

Rt. Rev. Casmir Gnanadickam Archbishop of Madras

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Court : Chennai

Decided On : Feb-05-1998

Reported in : (1998)3MLJ501

Appellant : Rt. Rev. Casmir Gnanadickam Archbishop of Madras

Judgement :

Kanakaraj, J.

1. The appeal is directed against an order of the learned single Judge dismissing a petition for the issue of a succession certificate in respect of a Christian Priest's outstandings in the bank. The petition was filed by the appellant, who claims to be the superior in charge of the order in which the deceased was admitted as a priest. The only ground on which the learned single Judge has rejected the petition is that Section 29(1) of the Indian Succession Act, hereinafter referred to as the 'Act' is not a bar under the circumstances of the case for the applicability of Part V of the Act. For this purpose the learned single Judge has relied on the judgment of Ismail, J., as he then was in Solomon v. Muthiah : (1974)1MLJ53 .

2. We are of the opinion that the question of Part V and the question of succession to the estate of the deceased need not be gone into and a finding rendered while considering the issue of a certificate under Part X of the Act. Before referring to the relevant provisions of law we will briefly refer to the facts and circumstances under which the petition was filed by the appellant.

3. The deceased Fr.Jacob Vettichirayil son of Thomas Vettichirayil was a priest and was serving as a Parish Priest in St.Antony's Church, Park Towrr, Madras in the Diocese of Madras-Mylapore. The said priest had served other places also under the said diocese and he died on 10.6.1987. He had left behind the movable properties described in the schedule comprising of fixed deposits and money collected in the Savings Account in various banks. The total amount lying in such banks is shown as Rs. 1,04,967,27. The other important fact to be noticed is that the deceased Father Jacob is a christian belonging to the Roman Catholic faith and he had joined the seminary run by the appellant diocese in accordance with the canon law. After undergoing training for a period of seven years he was ordained as priest after taking the necessary vows, one of which is to sever his connection absolutely with his family and his properties. After such ordination a priest cannot own any property of his own except for administrative purpose. The appellant claimed as the spiritual head of the diocese as being entitled to receive the amounts shown in the schedule. On the banks insisting on a succession certificate the application is filed.

4. As to the effect of a person renouncing the world several judgments have been cited before us both in respect of the Hindu Law and the Christian Law. Ramchandra v. Balla Singh : AIR1986 All193 approves the dictum in an Andhra Pradesh Judgment which is as follows:

The requirement of the initiation of a Brahmin as a Sanyasi is that he should perform the eight shraddhas or even twelve according to same these eight Shraddhas are to Devas, Rishis, Divyas, Manushas, the Bhutas, Pitrus, Matrus and oneself. The performance of Jeeva Shraddham or Atma Shraddham is the last of the first preliminaries after which civil death takes place, though according to same, this is not necessary.

Parama Nand v. Nihal Chand , says as follows:

When a person enters the Udasi order he severs his connection with the members of his natural family. It follows that neither he nor his natural relative can succeed to the property held by the other. There is however no reason for holding that an Udasi cannot acquire private property with his own money or by his own exertions.

If he does acquire private property, it cannot be inherited by his natural relatives, but passes on his death to his spiritual heir including his chela who is recognized as his spiritual son. The descent of the property from a guru to his chela does not warrant the presumption that it is religious property.

5. Krishna Singh v. Mathura Ahir : AIR 1982 SC686 says as follows:

In fact, this Court referred to the evidence of Sri Krishna Singh himself where he admitted that his father had become a Sadhu and had taken Sanyas. Thus, on his own showing Sri Krishna Singh's father had become a Sadhu and in the eye of law he died a civil death and, therefore, Sri Krishna Singh could not put forward any title to this property.

6. The judgment of the Kerala High Court in Mother Superior, Adoration Convent, Kanji Ramatton v. D.E.O. Kottayam : (1977)IILLJ450Ker , relates to the question of the applicability of the statutory rules with reference to Catholic nuns and whether such a person could nominate the head of the spiritual organisation as the person entitled to receive her retirement benefits, as teacher. While holding that she could nominate the spiritual head for receiving the retirement benefits the Kerala High Court had examined the entire ceremonies which a Catholic priest or nun before renouncing the world. Observed, the Kerala High Court, thus:

This being the general consequence of becoming a monk or nun and joining the holy order it has to be taken that with the taking of the perpetual vow the person concerned ceases to have any connection with the members of the natural family. So far as the natural family is concerned the woman is taken as dead and, therefore, her parents and other members specified in Rule 79, Part III, K.S.R. are not taken as blood relations thereafter.

7. We have cited the above judgments only because they were referred to us by the learned Counsel for the appellant. But, we are of the opinion that one need not to the extent of finding out whether the appellant in this case is an heir to the deceased Father Jacob. The certificate under Part X of the Act is given to a person who is able to establish his right to the effects of a deceased person. In fact, Section 374 explains the position by saying that a holder of a certificate is

empowered to receive the debts mentioned in the certificate as well as the interest or dividend therefor. There are provisions to revoke the certificate and the provisions to enable the parties to institute independent suits regarding the title to the debts claimed in the certificate. In *National Bank Ltd. v. Devi Dayal*, the position has been explained by saying that the succession certificate is not a final adjudication of the question as to who is the next heir and as such entitled to the estate of the deceased. The grant of succession certificate merely clothes the holder of the succession certificate with an authority to realise the debts of the deceased and to give valid discharge. He has, however, to dispose of the amount so realised in accordance with the rights of the persons who are entitled to it.

8. Similarly in *In re., Estate of C.V. Nayagan* A.I.R, 1936 Rang. 466, it is observed thus:

It is nowhere, as far as I can see, laid down, in terms, by Part 10, Succession Act, who is the person who has a right to come forward and ask of a succession certificate. But from the terms of Section 373 of the Act it appears to me that the person claiming a succession certificate must do so upon the footing of a 'right' thereto. It seems to me to imply that the applicant must file his application upon the footing of some 'right' which is not actually defined. The right referred to must, I think, be a right arising by virtue of a beneficial interest in the debt or security to be collected.

9. This being the correct position in law we are clearly of the opinion that it is certainly not necessary to go into the question of the applicability of Part V before issuance of a succession certificate. On the facts and circumstances of the case and on the averments contained in the application filed by the appellant we are satisfied that the appellant has a right to get a succession certificate within the meaning of Part V of the Act. If any other persons has any claim over the amounts mentioned in the schedule, it is always open to him/her to have the certificate revoked or file a suit to establish his or her claim. In this view of the matter, we are of the opinion that the certificate ought to have been issued to the appellant as prayed for.

10. The appeal is allowed and we direct issuance of a succession certificate to the appellant subject to the above conditions. There will be no order as to costs.

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