
Late Ishan and Late Ratanaprabha Dhanda Vs Jogesh

MCC No. 485 of 2012

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Feb. 21, 2013

Acts Referred:

Constitution of India, 1950 – Article 225#Succession Act, 1925 – Section 2(bb), 300, 300(1), 371, 372

Citation: (2013) ILR (MP) 2277 : (2013) 3 MPHT 72 : (2013) 2 MPLJ 460

Hon'ble Judges: J.K. Maheshwari, J

Bench: Single Bench

Advocate: A.K. Chitale, with Suhodh Abhyankar, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

J.K. Maheshwari, J.

Both these petitions have been filed under Rule 8 of the Testamentary and Intestate Rules framed by the High Court

of Judicature at Nagpur for issuance of the succession certificate u/s 372 of the Indian Succession Act, 1925. On filing the same as per order

dated 15-5-2012, time to file the undertaking in terms of Rule 8 in Form No. 7 prescribed in the said rule and-citation in terms of Rule 23 was

granted. The undertaking was filed on 20-5-2012 and the citation was published in the daily newspaper "Dainik Bhaskar" and "Free Express" on

2-7-2012 specifying the date of hearing as 17-7-2012. In the meantime vide order dated 15-5-2012, direction to submit certificate by the

Registrar as per Rule 9 and also to comply with Rule 10 with respect to payment of Court fee was issued. As per order dated 19-5-2012, Deputy

Registrar of this Court was directed to issue the citation in form No. 11. Thereafter, when the matter came up for hearing on 17-7-2012, an

objection was raised by this Court regarding the maintainability of the petition for grant of succession certificate in reference to the provisions of

Indian Succession Act whereby the certificate can be issued by the District Judge. It was observed that this Court was having doubt regarding

maintainability of the original proceedings for grant of certificate in the High Court. On the issue of maintainability of this petition, Shri Chitle,

learned senior counsel assisted by Mr. Subodh Abhyankar have been heard at length.

In view of objection of maintainability of this Court, the question for determination arises ""whether the succession certificate can be granted by the

High Court under the provisions of Indian Succession Act, 1925 read with the Testamentary and Intestate Rules exercising original jurisdiction?

2. Mr. Chitle, learned senior counsel contends that Part 10 of the Indian Succession Act, 1925 deals with grant of succession certificate. Section

371 specifies that District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death or if no fixed place of residence is

there, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant succession certificate under

the Act. The application for grant of such certificate may be applied for u/s 372 and the certificate may be issued after following the procedure

prescribed in section 373 of the Act. It is submitted by him that Court has been defined in section 2(bb) of the Act which reads as under:--

2(bb) "District Judge" means the Judge of Principal Civil Court of original jurisdiction".

3. It is his contention that for the purpose of testamentary and intestate jurisdiction the High Court may fall within the definition of the District Judge

and have concurrent jurisdiction to exercise such power. Rule 2 of Chapter 17 of High Court Rules and Orders 1956 specifies the rules for

regulating the testamentary and intestate proceedings in exercise of the powers conferred under Article 225 of the Constitution of India read with

clause 27 of the Letters Patent Act by the High Court of Judicature at Nagpur. While enacting the M.P. High Court Rules, 2008, in Chapter 22

the said rules have not been repealed and saved, in such circumstances the High Court is having the concurrent jurisdiction to maintain the

proceedings for grant of succession certificate. Learned counsel representing the application placed reliance on the judgment of Madras High

Court in the matter of M. Suresh Vs. Mrs. B. Sumathi and Mrs. Devi, wherein it was held that after amendment in the Indian Succession Act,

1929, the definition of District judge has been introduced. The District Judge includes the High Court insofar as it entertain a petition and grant,

revise or revoke the succession certificate and by virtue of clause 34 of the Letters Patent of Madras which gives the High Court jurisdiction in

testamentary and intestate matters. It is submitted by him that Clause 27 of the Letters Patent of Nagpur High Court is pari materia and confer

powers similar to Clause 34 of the Letters Patent of Madras High Court, therefore under the rules the succession certificate can be issued by the

High Court. It is also submitted that M.P. High Court is the successor Court of Nagpur High Court and those rules are prevalent in Madhya

Pradesh, however the High Court of Madhya Pradesh is having jurisdiction to entertain this petition for grant of succession certificate. Learned

counsel further placed reliance on a judgment of In Re: Bholanath Pal, Deceased, wherein also it has been observed that the High Court can grant

the succession certificate, further reliance is placed on a judgment of Sukratendra Tirtha Swami Vs. N.N. Prabhu, wherein also the same

proposition of law has been enunciated. In addition to the aforesaid, it is submitted that similar analogy has been propounded by the Full Bench in

the matter of Mary Thomas Vs. Dr. K.E. Thomas, In view of the foregoing, it is urged that the objection raised by this Court may be annulled

maintaining this petition.

