

(1985) 07 KL CK 0030

In the High Court Of Kerala

Case No : C.R.P. No's. 41 and 104 of 1985

Abdul Karim and Another

APPELLANT

Vs

Raheesa Ansari

RESPONDENT

Date of Decision : 31-07-1985

Acts Referred:

Insurance Act, 1938 — Section 39

Succession Act, 1925 — Section 373, 373(3), 384(1), 388(2)

Citation : AIR 1986 Ker 183

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : P. Sukumaran Nair, for the Appellant; K.C. John, for the Respondent

Final Decision : Allowed

Judgement

U.L. Bhat, J.—These revision petitions are filed by respondents 1 and 2 in O. P. (Succession) 34/83 who are also petitioners in O. P. (Succession) 58/82 on the file of the Subordinate Judge, Attingal. Common respondent in the two revision petitions was petitioner in O. P. 34/83 and respondent in O. P. 58/82. Third respondent in O.P. 34/83 is not before Court. In these revision petitions what is challenged is the common judgment of the Dist. Court, Trivandrum in A. S. 377/1983 and A. S. 378/1983 filed by the respondent herein against orders passed in the O. Fs.

2. Claim relates to the estate of Abdu! Karim Ansari who was employed in Dubai, U. A. E. and died there in an accident on 27-2-1982. Revision petitioners are father and maternal grandmother respectively of the deceased. Common respondent is the widow of the deceased. Third respondent in O. P. 34/83 is the only brother of the deceased.

3. Petition in O. P. 34/83 and the counter in O. P. 58/82 give details of the various amounts which are subject-matter of the proceedings. Amounts are:

1. Death claim under group insurance Policy No. C112 taken out by the

deceased Dirhams 54,000.00 Rs. 1,40,625.02

2. Gratuity Dirhams 5,602.96 Rs. 14,591.04

3. Proportionate leave encashment of 9 days Dirhams 330.00 Rs. 859.38

4. Deposit in Bank of Oman Dirhams 2,271.90 Rs. 5,916.40

Total Dirhams 62,204.86 Rs. 1,61,991.83

Less Consular fee Dirhams. 1,585.12 Rs. 4,049.78

Balance Dirhams 60,619.74 Rs. 1,57,942.05

4. In O. P. 58/82, petitioners contended that second petitioner, maternal grandmother is entitled to 1/6th share in the assets of the deceased, that the widow is entitled to 1/4th share and the father, residuary heir, is entitled to the balance 14/24th share. Thus, each of the petitioners claimed succession certificate regarding his or her share in the total amount viz., Rs. 92,132.88 and Rs. 26,323.67 respectively. In the counter filed therein and in the petition in O. P. 34/83 the widow contended that the amount due as death claim under the insurance policy was gifted by the deceased in moieties to the widow and the brother as per nomination and this amount must be divided equally and in the amounts due under the other heads she is entitled to 2/3rd share under the law obtaining in U.A.E. She claimed succession certificate in regard to her share and if that is to be issued for the full amount due she offers to furnish security also.

5. Respondent herein produced certain documents. Ext. A1 is a letter received by the respondent from the Consulate General of India, Dubai. It was in this letter that particulars of the various amounts due were mentioned and she was informed that the amount was being forwarded. Ext. A6 is a copy sent to the respondent of a letter of Consulate General of India, Dubai to the District Collector, Trivandrum informing the latter that Demand Draft for Rs. 1,57,942.05 was being sent to the latter. The letter also informed the District Collector that the widow (respondent) was being advised to arrange for collection of the amount from him against succession certificate. Ext. A3 is purported to be photostat copy of the nomination made by the deceased Abdu! Karim Ansari in regard to the insurance policy. The nomination names the widow and the brother to get fifty per cent each as beneficiaries out of the sum in the event of his death while being a member of the policy. Ext. A2 is the letter by which Ext. A3 was sent to the respondent. Ext. A4 is letter of the Consulate General of India to the respondent enclosing Ext. A 5 purporting to be printed extract of the law obtaining in U.A.E. regarding distribution of death compensation. According to Ext. A5, if a person dies without leaving children, the widow should get 2/3rd and the father 1/3rd of the death compensation.

6. Learned Subordinate Judge held that there is no authenticated document to prove the gift of the insurance amount to the widow and the brother, that there is no authenticated document to prove nomination in their favour and even if

there be nomination, it does not confer right on the nominees except to make collection. Learned Judge also took the view that is the law obtaining in U. A. E. treats nomination as gift, the local Government or the Consulate General would have paid the money directly to the donees. Learned Judge held that succession certificate is to be issued on the basis of the Mohammaden Law of Succession as applicable in India in which case the amount has to be divided in the proportion of 1/4th, 1/6th and the residue to the widow maternal grandmother and the father respectively. Accordingly, learned Judge directed succession certificate to be issued for the various shares to the three heirs.

