

(1991) 03 AHC CK 0122
In the Allahabad High Court
Case No : F.A.F.O. No. 825 of 1990

Brij Behari Mishra and Others

APPELLANT

Vs

Vijay Shanker Mishra and Others

RESPONDENT

Date of Decision : 07-03-1991

Acts Referred:

Succession Act, 1925 — Section 383, 384

Citation : (1991) 1 AWC 490 : (1991) RD 431

Hon'ble Judges : N.N. Mithal, J; Beerendra Dixit, J

Bench : Division Bench

Advocate : Faujdar Rai and Chandra Kumar Rai, for the Appellant; Sri Kant, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mithal, J.—This appeal is directed against an order rejecting an application for revocation of a succession certificate granted by the court below.

2. The succession certificate was granted to Respondent No.1 on 21st April, 1989 in respect of certain debts and securities of the deceased Sudama Misra. The Appellants claim that the said Sudama Misra had executed a will in their favour on 20th November 1982 and as such they sought to have been impleaded as parties. Since the Appellants were not made parties in the said proceedings the succession certificate granted to the Respondent was liable to be revoked.

3. The parties are related to the deceased as will be obvious from the following pedigree:

Ramyad	Misra	

Misra Kanhaiya Mishra Beni Madho		
-----	Kamal Nain Rajeev N.	

4. It is undisputed that Sudama was possessed of moveable and Immovable

properties part of which are situate in the district of Ballia while Immovable properties are situate in Kalimpong (West Bengal). Respondent No. 1 claimed succession certificate on the basis of the will executed by the deceased Sudama on 1-12-1985. Soon thereafter he died in a hospital in Ballia on 3-12-85. In the application for succession certificate Beni Madho was impleaded as opposite party along with one Surendra Misra who also claimed same right in the estate of the deceased. A joint vakalatnama was filed on behalf of the Respondents opposite parties and they filed an application that they had no objection if succession certificate was granted to the applicant. The court after recording the evidence led by the applicant granted the certificate on 21st April, 1989.

5. Soon after the grant of succession certificate three applications were moved for its revocation. The first application was by the Appellants who sought revocation on the ground that they had not been impleaded and that the certificate had been obtained fraudulently and by concealment of material facts on record. The second application for revocation was moved by Surendra Misra on the ground that he had not been properly served and that he had never engaged the counsel whose vakalatnama finds place on the record and that he never gave his consent for grant of succession certificate to the applicant. The 3rd objection by Beni Madho was on the same lines.

6. The trial court rejected all these objections. The court has recorded a clear finding that service on Surendra Misra and Beni Madho was proper and proceedings had been taken in accordance with law after due proclamation and service of show cause notice. It also found that the Will relied upon by the opposite party was not a forged and fictitious deed. Since neither Beni Madho nor Surendra Mishra had appeared in the witness box deny their signature on the application consenting to the grant of succession certificate the court found that they had full knowledge of the proceedings and there was due service of notice on them. Accordingly, the court dismissed their applications for revocation. As regards the third objection which was moved by the Appellants the court below has found that since Beni Madho was a party and he had been duly served with notices and had consented to the grant of succession certificate to the Respondents these objectors had no right to seek revocation of the Will.

7. The main ground for seeking revocation was that the deceased had executed a Will in favour of these Appellants on 20-11-1982 and as such they were necessary parties. It was also stated that already proceedings for grant of probate was pending in the court of Assistant District Judge, Darjeeling. The court below has, however, found that since the succession certificate was granted on the basis of evidence proving the Will dated 1-12-1985 set up by Respondents 1st set and there was no evidence to show that the aforesaid Will had not been executed in the manner alleged therefore the succession certificate already granted to Respondents 1st set could not be revoked.

8. In appeal learned Counsel for the Appellants has strenuously urged that the view of the court below was erroneous. He has referred to certain documents,

copies of which are filed as Annexures to the affidavit and rejoinder affidavits and on its basis it is urged that the Respondents 1st set had full notice of the Will dated 20-11-82 in favour of the Appellants. However, in the affidavit there is no mention that these documents have been filed before the trial court. Learned Counsel for the Respondents, 1st set submitted that these documents had never been placed on record in the trial court and as such these cannot be taken into account while deciding the appeal. Sri Murlidhar, learned Counsel for the Respondents 1st set also urged the appeal was not maintainable u/s 384 of the Indian Succession Act.