4. After hearing learned senior counsel appearing on behalf of the petitioner, first of all the provision of Indian Succession Act is required to be

referred. Section 371 of the Indian Succession Act specifies that 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 part X of the Act. As per section 372 and 373, for the purpose of submitting the application

and to grant certificate and follow the procedure the word "District Judge" has been referred. In the said context, as per definition of clause 2(bb),

it is apparent that under the Act the District Judge means the Judge of a Principal Civil Court of original jurisdiction. However, as per Indian

Succession Act, the application can be submitted for grant of succession certificate before the District Judge and he may issue the same, section

300 of the said Act confers concurrent jurisdiction to the High Court with the District Judge to exercise all the powers conferred upon the District

Judge with certain exceptions, as specified in sub-section (2) thereof.

5. Under Article 225 of the Constitution of India, the power has been conferred to the High Court to make the rules of the Court and to regulate

the sitting of the Court and members sitting alone or in division Courts after commencement of the constitution. It cannot be doubted that M.P.

High Court Judicature at Jabalpur is the successor Court to the High Court of Judicature at Nagpur which Letters Patent of Nagpur applies.

Clause 27 of the said Letters Patent confers the power for regulating the proceedings which is reproduced hereinbelow:--

27. Regulation of Proceedings. -- And we do further ordain that it shall be lawful for the High Court of Judicature at Nagpur from time to time to

make rules and orders for regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the CPC being

an Act No. V. of 1908, passed by the Governor General in Council and the provisions of any law which has been or may be made, amending or

altering the same, by competent legislative authority for India, to all proceeding in its testamentary, intestate and matrimonial jurisdiction

respectively.

6. Thus, the High Court of Judicature at Nagpur in exercise of the powers conferred under Article 225 of the Constitution of India read with

Clause 27 of the Letters Patent has made the rules which were known as "The Testamentary and Intestate Rules" and made effective w.e.f. 1-7-

1956. In such circumstances it is clear that for exercising the concurrent jurisdiction by the High Court akin to the District Court the powers flows

under those rules. Under the rules, it has been specified that Registrar of the High Court or such officer of the High Court as may be authorized by

the Chief Justice shall perform such duties assigned to the Registrar. In those rules, how the application for probate, letter of administration,

succession certificate can be applied for, has been specified and thereafter following the procedure as contemplated in rule, the certificate may be

issued as contemplated in rule, the certificate may be issued as per Schedule VII of India Succession Act, 1925. Thus the complete procedure has

been specified for grant of certificate by the High Court.

7. Now it is to be seen that under the Succession Act, the power for grant of certificate has been conferred to the District Judge of a District

Court, however the High Court may exercise the power of the District Judge for the purpose of issuance of succession certificate in exercise of

concurrent jurisdiction is required to be considered. The said issue arose for consideration before the Madras High Court in the matter of In Re:

G.A. Kuppaswami Nayagar, . In the said case, Justice Kumaraswami Sastri after elaboratively discussing various provisions of Parts IX and X

including Clauses 11 and 21 and Clause 34 of the Letters Patent of Madras including the definition of District Judge held that there is no reason

why the High Court cannot grant succession certificate in cases where it could be granted outside the Madras. It was further held that in terms of

Clause 34 of the Letters Patent which gives jurisdiction in testamentary and intestate matters, the High Court is also vested with concurrent

jurisdiction for grant of succession certificate. In the matter of Smt. Satyabala Dasi vs. Smt. Sudharanee Dasi (supra), the Calcutta High Court held

as thus:--

It is argued that in order to meet this difficulty the Act of 1920 was passed. That Act defined the words ""District Judge" as they had been defined

in the General Clauses Act, but omitted the proviso.

It is contended that it cannot have been the intention of the legislature by that amending Act, or at all, to give a High Court power to grant a

succession certificate.

It is not suggested that the definition does not include a Judge of a High Court for as regards certain sections of the Succession Act of 1925, it was

obviously intended that the words "District Judge" should include a Judge of a High Court. The Court is invited to hold that although the term

District Judge"" includes a Judge of the High Court when it is used in all other sections of the Succession Act, it excludes a Judge of the High Court

when it is used in the sections relating to succession certificates. There is nothing in these sections to indicate that the definition in the amending Act

was not intended to apply to them.

The words used are plain and unambiguous and read in their ordinary meaning give a High Court jurisdiction to grant succession certificate.

The presumption that the legislature did not intend to alter the law by an Act described as a consolidatory Act, cannot override the plain meaning

of the words used.

In my opinion to accede to the argument in this case would be to amend and not to construe the Act, and however strongly a Court may feel that

the legislature has overlooked a necessary provision or however obvious it may be that a provision has been inserted or omitted owing to the

blunder of the draftsman, a Court is not at liberty to make laws or amend them.

The result of accepting the ordinary meaning of the words used does not involve any absurdity or nullify the whole object of the Act. A Bench of

the Madras High Court came to the same conclusion but without giving any reasons.