7. Against the orders in the two original , petitions respondent herein filed appeals before the District Court. Learned District Judge held that there is no material to show what exactly is the law obtaining in U. A. E. regarding these matters. Learned Judge also held that nomination in the insurance policy does not vest title to the money in the nominees unless that be the law in U. A. E. for which there is no material before Court. Learned Judge took the view that question whether the claim under the policy belongs to the estate of the deceased or to the nominees is a matter for decision in the proceedings. It appears, appellant's counsel prayed for further opportunity to produce necessary materials to show that the insurance money does not form part of the estate of the deceased. Therefore, the learned Judge set aside orders in the two original petitions and remanded the case for fresh disposal.

8. Learned counsel for the revision petitioners contended that the Appellate Court u/s 384 of the Succession Act, 1925 (for short "the Act") has no power to order remand that the Succession Court acting under Part IX of the Act cannot enter a finding as to whether a particular debt was due to the deceased or not and submitted that orders passed by the learned Subordinate Judge may be restored. These contentions are sought to be rebutted by learned counsel for the respondent.

9. Section 214 of the Act insists on proof of representative title as condition precedent to recovery through the Courts of debts from debtors of deceased person. Representative title should be proved by probate or letters of administration, certificate granted under the Administration General's Act, Succession certificate granted under Part X of the Act or certificate granted under the Succession Certificate Act or certificate granted under Bombay Regulation No.VIII of 1827. The word "debt" includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

10. Part X of the Act deals with Succession Certificates. Section 371, inter alia, empowers the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death to grant a certificate under this part Section 388 authorises the State Government to invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this part. Such power has been invested in this State with the Subordinate Civil Judicial Officers. Section 372 prescribes mode of application and particulars to be

set forth in such application. Petitioner has to mention the right in which petitioner claims and the debts and securities in respect of which certificate is applied for. Application for such certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

11. Section 373 deals with procedure on application. If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for hearing thereof and cause notice of the application and of the day fixed for hearing to be served on any person to whom in the opinion of the Judge special notice of the application should be given and to be pasted on some conspicuous part of the Court-house and published in such other manner, if any, as the Judge, subject to any rules, thinks fit. Upon the day fixed or as soon thereafter as may be practicable, Judge shall proceed to decide in a summary manner the right to the certificate. Sub-sec. (2) states that when the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him. Sub-sec. (3) states that 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. Sub-sec. (4) states that when there are more applicants than one for a certificate, and it appears to the Judge that more than one of the such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

12. Section 374 states that when the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate and may thereby empower the person to whom the certificate is granted to receive interest or dividends on, or to negotiate or transfer, or both to receive interest or dividends on, and to negotiate or transfer the securities or any of them. Section 375 enables the District Judge to require requisition security from the grantee of the certificate. Section 381 lays down that subject to the provisions of Part X, the certificate shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall notwithstanding any contravention of Section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted. However, Section 387 states that no decision under the Part upon any question of right between any parties shall be held to bar the trial of the same question in any other proceeding between the same parties and nothing in the part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefore to the person lawfully entitled thereto.

13. It would be instructive to compare the above provisions with the provisions in

Chapter IV of Part IX of the Act dealing with the practice in granting and revoking probates and letters of administration. Section 284 contemplates caveats to be lodged with the District Judge. Section 295 deals with procedure in contentious proceedings. Proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Civil P. C. There is no provision indicating that the enquiry by the District Judge shall be summary.

14. A Division Bench of this Court had occasion to consider scope of enquiry under Part X of the Act in *Ammini Ammal v. Lakshmi* 1957 Ker LT 301 : AIR 1957 Ker 901. The Division Bench observed after referring to Sections 372 and 373 of the Act;

"These provisions make it clear that the Legislature contemplated only that the District Judge be satisfied, not that the succession certificate will be necessary u/s 214 or otherwise, but that there is ground for entertaining the application. The exact character of the applicant's claim was not intended to be litigated and what was sought to be determined was only whether the applicant was the proper person or a proper person to be clothed with the representative character."

Division Bench quoted with approval the following observations in *Bai Kashi v. Parbhu Keva* ILR 28 Bom 120:

"There is nothing in the Act which either expressly or by necessary implication requires the Court granting a certificate to hold an enquiry into the existence of any debt alleged by the person applying to be due as a preliminary condition of the grant..... all enquiry under the Act is intended by the Legislature to be summary..... All that a Court has to do under the Act is to ascertain the right of a person to a certificate apart from the question of the existence or non-existence of the debts in respect of which he applies."

