

(1998) 11 MP CK 0068

In the Madhya Pradesh High Court

Case No : C. Revision No. 1291 of 1998

Chandrakala Doble (Smt.) and Others

APPELLANT

Vs

Shyam Rao Doble and Others

RESPONDENT

Date of Decision : 30-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10A, Order 7 Rule 10A(1), 20
Succession Act, 1925 — Section 371

Citation : (1999) ILR (MP) 881 : (1999) 2 JLJ 51

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : R.P. Khare, for the Appellant; Anil Kumar Jain, for non-applicants 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Being aggrieved by the order passed in Succession Case No. 42/98 by the learned VIth Civil Judge, Class-I, Jabalpur on 23.4.98 holding that the Court at Jabalpur has no jurisdiction to hear and decide the succession matter, the applicants have filed this revision petition.

2. Submission of learned Counsel for applicants is that in view of the language of Section 371 of Indian Succession Act, 1925 (hereinafter referred to as "the Act") read with Section 20 of the CPC (hereinafter referred to as "the Code"), the Court at Jabalpur would have complete jurisdiction and could not reject the application for grant of certificate.

3. Shri Jain, on the other hand, submits that provisions of Section 371 would over-power the provisions of Section 20 of the Code because provisions of Section 371 of the Act are special in nature while provisions of Section 20 of the Code are general in nature. He submits that once it is admitted before the Court that the deceased at the time of his death had a permanent place of his residence, then the District Court within whose jurisdiction the deceased resided

would have the jurisdiction and no other Court even if part of the property is situated within the jurisdiction of the other Court. In reply learned Counsel for applicants submits that if the Court below had no jurisdiction, then too it could not reject the petition but it should have returned the petition for its proper presentation or should have passed an order under Rule 10A of Order 7 of the Code.

4. I have heard the parties at length.

5. Section 371 of the Act deals with the Courts which have jurisdiction to grant the certificate. Section 371 provides that the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death or, if at that time he had 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. A bare perusal of Section 371 would show that if at the time of the death the deceased had a permanent place of residence, then the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, would have jurisdiction to grant a certificate under this part of the Act. It is only when at the time of death the deceased had no fixed place of residence then the District Judge within whose jurisdiction any part of the property of the deceased situates can grant a certificate under this part of the Act. If it is proved to the satisfaction of the Court or it is admitted position before the Court that at the time of the death, the deceased was ordinarily residing within the jurisdiction of a particular District Judge, then that Court alone would have jurisdiction to hear and decide the matter. The alternate provided by Section 371 of the Act would come into operation if it is not proved to the satisfaction of the Court or it is pleaded before the Court that at the time of death, the deceased had no fixed place of residence. In such a case, it will also have to be submitted by the claimant that property belonging to the deceased is situated within the local jurisdiction of that District Judge, therefore, he would have jurisdiction to hear and decide the matter. In the present case, undisputedly at the time of death, the deceased was residing at Dindori within the jurisdiction of the District Judge, Mandla, therefore, from the very language of Section 371 of the Act, it would be clear that District Judge or his nominee or the person in whose favour the powers have been deligated either by the High Court or by the State Government can exercise the jurisdiction.

5. Section 20 of the Code provides that every suit shall be instituted in a Court within the local limits of whose jurisdiction, the Defendant or each of the Defendants, where there are more than one Defendant, at the time of the commencement of the suit actually and voluntarily resides, or carries on business or personally works for gain; or any of the Defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain; provided that in such case either the leave of the Court is given, or the Defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such

institution; or the cause of action, wholly or in part, arises. Perusal of Section 20 of the Code would show that a suit can be instituted in a Court within whose jurisdiction the cause of action wholly or in part arises or a suit can be instituted in a Court within whose jurisdiction the Defendant/Defendants if there are more than one reside, carry on business, work for gain, etc. A comparison of Section 20 of the Code with Section 371 of the Act would bring out the distinction absolutely clear. Section 20 of the Code mainly provides that a suit is to be filed within the jurisdiction of the Court where the Defendant resides, carries on business or works for gain or in a Court where the cause of action wholly or in part arises. Section 371 of the Act provides for two places only for trial, one where the deceased at the time of his death was ordinarily residing or; if he had no fixed place of abode at the time of his death, then a Court within whose jurisdiction the property is situated would have jurisdiction. For attraction of Section 371 of the Act conferring the jurisdiction upon a particular District Court; the Court is required to be satisfied on the facts. A claimant is required to show to the Court that at the time of death of the deceased, he was residing within the local jurisdiction of that District Court. Section 371 of the Act has nothing to do with the place of residence of the Defendant. It simply says that two Courts would have jurisdiction firstly the Court within whose jurisdiction, at the time of the death the deceased was residing or secondly if the deceased had no fixed place of residence at the time of death, then the District Court within whose jurisdiction the property situate would have jurisdiction to hear and decide the matter. Section 371 of the Act is a special enactment; it would not be governed by Section 20 of the Code. For conferring jurisdiction upon a Succession Court, a claimant is required to satisfy the Court that the deceased at the time of his death was residing permanently/ordinarily within the local jurisdiction of that Court or that the Court would have jurisdiction because the property of the deceased is situated within the local jurisdiction of that Court and the deceased at the time of his death had no fixed place of residence.

6. The Court below was justified in accepting the objection raised by the non-applicant because it was not disputed before the Court below that at the time of death of deceased, he had a fixed place of residence. Once the fact of residence is not in dispute, then there is no escape from application of Ist part of Section 371 of the Act.

7. Rule 10 of Order 7 provides that subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. It further reads that on returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it and a brief statement of reasons for returning it. According to Rule 10A of Order 7 where the Defendant has appeared in the suit and the Court is of the opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the Plaintiff. After receiving the intimation, under Sub-rule (1) of Rule 10A, the Plaintiff may ask the Court to specify the Court in which he proposes to present the plaint after its return,

asking the Court to fix a date for the appearance of the parties in the said Court requesting that the notice of the date so fixed may be given to him and to the Defendant present in the Court. If such an application is filed and prayer is made to the Court, then the Court is required to fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented and give the parties present in the Court notice of such date for appearance. In the present case, the trial Court has not observed the provisions of Rule 10 and Rule 10A of Order 7. On the merits, the order is maintained, but it is directed that the trial Court shall observe the provisions of Rule 10 and Rule 10A if an application is filed by the applicants before that Court. The parties present in this Court are required to appear before the trial Court on 15.12.1998. The applicants may move an application to the trial Court for making an order under Rule 10A of Order 7 of the Code of Civil Procedure. If such an application is filed, the Court shall pass necessary orders on the said application.

8. This petition, to the extent indicated above, is allowed. The order on the merits is maintained, but the applicants are given an opportunity to move an application under Rule 10A of Order 7 of the Code of Civil Procedure. There shall be no order as to costs.

9. Certified copy within three days, to the parties, if applied on urgent charges.