

(2003) 03 AP CK 0108

In the Andhra Pradesh High Court

Case No : Tr. CMP No's. 469 of 470 of 2002

Ahmedunnisa Begum

APPELLANT

Vs

Badarunnisa Begum and Others

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Succession Act, 1925 — Section 371

Citation : (2003) 4 ALD 871

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; Rupendra Mahendra in Tr.CMP No. 469 of 2002 for Respondent No. 1 and Tr.CMP No. 470 of 2002, for the Respondent

Judgement

P.S. Narayana, J.—Tr.CMP No. 469 of 2002 is filed praying for transfer of OP No. 1042 of 2002 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad to the Court of the Senior Civil Judge, Bodhan, Nizamabad and pass such other appropriate orders. Tr.CMP No. 470 of 2002 is filed by the petitioners in Tr.CMP No. 469 of 2002 as 1st petitioner and Asia Parana as 2nd petitioner praying for transfer of OP No. 1 of 2002 on the file of the Junior Civil Judge, Yellareddi, Nizamabad District to the Court of the Senior Civil Judge, Bodhan, Nizamabad District and pass such other appropriate orders.

2. As can be seen from the allegations made in these transfer CMPs., the parties had invoked the jurisdiction of the respective Courts for the purpose of obtaining succession certificate claiming as widows of late Mohd. Zainulabuddin and claiming his terminal benefits. Both the Counsel on record had advanced elaborate arguments to convince this Court on the aspect of jurisdiction of the respective Courts in entertaining the O.P.s. for grant of succession certificates.

3. Section 371 of the Indian Succession Act, 1925 dealing with Court having jurisdiction to grant certificate reads as hereunder:-

"The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death or if at that time he has 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."

4. Much stress had been placed on the words "the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death."

5. It is brought to my notice that these parties i.e., the petitioner and the 1st respondent in Tr.CMP No. 469 of 2002 had filed the respective O.Ps for grant of succession certificates claiming pensionary benefits as widows of Mohd. Zainulabuddin, who had retired as Deputy Tahasildar of Salabatpur in the year 1997. It is stated that the petitioner and her husband lived together at Yellareddi from 1997 and her husband died on 5-3-2001 when he came to Hyderabad on some work to his relatives place. It is pertinent to note that the 1st respondent had given the address in the application as 16-6-62/2, Chanchalguda, Hyderabad and it is stated that this is the immovable property situated within the limits of Hyderabad. However, the present controversy relates to the claim of pensionary benefits and the grant of succession certificates in favour of the respective parties for the purpose of claiming the said pensionary benefits in relation to the deceased husband of widows. The Counsel representing the petitioners in the transfer CMPs. had taken me through the allegations made in the respective affidavits filed in support of the transfer CMPs and had contended that though the Court at Hyderabad has no jurisdiction since the deceased Mohd. Zainulabuddin and herself had decided to live at Yellareddi from 1997 that should be taken as ordinary place of residence and hence, OP No. 1042 of 2002 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad is to be transferred to the Court of Senior Civil Judge, Bodhan. The Counsel also submitted that since the petitioners in Tr.CMP No. 470 of 2002 filed OP No. 1 of 2002 on the file of the Junior Civil Judge, Yellareddi, Nizamabad District, in view of the prayer prayed for in Tr.CMP No. 469 of 2002 the said OP No. 1 of 2002 might be withdrawn from the file of the Junior Civil Judge, Yellareddi and transferred to the Court of the Senior Civil Judge, Bodhan for the purpose of disposal.

6. Per contra, the Counsel for the 1st respondent, the other wife, who is also claiming for a succession certificate had submitted that the death certificate shows that the said Mohd. Zainulabuddin died at Hyderabad and apart from it the correspondence and also the communication definitely will go to show that the permanent residence of the deceased husband was only Hyderabad and ultimately he died at Hyderabad only. The learned Counsel also submitted that the 1st respondent was shown as nominee. The learned Counsel also had pointed out that the deceased had left a house, immovable property also within the limits of Hyderabad and though the said property is not the subject-matter of the present dispute, this aspect may also have to be taken into consideration. The learned Counsel further submitted that the mere fact and allegation made that

for sometime the husband was posted at Nizamabad District that does not mean that the husband was a permanent resident of Nizamabad District. At any rate, the Counsel submitted that the ground taken that the Court at Hyderabad has no jurisdiction is totally an unsustainable ground even in the light of the allegations made in the affidavit to the effect that their husband died on 5-3-2001 when he came to Hyderabad on some work to this place.

7. Heard the Counsel.

8. It is pertinent to note that the powers u/s 24 of the CPC are very wide. As can be seen from the respective allegations made in the affidavits filed in support of the transfer CMPs and also in the counter-affidavits it can be definitely said that both the Courts are having jurisdiction to entertain the respective O.P.s for grant of succession certificates. However, in the light of the peculiar facts inasmuch as the dispute is between two widows claiming succession certificate in relation to the pensionary benefits of the deceased husband, the question of jurisdiction falls into insignificance. OP No. 1042 of 2002 is on the file of the III Additional Chief Judge, City Civil Court, Hyderabad and the relief prayed for is to transfer the same to be tried by the Senior Civil Judge, Bodhan, Nizamabad District. It is pertinent to note that the OP No. 1 of 2002 is on the file of the Junior Civil Judge, Yellareddi and in the light of the relief prayed for the said matter is to be transferred to the Court of Senior Civil Judge, Bodhan in the event of allowing Tr.CMP No. 469 of 2002. In view of the fact that the death certificate issued by the Municipal Corporation of Hyderabad and also allegation made in the transfer CMPs. that the husband died on 5-3-2001 at Hyderabad and also taking into consideration that OP No. 1042 of 2002 was filed before a competent Court to entertain the OP for grant of succession certificate and also in view of the fact that OP No. 1 of 2002 was filed on the file of the Junior Civil Judge, Yellareddi, in view of the fact that since the subject-matter concerned in both the succession O.Ps being the same, taking all the facts and circumstances into consideration, I am inclined to withdraw OP No. 1 of 2002 on the file of the Junior Civil Judge, Yellareddi, Nizamabad District and transfer the same to the Court of the III Additional Chief Judge, City Civil Court, Hyderabad to be tried and disposed of in accordance with law with OP No. 1042 of 2002 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad. In view of the peculiar facts and circumstances this will be the just and convenient order.

9. Accordingly Tr. CMP Nos.469 of 2002 and 470 of 2002 are disposed of by withdrawing OP No. 1 of 2002 on the file of the Junior Civil Judge, Yellareddi, Nizamabad and transferring the same to be tried and disposed of along with OP No. 1042 of 2002 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad in accordance with law.

10. Tr.CMPs ordered to the extent indicated above. No order as to costs.