The Bench also quoted with approval observations of Rankin, C.J. in *Brojendra Sundar Banerji Vs. Niladrinath Mukerjee and Others*, :

"In my opinion it is not the law that the Court upon an application for a certificate has to decide for itself, as a condition of granting the certificate that the case is one in which the debt was due to the deceased person within the meaning of Section 214. A reasonable and sensible claim to be enabled to proceed against a third party as being a debtor of a deceased person is sufficient for the purpose of clothing the Court with jurisdiction u/s 373 and may be regarded as ground for entertaining the application.....

"Prima facie a person disputing the title of the deceased to the debts in question is only putting himself put of Court, showing good reason why some willing person other than himself should be authorised to assert the claim in the right of the deceased. No doubt there may be baseless claims for a certificate and it is right that the Court should not be helpless to resist them. But I demur altogether to any doctrine which involves the Judge in finding upon contest at the enquiry that there is good prima facie evidence that the debts were due to the deceased."

The Division Bench further observed:

"The Act is thus not intended to afford litigant parties an opportunity of litigating contested questions of title to property. The Court has no doubt to satisfy itself that the person to whom it grants the certificate has the prima facie right and for this purpose some enquiry may be necessary in many cases. But if on facts admitted by both parties the prima facie title to the certificate is clear, the Court can dispense with the enquiry. And after all no party is prejudiced because Section 387 provides that the decision of a Court as to any question of right between the parties is in no way final and does not bar the trial of the same question in any other proceedings between the same parties. We hold accordingly that the Court below was perfectly right in refusing to decide the question of co-ownership set up by the appellant as regards the debts and securities scheduled."

15. In Basu's Law of Succession, Fifth Edition at page 1015, it is stated "all that it is required to do is to hold a summary enquiry into the right to the certificate, with a view, on the one hand, to facilitate the collection of debts to the deceased and prevent their being time-barred, owing (for instance) to dispute between the heirs inter se as to their preferential right to succession, and on the other, to afford protection to the debtors by appointing a representative of the deceased and authorising him to give a valid discharge of the debt. Grant of certificate to a person does not give him an absolute right to the debt, nor does it bar a regular suit for adjustment of the claims of the heirs inter se.....

.....When the title of rival claimants depends upon a question of fact, that question must be gone into before it can be held who has the preferential claim to be a representative of the deceased, and entitled as such to a certificate to collect the debts due to the deceased."

At page 1018, it is observed : "The question whether certain debts belong to the deceased is not a matter which can be decided in an application for the grant of succession certificate."

"A court granting a certificate is not competent to enquire whether a debt alleged by the petitioner is really due to the estate of the deceased before granting the "certificate."

"The only right which entitles a person to a succession certificate is a beneficial interest in the debt or security to be collected. It is open to anyone who has a beneficial interest to apply for it. In granting a certificate, a Judge must look to fitness as well as propinquity,"

16. Grant of a succession certificate does not depend on the right of any claimant to the debt. The certificate does not recognize or invest in the grantee title to the debt or property in the debt. It only enables him to collect the debt and give valid discharge to the creditor. Grant of a certificate does not strike out or destroy the claims of others. If there be conflicting claims, they have to be

settled in appropriate proceedings in accordance with law. In the summary enquiry contemplated by the provisions, the Judge is not expected nor required to decide whether actually the debt belonged to the deceased or not. That is a matter extraneous to the enquiry. That may have to be decided in the proceedings which the grantee of a certificate commences against the creditor for recovery, if such a dispute is raised. It may have to be decided in proceedings inter se among the rival claimants. Settlement of such a dispute is foreign to the scheme of the provisions of Part X of the Act.

