to the District Judge, has to be moved before the High Court of Delhi. [Section 2(bb) of Succession Act and S. 5 of High Court Act are the reproduced].

(3) This vary question came up for decision before D. Public Witness wadhwa J. of Delhi High Court in Probate Case No. 55 of 1984 in the matter of the estate of Late Shri R. P. Sachdeva and Smt. S. Sachdeva and others decided on 27.3.1985 and it was held that Delhi High Court had no jurisdiction to grant succession certificate under the Act. Reliance was placed in that case on Bakshi Lochan Singh v. Jathedar Santokh Singh (D. B.) 1971) 1 Delhi 615 wherein it was held that District Judge, Delhi would be the Principal Civil Court of Original jurisdiction in every suit the value of which did not exceed Rs. 50,000.00 but in other suits the value of which exceeded Rs. 50,000.00, this High Court would be the principal Civil Court of Original Civil jurisdiction. The dividing line of Rs. 50,000.00 was replaced by Rs. 1 lac by the Delhi High Court (Amendment) Act, 1980 w.e.f. 1.10.1980 and it is that amount which governs present case. Reliance was also placed by Wadhwa J. on Mary v. Vincent 1976 R.L.R. 112 where contention was raised that after coming into force of Delhi High Court Act, 1966, by virtue of the non-obstinate clause contained in Sec, 5(2) of the Act, the Court of the District Judge, Delhi had ceased to be the principal Civil Court of original jurisdiction with respect to any suit the value of which exceeded Rs. 50,000.00 (now Rs. 1 lac), and in view of that provision of law, the principal Civil Court of Original jurisdiction with respect to all matters value of Which exceeded Rs. 50,000.00 (now Rs. 1 lac) would be the High Court of Delhi. That was a case for the grant of letters of Administration u/s 266 of the Act. That contention was rejected by the Court by observing as follows on pages 114 and 115 :-

'It appears to me that this contention of appellant is not sustainable. It is no doubt true that Section 5(2) of the Delhi High Court Act, 1966 confers the High Court of Delhi ordinary original civil jurisdiction in every suit the value of which exceeds fifty thousand rupees and, therefore, to that extent after coming into force of the aforesaid Act as amended, this Court has become the principal civil court of original jurisdiction, as held by the court in the case of Bakshi Lochan Singh (supra), but the contention that by virtue of the aforesaid provision this court has become the principal Court of Original civil jurisdiction with respect to all matters of the said value including matter in which the testamentary and intestate jurisdiction is invoked, so as to divest the District Judge of jurisdiction to deal with such matters, ignores the limited purpose for which sub-section (2) confers the ordinary original civil jurisdiction and impliedly ousts the corresponding jurisdiction of the District Judge. A bare reading of sub section (2) of Section 5 leaves no manner of doubt that the ordinary original civil jurisdiction has relation to 'every suit' . This obviously leaves jurisdiction other than that exercisable in a suit such as testamentary and intestate jurisdiction as indeed other jurisdiction, unaffected. The mere fact that Section 266 of the Indian Succession Act equates the power of the District Judge in relation to proceedings for the grant of probate and Letters of Administration and all matters connected therewith the powers that the District Judge would have in relation to any suit or proceedings pending in his Court does not obliterate the distinction between the ordinary civil jurisdiction of the District Judge and the testamentary and intestate jurisdiction of that Court under the Indian Succession Act. Section 266 merely indicates the ambit of the power of the District Judge while dealing with the matters in exercise of its testamentary and intestate jurisdiction. The non obstinate clause in Section 5(2) operates only in relation to provision contained in any law with regard to jurisdiction of Courts vis-a-vis suits and leaves other jurisdiction untouched. It is significant that while Section 264 of the Indian Succession Act confers power on the District Judge in relation to matters of grant of probate and letters of administration and the expression District Judge is defined as meaning a Judge of a principal civil court of original jurisdiction, Section 300 of the Indian Succession Act, nevertheless, provides for the concurrent jurisdiction of the High Court in exercise of all the powers conferred by that Act upon the District Judge.'

(4) Then again at page 118 of that very authority while referring to the wider definition of the 'District Judge' given in Section 2(bb) of the Act which was brought about by the Amendment Act 18 of 1929, the following observations were made :

'...It is, however, not possible to read in the wider definition any exclusion of the 'District Judge' as such from the ambit of the said definition or to hold that merely because ordinary original civil jurisdiction has been conferred on this Court in relation to units of a certain pecuniary valuation, the testamentary and intestate jurisdiction of the 'District Judge' had thereby been taken away.'

(5) This authority in its para 23 spread over pages 118 and 119, discussed various authorities pertaining to the High Courts of Madras, Calcutta and Patna viz. G.A. Kuppuswami Air 1930 Mad 779 ; Satyabala v. Sudharanee Dasi : AIR1931 Cal580 ; Sailendra Krishna Ray : AIR1949 Pat318 and Mdrtik Lal v. Hira Lal : AIR1950 Cal377 , some of which were also relied upon by the learned counsel for the petitioner in the case in hand, and held on to its own view already pointed out above.

(6) The grant of succession certificate under the Act pertains to the testamentary/non-testamentary jurisdiction of the District Judge. Under Section 264(i) of the Act the District Judge has jurisdiction in granting and revoking probates and Letters of Administration in all cases within its district and this provision finds mention in part IX of the Act pertaining to probate, letters of administration and administration of assets of deceased and by virtue of Section 300 of the Act falling in part IX the High Court is also conferred upon with concurrent jurisdiction with the District Judge in the exercise of all the powers conferred upon the District Judge under Part IX of the Act. But no such concurrent jurisdiction has been conferred upon the High Court in the matter of grant of succession certificate which falls within the ambit of part X of the Act and the jurisdiction is only with the District Judge whose testamentary and non-testamentary jurisdiction has remained unaffected by the introduction of Section 5(2) of the Delhi High Court Act, 1966 and, thus whatever valuation of the property put in petitions for the grant of succession certificate under Section 372 of the Act, the Principal Civil Court of original jurisdiction remains a District Judge and not the

High Court even if the valuation exceeds Rs. 1 lac.

(7) In view of the above discussion, I hold that this Court has no jurisdiction to entertain this petition and consequently this petition is ordered to be returned to the petitioner for presentation to the Court of competent jurisdiction.

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