9. Having heard learned Counsel for the parties at great length we find force in the submissions made by the Respondents. An application for revocation of a succession certificate can lie on any one of the grounds mentioned in Section 383. Sri Faujdar Rai for the Appellants conceded that Clauses "a," "d" and "e" are not attracted in the instant case. He relies mainly on Clause (b) of the section for the maintainability of the application. The aforesaid provision is as under:

That certificate was obtained fraudulently by making a false suggestion, or by concealment from the court of something material to the case.

10. According to this provision revocation can be claimed on two grounds i.e. firstly when it is obtained fraudulently by making a false suggestion and secondly by concealment from the court of something material to case. In the grounds taken in the application for revocation, there is nothing to suggest that false suggestion was made and material fact was concealed. A reading of the entire application, copy of which is Annexure "2" to the affidavit, goes to show that (i) the certificate was obtained by taking hasty proceedings without knowledge of the applicants (ii) there was a Will in favour of the Appellants which was executed on 20-11-1982, (iii) the donor executant died two days after executing the Will set up by the Respondents and this was a grave suspicious circumstance to show that the Will set up by the Respondents was fictitious and forged and (iv) the Respondents 1st set had full knowledge of the probate proceedings pending in the court of Assistant District Judge, Darjeeling which were initiated on 15-10-87, None of these grounds, however, except the last one, would be covered by the provisions of Section 383(b). So far as the last ground is concerned there was no evidence on record to show that the Respondents 1st set was ever served with notice of that proceedings on or before the date of his application for grant of succession certificate which was admittedly made in April, 1989.

11. As a matter of fact unless it is shown that the Respondents 1st set was aware about the Will set up by the Appellants or of the probate proceedings initiated in respect thereof it can not be argued that the impleadment of the Appellants was essential. The deceased had only two brothers, Kanhaiya and Beni Madho. Since Kanhaiya was not alive his son Vijai Shanker, Respondent 1st set, and Beni Madho alone would be interested in the estate of the deceased. Both of them

were parties in the proceedings. During the life time of Beni Madho none of the Appellants could claim any preferential right to the estate of Sudama deceased except under a Will or gift deed. In these circumstances it was essential that the Appellants should have placed relevant evidence on record to show that the Respondents 1st set had prior notice of the Will dated 20-11-82 or regarding the probate proceedings initiated by them, In the absence of any proof of this mere impleadment of Beni Madho was sufficient compliance and it cannot be said that by the non-impleadment of Appellants there was concealment of any material fact or that the certificate had been obtained fraudulently by making false suggestion.

12. Sri Faujdar Rai urged that Sub-clause (c) of Section 383 will also come to his aid. The said sub-section provides that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such an allegation was made in ignorance or inadvertence.

13. Succession certificate in this case was obtained by the Respondents 1st set on the basis of the Will dated 1-12-85 and unless it is established that this allegation was wrong the Appellants cannot succeed. The trial court has recorded clear finding on this point and has found that there was no material placed on the record to show that the Will had not been executed in the manner stated. In fact no evidence has been led by the Appellants to show that the Will dated 1-12-85 had not been executed. In these circumstances, in our opinion, the findings recorded by the trial court cannot be said to be erroneous or against the material on record. No interference in the finding is, therefore, called for.

14. Apart from this, there is a short ground on which also the appeal can be dismissed. An appeal u/s 384 can be filed only against the order granting or refusing the certificate or an order revoking a certificate. The order which is challenged in this appeal is not of any of these types. In fact it is an order refusing to revoke the certificate. An appeal against such an order is not permissible u/s 384.

15. It is urged that the Appellants' valuable rights are affected and they would be very seriously prejudiced if the order of the court below is maintained. It may be pointed out that the succession certificate merely authorises the party in whose favour grant has been to give full discharge of liability to the Bank or the debtor. It, however, does not confer any title to the person in whose favour the grant has been made. Such a right can always be established in a proper proceeding in a court of law. This, therefore, cannot be a ground for allowing the appeal.

16. In view of what we have said above, the appeal is neither maintainable u/s 384 nor on merits. The appeal is accordingly dismissed with costs.