17. Dispute in this case relates to the amount due under the insurance policy. According to the widow, 1/2 belongs to her and the other half belongs to the brother of the deceased by virtue of gift granted in the form of nomination in the policy. This is explained by learned counsel for the respondent who stated that the amount did not belong to the deceased on the date of his death but it is something in the nature of compensation to the dependents of the deceased. I think this idea is not in consonance with the theory of gift propounded earlier. At the same time, it is interesting to note that the widow who claimed 16 of the insurance money as gift from her husband and now contends that it is compensation due to the dependents, actually sought a succession certificate in regard to that money. If the money did not devolve on her by succession as a heir of the deceased, it is inexplicable why she sought a succession certificate at all. If the money belongs to her as a dependent of the deceased by way of compensation, it is not understandable why she seeks a succession certificate. She can seek a succession certificate only on the ground that the insurance money formed part of the estate of the deceased. Whether it is so or not is not a matter which is normally adjudicated upon by a succession Court exercising jurisdiction under Part X of the Act. In these circumstances, I find that the learned District Judge was in error in directing remand of the cases for the purpose of enabling the court below to decide whether the money belongs to the estate of the deceased or not. The succession Court, in the circumstances, was justified in proceeding on the basis that the money belonged to the estate of the deceased. The Court could not go into that question and record a finding whether it is so or not. The Court is primarily concerned with the question as to who among the various applicants is the proper person to represent the estate of the deceased and collect the money. All other disputes have to be decided in other appropriate proceedings.

18. Three applicants sought succession certificates. Perhaps, the Court could have chosen anyone of them as grantee. It is interesting to note that all of them sought succession certificates only for portions of the various debts. The succession Court issued certificates in regard to portions, based on the principles of Mohammaden Law as applied in India. This would not mean that the Court has adjudicated on question of title to the money. If there is dispute regarding title to the money, that has to be independently decided in appropriate proceedings. The fact that the succession Court granted certificates to the three applicants did not and could not decide the question of title to the debt. It only enables the sharers

to collect various amounts due as representing the estate of the deceased and they are liable, to account for the same. In this view, I find that the learned District Judge erred in setting aside orders passed by the succession Court.

19. Learned counsel for the respondent relies on the alleged nomination to contend that in regard to the major item involved in the case, no succession certificate could be issued to the revision petitioners. We do not know what exactly is the law obtaining in U.A.E. regarding effect of nomination. Law in India is beyond all controversy. Going by Ext. A3 produced by respondent herself, widow and brother were nominated as beneficiaries in regard to fifty per cent each of the sum due in the event of the death of the assured while being a member of the policy. In other words, if the policy matured during his lifetime, it should have belonged to him. Money due under a policy and payable to him if he was living at the time of maturity, or payable to the nominees of the policy, is debt for the purpose of issue of succession certificate. Title to the amount does not vest in the nominees but in the heirs. In *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, Supreme Court, having regard to Section 39 of the Insurance Act, 1938, observed :

"A mere nomination made u/s 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment, and the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

20. In the light of the above dictum, there was nothing wrong in the succession Court deciding to grant succession certificate to the heirs. Investigation into the law obtaining in U.A.E, would involve decision on a question of law which is too intricate and difficult for determination in a summary proceeding. Hence, under Sub-section (3) of Section 373 of the Act, the Court may nevertheless grant succession certificate to the applicant if he appears to be the person having prima facie, the best title thereto. In these circumstances, there was nothing wrong in the succession court deciding to grant succession certificate to the heirs in proportion to their shares, as none of them is alleged to be unfit in that regard.

21. Last contention urged is regarding power of the Appellate Court to remand the proceedings to the Court below. Argument is based on Sub-section (1) of Section 384 and proviso to Sub-section (2) of Section 388 of the Act.

22. Section 384 deals with appeals. Sub-sec. (1) states that subject to the other provisions of the part, an appeal shall lie to the High Court from an order of a District Judge, granting, refusing or revoking a certificate under the part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the

certificate, if any, already granted. According to the proviso to Sub-section (2) of Section 388, where an inferior Court has been invested with the functions of a District Judge, appeal shall lie to the District Judge and not to the High Court and the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as Sub-section (1) of Section 384 authorises the High Court to make by its order on an appeal from an order of a District Judge. Sub-section (3) of Section 384 states that subject to the provisions of Sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Civil P.C., 1908, as applied by Section 141 of that Code, an order of a District Judge under the part shall be final.

23. Learned counsel has invited my attention to Section 299 of the Act which provides for appeal against an order regarding probate or letters of administration. This section states that every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Civil P.C., 1908, applicable to appeals. Argument is that while Section 299 does not restrict powers of the Appellate Court in any way, such a restriction is specifically incorporated in Sections 384 and 388 of the Act.

24. Sub-section (1) of Section 384 or the proviso to sub-sec, (2) of Section 388 does not contain any restriction, as contended by the petitioners. These provisions state that appeal shall lie to the High Court or to the District Judge, as the case may be. These provisions also state that the Appellate Court may, if it thinks fit, declare the person to whom certificate should be granted and directs the succession Court, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted. This provision is not intended to take away other powers of the Appellate Court such as confirmation of the order appealed against, modification of the order appealed against or reversal of the order appealed against; nor could it be read as taking away power of the Appellate Court to order remand. The provision would only mean that, if it thinks fit, Appellate Court may, instead Of itself granting succession certificate to a person who was unsuccessful before the Court below, direct the Court below to do so. It is difficult to accept that this operates as restriction on the powers of the Appellate Court.