In my opinion the Succession Act of 1925 read with the Amending Act of 1929 gives a High Court power to grant succession certificates. The

order of the learned Judge will stand. The Secretary of State must pay the costs, on the footing that he appeared in a contested application for the

issue of a succession certificate.

8. The Madras High Court in the matter of M. Suresh (supra) referring the aforesaid provision in para 11 and para 21 held --

11. The next question, therefore, arises as to whether the High Court has jurisdiction to entertain a petition for issue of succession certificate. In this

context, the definition of section 2(bb) of the Act is referable. As the Succession Certificate Act 7 of 1889 has defined only the District Court for

the purpose of conferment of jurisdiction to issue succession certificate, by Amendment Act 18 of 1929, section 2(bb) was introduced wherein the

District Judge was defined as a Judge of the Principal Civil Court of original jurisdiction. The jurisdiction to entertain a petition for succession

certificate and the power to issue such certificate came up for consideration before this Court in the matter of In Re: G.A. Kuppuswami Nayagar, .

In the order of reference, Kumaraswami Satri, J., after elaborately discussing the various provisions of Part IX and part X of the Act including

Clauses 11 and 21 and Clause 34 of the Letters Patent including the definition of "District Judge" held that "there is no reason why the High Court

cannot grant succession certificates in cases where it could be granted outside Madras". The learned Judge also held that in terms of Clause 34 of

the Letters Patent, which gives jurisdiction in testamentary and intestate matters, the High Court is also vested with concurrent jurisdiction for grant

of succession certificate.

21. The above discussion on the issue leads us to the only conclusion that though there is no specific provision of concurrent jurisdiction for the

High Court grant a succession certificate under Part X, when such provision of concurrent jurisdiction is conferred by section 300 for grant of

probate and letters of administration, in view of the definition of section 2(bb) defining the term ""District Judge"" which includes the High Court

insofar as it entertains a petition and grant, revise or revoke the succession certificate and by virtue of Clause 34 of the Letters Patent which gives

the High Court jurisdiction, in testamentary and intestate matters, we hold that this Court should have concurrent jurisdiction vested with 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 and the present original petition for the grant of

succession certificate is maintainable. In view of our discussion, the order of the learned Single Judge is liable to be set aside. Accordingly the

impugned order is set aside and the original side appeal is allowed. Registry is directed to number the Original Petition Diary No. 12670 of 2006

and post the same before the learned Single Judge dealing with the subject. No costs. Consequently, M.P. No. 1 of 2007 is closed.

9. In the judgment of Mary Thomas (supra) wherein issue regarding ousting of jurisdiction of High Court with respect to matrimonial cases was

involved, the Court referring the provisions of Family Courts Act has observed:--

After the constitution of the Family Court for the Madras area, the original jurisdiction of the High Court in respect of matters that may fall under

the Explanation to section 7 of the Act is not ousted and the High Court can continue to exercise its jurisdiction notwithstanding the coming into

force of the Family Court Act, 1984.

10. In the said context, it is seen that referring Clause 34 of the Letters Patent of Madras High Court, the judgments have been delivered and in

M.P. High Court which is successor to Nagpur High Court, thus Letters patent of Nagpur is applicable. On perusal of Clause 27 of the said Act

referred hereinabove it is clear that provisions of Clause 34 of the Letter Patent of Madras High Court are pari materia. In exercise of the said

powers as well as the powers so conferred under Article 225 of the Constitution of India, High Court has framed the rules of Testamentary and

intestate jurisdiction and notified on 16-5-1956. Under those rules, procedure have been prescribed for issuance of the certificate, the rules of

1956 has not been repealed by new M.P. High Court Rules 2008 and saved as per Chapter 22 of the said rules. It is to be observed here that as

per the record, the High Court of M.P. has granted certificates various cases, details of some of them are as under:--

11. As per Testamentary and Intestate Rule of 1956, it is made clear that for testamentary and intestate purpose, the Indian Succession Act, 1925

will be applicable and the Registrar of the High Court as the officer of such Court may be authorised by the Chief Justice to perform such duties

assigned under the 1956 rules. Thus, on filing an application seeking succession certificate and after following the procedure prescribed in the case

of 1956, the High Court can exercise the concurrent jurisdiction as per section 300(1) of Indian Succession Act. It is to be further noted here that

in the light of the judgment in the case of G.A. Kuppuswami, Smt. Satyabala Das and M. Suresh (supra), while exercising the power under the

Testamentary and Intestate Rules, 1956, the High Court be treated as District Court for the purpose of the Indian Succession Act while exercising

such jurisdiction, it is to be further observed that the High Court of M.P. is vested with the powers to grant succession certificate as per rules of

1956. In such circumstances the question raised as per order dated 17-7-2012 is hereby decided, maintaining this petition. In view of the earlier

orders, the Registrar of this Court shall submit a certificate as per Rule 9 of the Rules of 1956 and the applicant shall comply with Rule 10 paying

requisite Court fee within a week.

List on 27-2-2013.