

(1996) 04 AP CK 0004

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 338 of 1996

Master A. Sridhar, Minor being
rep. by his Guardian, A.
Venkateswarlu

APPELLANT

Vs

Smt. A. Adivaralaxmi and
Another

RESPONDENT

Date of Decision: April 17, 1996

Acts Referred:

- Succession Act, 1925 - Section 373(3), 375, 387

Citation: (1996) 2 ALT 890 : (1996) 2 APLJ 19 : (1996) 1 APLJ 19

Hon'ble Judges: P. Venkatarama Reddi, J

Bench: Single Bench

Advocate: M.R.K. Chowdary, for the Appellant; S. Jaya Prasad and M. Krishna Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Venkatarama Reddi, J.

This C.R.P. is filed against the Order passed by the learned Additional Chief Judge, City Civil Court, in I.A. No. 557/1995 in O.P. No. 968/1992. O.P. No. 968/1992 is a petition filed by the 1st respondent herein for grant of succession certificate in her favour. Another suit was filed in the year 1992 by the respondents for declaration of the status of the respondents as legally wedded wife and daughter of late Narayana Rao respectively and for partition and separate possession of the proper ties of late Narayan Rao. The said suit was transferred to the Court of the Additional Chief Judge and on such transfer, the suit was assigned the number O.S. No. 224/1994. However, the said suit was made over to the Family Court, Hyderabad after the Family Courts Act was brought into force in the city of Hyderabad. The said suit is

pending in the Family Court. While so, the respondent in the O.P. (Petitioner here in) who is the son of late Sri Narayana Rao filed an I. A. u/s 151 C.P.C. praying the Court of the Additional Chief Judge, City Civil Court, not to proceed with the enquiry in O.P. No. 968/1992, pending decision in the suit transferred to the Family Court. That application having been rejected, the present C.R.P. is filed.

2. The learned counsel for the petitioner contends that the two proceedings are inter-connected and if any order is granted in favour of the petitioner in O.P. No. 968/1992 (1st respondent herein), it would result in conflict of decisions if the suit filed by the respondents herein is ultimately dismissed by the Family Court. As the question whether the 1st respondent is the legally wedded wife is directly in issue in the suit, it is just and proper to stay the proceedings in O.P. No. 968 /1992 till that issue is decided in the suit inasmuch as the decision in the suit as regards the relationship and status of the respondents will have binding effect on the parties. It is pointed out that the O.P. cannot be transferred to the Family Court and, therefore, the only way to avoid conflict of decisions and to safeguard the interests of the petitioner is to keep the proceedings in O.P. No. 968/1992 in abeyance pending disposal of the aforementioned suit.

3. The learned Additional Chief Judge pointed out that the grant of succession certificate does not establish the title of the grantee but only invests him or her with an authority to collect the debts mentioned in the petition- schedule. It is also pointed out that as per Section 387 of the Indian Succession Act, the proceedings being of a summary nature and the decision of the Court as to inter se relationship between the parties is in no way final or binding it does not bar the trial of the same question in the suit.

4. By taking the above view, I do not think that the lower court has committed any illegality or error of jurisdiction. The question of conflict does not arise as ultimately it is the decision of the Family Court, as regards the status of the respondents herein and their relationship with late Narayana Rao that prevails. In this connection, Sub-section (3) of Section 373 of Indian Succession Act deserves notice. It lays down:

"If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto."

Under this provision, the Court has to satisfy itself that the grantee of the certificate has prima facie right or title to the property in question and for this purpose a summary enquiry is to be conducted. It gives an indicia that the Court is not debarred from granting a certificate to the applicant if as a result of summary enquiry it forms a prima facie opinion that the applicant has better title than the other contesting parties. Thus, the scope of the enquiry for the purpose of issuing

the succession certificate and the scope of the suit pending in the Family Court are quite different and the former proceedings need not be stopped till the suit in the Family Court is finally decided. Otherwise, there is every possibility of the debts due to the estate getting time-barred and the successors to the estate suffering a prejudice. On the other hand, no prejudice will be caused by allowing enquiry in the O.P. to go on. It is to be noted that u/s 375, the District Judge is not powerless to prescribe such conditions as to security or rendering an account of the debts received by the grantee as may be necessary to safeguard the interests of the persons who may be legally entitled to claim the same. In this view of the matter, no interference is called for with the order passed by the learned Additional Chief Judge, City Civil Court.

5. The C.R.P. is dismissed subject to the above observations.