25. Learned counsel placed strong reliance on a decision of the Court of Judicial Commissioner, Manipur in *Deity L. Khoumbomba v. Khomdonjao Singh* AIR 1961 Gau 52. Appeal in that case was filed against order of the District Judge granting succession certificate to the respondent. Respondent claimed that after the death of his brother, who was the Shebait of the deity, he became the Shebait and was therefore entitled to the amount due to the deity. Respondent also stated that the deceased had no other relations. On the basis of the evidence given by the respondent, District Judge directed issue of succession certificate to him. Appellant did not appear before the District Judge in response to public notice and was not party to the proceedings. That was a clear case where there was no

contest before the District Judge. Court concluded that unless there was contest before the District Judge as to who should be given the certificate. Appellate Court cannot interfere in appeal. Appellant sought to produce certain documents in the Appellate Court and requested for remand of the case for fresh enquiry. Court took the view that there was no power of remand vested in the Appellate Court and the Appellate Court can only declare the person to whom the certificate should be granted where there are rival claimants before the District judge. With great respect, I am Unable to agree with the view expressed in the above decision. I have already indicated that the provisions enabling Appellate Court to declare the person to whom the certificate should be granted in no way restricts powers of the Appellate Court.

26. I may in this connection advert to decisions in *Kalidas Fakirchand v. Bai Mahali* ILR (1892) 16 Bom 712 and *Basanta Lal v. Parbati Koer* ILR (1904) Cal 133, where the two High Courts as Appellate Courts actually remanded the proceedings to the District Judge for fresh disposal.

27. Section 384 provides for appeal to the High Court. In the instant case, by virtue of the proviso to Sub-section (2) of Section 388, appeal lies to the District Judge. Concept of appeal is a well established one. Appellate Court, in the absence of any restriction on its powers introduced either expressly or by necessary implication, has power to interfere with findings of fact and law and to confirm, modify, vary or reverse the order, and even to order remand. An express grant of statutory power carries with it by necessary implication, the authority to use all reasonable means to make such grant effective (*Sutherland Statutory Construction*, Third Edition, Arts. 5401 and 5402). In *Domat's Civil Law*, Cushing's Edition, Vol. 1 at page 88, it has been stated :

"It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."

In *Maxwell on Interpretation of Statutes*, 11th Edn., it is observed : "Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

28. Similar question came up for consideration before this Court and the Supreme Court on the powers of the Appellate Tribunal u/s 64 of the Motor Vehicles Act, 1939. Question was whether the Tribunal has power to remand the proceedings. Section 64 did not give any indication as to the extent of the power; nor did it contain any restriction on the appellate power except to state that the Tribunal shall "give a decision thereof which shall be final". Contention was that Tribunal could only give a decision and could not relegate decision to the lower authority. A Full Bench of this Court in *N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others*, held that the Tribunal has power to order remand, though such power is not specifically mentioned in

Section 64. Court took the view that the section is not concerned with defining powers of the Appellate Authority and does not purport to do so. Such power is incidental to and implicit in the appellate jurisdiction created by the section. I may notice that this decision was specifically approved by the Supreme Court in *Income Tax Officer, Cannanore v. M. K. Mohammed Kunhi* AIR 1969 SC 4301 therefore hold that the Appellate Court has power to order remand.

29. As against this decision, respondent would rely on a decision of this Court in *Joseph v. District Judge, Ernakulam* 1963 Ker LT 64. In that case, Court dealt with the question whether Appellate Authority under the Kerala Buildings (Lease and Rent Control) Act, 1959 has power to remand the case to the Rent Controller. Court answered the question in the negative. Section 18(3) of that Act laid down that the Appellate Authority shall send for the records and after giving the parties an opportunity of being heard and if necessary after making such further enquiry, as it thinks fit, either directly or through the Rent Control Court shall decide the appeal. It was interpreting this provision that the Court held that Appellate Authority had no power to order remand. It had the power to decide the appeal and if further enquiry was found necessary the same could be done either directly or through the Rent Control Court, but not by way of remand. Absence of power of remand was held to be implicit in the section. Provision with which we are concerned in this case is of totally different nature and the decision is therefore not helpful in this case.

30. In the result, judgment of the Appellate Court in the two appeals is set aside. Orders passed by the succession Court in the two original petitions are restored. Revision petitions are allowed but without costs.