

In the Matter of Mohanaprakasam

In the Matter of Mohanaprakasam

SooperKanoon Citation : sooperkanoon.com/786783

Court : Chennai

Decided On : Jan-03-1974

Reported in : AIR1975Mad30

Judge : Paul, J.

Acts : [Succession Act, 1925](#) - Sections 371

Appeal No. : Diary No. 9051 of 1973

Appellant : In the Matter of Mohanaprakasam

Judgement :

ORDER

Paul, J.

1. A petition under Section 370 of the Indian Succession Act has been filed by one Sarojini as guardian of a minor for the grant of succession certificate. It is stated in that petition that one Pachayappa Mudaliar who was ordinarily residing at Chingleput died intestate at Chingleput on 18-12-1958 leaving behind the property mentioned in the petition and leaving behind as his heirs the petitioner who is the widow of his pre-deceased son, his grandson Mohana Prakasam and his second son Thillai Natarajao and even during the lifetime of the deceased 2 partition suit was filed by the petitioner and her minor son in C. S. No. 109 of 1954 on the file of this court against the late Pachayappa Mudaliar and his wife and

Thillai Natarajan and by a decree dated 3-1-1957, this court allotted certain Items to the minor Mohanaprakasam and three life insurance policies which are the subject-matter of this petition, were directed to be assigned by the deceased Pachiappa Mudaliar in favour of Mohana-prakasam, but before the assignment deed was executed Pachiappa Mudaliar died and an assignment deed was executed by the heirs of the deceased on 6-7-1961; but the Life Insurance Corporation, declined to act upon the decree passed in C. S. 109 of 1954 or the assignment deed without a succession certificate.

2. The Office returned the petition with an endorsement as follows: 'Since the deceased was not an ordinary resident within the jurisdiction of this court at the time of his death, it may be stated how this petition can be filed in this court without any impediment to the provisions of Section 371 of the Indian Succession Act.' The petition was represented with the following endorsement 'in C. S. 109 of 1954 op the file of this Honourable Court, this particular item was allotted to the minor. Although normally the L. I. C. could act on the decree copy, they still want a succession certificate. As this Honourable Court in exercise of its original jurisdiction has allotted this item to the minor, I submit that this court can issue succession certificate. If there is doubt the matter may be posted before court.' Hence the matter was posted for hearing and I have heard the counsel for the petitioner.

3. Section 371 of the Indian Succession Act reads as follows:

'The District judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.'

Admittedly the deceased ordinarily resided at the time of his death within the jurisdiction of the District Judge of Chingleput and as such it is the District Judge of Chingleput who has to issue the succession certificate; Only if at the time of his death the deceased had no fixed place of residence then the jurisdiction of the court will have to be determined with reference to the situation of the property of the deceased. In this case it cannot be said that the deceased had no fixed place

of residence at the time of his death I find that in the petition itself it is alleged that Pachiappa Mudaliar ordinarily resided in Chingleput and died at Chingleput. Under Section 371 of the Indian Succession Act the jurisdiction of the court is made to depend upon one of the two circumstances, namely, either ordinary residence of the deceased at the time of his death or in the absence of any fixed place of residence the situation of any part of the property within the jurisdiction of the court to which the application is made. The second part of Section 371 of the Act, that is the jurisdiction arising by reason of the situation of the property of the deceased within the jurisdiction of the court to which the application is made, would come into operation only if the deceased had no fixed place of residence. If the deceased had a fixed place of residence elsewhere, the fact that his properties are situated within the jurisdiction of the court to which the application is made, would not confer jurisdiction on the court within whose jurisdiction the properties are situated. The ordinary circumstance which gives rise to jurisdiction is that of residence ordinarily within the local limits of the court's jurisdiction at the time of the death. The second provision granting jurisdiction is a mere alternative and applies only to these cases where the deceased at the time of his death, had no fixed place of residence at all. Section 300 of the Indian Succession Act cannot be invoked in support of this petition for the issue of a succession certificate mechanically in this court for that section occurs in Chapter IV of Part IX whose heading is 'Of the practice in granting and revoking probates and testaments, of administration and Section 300 says that the High Court will have concurrent jurisdiction with the District Judge. Sub-section (2) of Section 300 and the notification contemplated thereunder make the position clear. Succession certificates, it must be remembered are dealt with in Part X of the Indian Succession Act.

4. It is however contended by the learned counsel that inasmuch as in C.S. 109 of 1954 on the file of this court a decree has been passed whereby certain items have been allotted to the minor Mohanaprakasam and directions have been given to the deceased to assign three life Insurance policies in favour of the minor, this court could deal with the matter. But the fact that in that suit a decree was passed with, reference to some of the properties specified in the schedule to this petition would not confer jurisdiction on this court to issue a succession certificate: in view

of the clear provisions, of Section 371 of the Indian Succession Act. Hence this petition is ordered to be returned for presentation before the proper court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com