
(2013) 09 CAL CK 0083
In the Calcutta High Court
Case No : W.P.S.T. No. 373 of 2013

Bappaditya Mukherjee and Another	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2013) 4 CALLT 397 : (2014) 1 WBLR 1014

Hon'ble Judges : Subhro Kamal Mukherjee, J; Murari Prasad Shrivastava, J

Bench : Division Bench

Advocate : Debjit Mukherjee and Mr. Saikat Chatterjee, for the Appellant; Sahidullah Munshi for the State, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—In view of the urgency pleaded by the learned advocate for the petitioners, this matter is taken up for hearing out of turn in presence of Mr. Sahidullah Munshi, learned advocate appearing for the State respondents. This is an application under Articles 226 and 227 of the Constitution of India against the judgment and order dated March 19, 2013 passed by the West Bengal Administrative Tribunal, in Original Application No. 976 of 2011.

2. Sanjit Mukherjee, since deceased, was a permanent employee in the office of the Sub-divisional Agricultural Officer at Suri, district, Birbhum. We are informed that he was employed, during his lifetime, as a permanent Krishi Projukti Sahayak.

3. Sanjit Mukherjee, since deceased, was a bachelor. He executed his last will and testament on September 21, 2005, corresponding to 4 Ashwin 1412 B.S. He named and appointed his sister-in-law, Shrimati Bishnupriya Mukherjee, and his nephew, Bappaditya Mukherjee, as the executrix and the executor respectively of his said will. He bequeathed all his estate, including his entitlements from the Government of West Bengal, in their favour.

4. Sanjit Mukherjee, since deceased, died on November 17, 2005.

5. An application for grant of probate was filed, which was, eventually, registered as Miscellaneous (Probate) Case No. 62 of 2006 in the Court of the learned Additional District Judge, First Court at Suri, district: Birbhum. The learned Additional District Judge granted probate with the will annexed in favour of the executrix and the executor.

6. These petitioners, after obtaining probate, approached the Sub divisional Agricultural Officer at Suri, district: Birbhum, for release of the gratuity, the general provident fund and the leave salary and other admissible dues concerning the deceased employee in their favour.

7. The said Sub-divisional Officer, in his communication dated April 19, 2008, asked these petitioners to produce a succession certificate as he opined that as these petitioners were not members of the family of the deceased employee within the meaning of the Death-cum-Retirement Benefit Rules, 1971, they must produce a succession certificate. These petitioners approached the Additional Director of Agriculture. The Additional Director, Agriculture was of the same opinion and declined to release those benefits in favour of these petitioners.

8. Unfortunately, the administrative authorities did not apply their minds that once a probate is obtained, it was not necessary for these petitioners to obtain a succession certificate. No court was competent to grant a succession certificate when probate has, already, been granted in respect of the estate of deceased and has been still in force.

9. Unfortunately, situation did not improve when these petitioners approached the West Bengal State Administrative Tribunal.

10. The learned members of the State Administrative Tribunal, without at all referring to the Indian Succession Act, 1925, rejected the contention of the petitioners. It was held that the petitioners were not the members of the family within the meaning of note e (7) of the Death-cum-Retirement Benefit Rules, 1971 and as the benefits were to be released only to the members of the family as defined in the said Rules, unless these petitioners obtain a valid succession certificate from a competent Court of law, the authorities were not obliged to release those payments in favour of the petitioners irrespective of the fact that they have obtained a probate of the last will and testament of the deceased employee.

11. The learned members opined, I repeat, again without any application of mind and without any reference to the said Act of 1925, that the authorities did not commit any mistake by asking these petitioners to produce a succession certificate. Thus, the original application was disposed of by directing the petitioners to produce a succession certificate before the authorities and the authorities were directed to take action on the basis of such succession certificate within two months on the production of the said will.

12. It seems that the attention of the learned members of the tribunal was not

drawn to the provisions of section 385 of the said Act of 1925. The section 385 of the said Act contemplates a certificate granted under the said Act of 1925 in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

13. A probate is a copy of a will certified by a Court of competent jurisdiction. It proves that it is the last and final will of the deceased penned on a particular date and is granted with the seal of the Court and has a copy of the said will attached to it.

14. If, however, a person dies without leaving a will, then a succession certificate can be granted by the competent court to realize the debts and securities of the deceased. A succession certificate is never granted in cases where obtaining a probate or letters of administration is necessary as there is a valid will.

15. Thus, law is well-settled that if probate has, already, been granted in respect of the estate of the deceased and is still in force, the learned District Judge is not competent to grant a succession certificate in respect of the self-same property. He is not competent to go into the question whether the probate fulfilled certain requirements of law or to hold that the deceased was not legally competent to make the will of which the probate has been granted, section 385 of the said Act of 1925 prohibits granting of a succession certificate where earlier probate had, already, been granted by a competent court of law and all authorities are, therefore, bound to accept the probate. Thus, a separate certificate cannot be issued to each and every heir to a fractional share of a deceased so as to enable him to recover separately his or her share from the creditors. But, the position would be altogether different if the certificate relates to properties not included in the will or the probate.

16. If citations are necessary for such well-established proposition, reference may be made to the observations in the cases of AIR 1930 574 (Lahore) and Smt. Fulkalia Vs. Nathu Ram and Others,

17. A copy of the will is annexed to this writ petition. We have perused the copy of the will. We have, also, perused copy of the probate granted by the learned Additional District Judge, First Court at Suri, district: Birbhum in Miscellaneous (Probate) Case No. 62 of 2006. From the said will of the said Sanjit Mukherjee, since deceased, dated September 21, 2005, it clearly appears that these petitioners are not only the executrix and the executor respectively named and appointed in the will, but they are, also, the legatees under the will. The testator bequeathed his admissible benefits from his employer in their favour.

18. Thus, the order impugned, passed on a complete misconception of the provisions of Section 385 of the said Act of 1925, is set aside. We direct the authorities to release payments in favour of these petitioners peremptorily within two months from the date of communication of this order to them. The

application stands allowed.

We, however, direct the parties to bear their respective costs in this application.

Murari Prasad Shrivastava, J.

I agree.