
(2005) 06 OHC CK 0023
In the Orissa High Court
Case No : Civil Revision No. 330 of 2001

Damji Narshi Das

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 24-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Succession Act, 1925 — Section 213, 276, 57

Citation : (2005) 2 OLR 383

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : A.K. Mukherji, G. Mukherji, P. Mukherji, S. Patnaik, M.K. Majumdar and P. Mishra, for the Appellant; Additional Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—This Civil Revision is directed against the order dated 27.8.2001 passed by the Additional District Judge, Angul in Probate Misc. Case No. 227 of 1999 dismissing the application of the petitioner praying to include the properties situated at Talcher, Pallahara, Telkoi, Deogarh and Rajkot in the probate proceeding.

2. The brief facts as narrated in the revision application are as follows :

The petitioner initiated a proceeding u/s 276 of the Indian Succession Act before the District Judge, Dhenkanal, on 12.10.1999 for probate of the Will dated 16.1.1999 executed by late Kanchan Gauri Narshi Das. Kanchan Gauri Narshi Das died issueless on 6.6.1999. The petitioner as the sole executor-cum-beneficiary under the Will instituted the proceeding for Probate of the aforesaid Will. The said case was registered as Misc. Case No. 227 of 1999. Under the Will, the properties of late Kanchan Gauri Narshi Das located at Talcher, Angul, Rajkot, Pallahara, Deogarh and Telkoi have devolved on the petitioner. In the schedule to the petition filed u/s 276 of the Indian Succession Act, all the properties except the property at Angul were valued at Rs. 6,50,000/- and, according to the

petitioner, no duty money is payable in respect of the properties at Talcher, Rajkot, Pallahara, Deogarh and Telkoi as provided u/s 57 of the Indian Succession Act.

3. The further case of the petitioner is that the property located at Angul is a Cinema Hall and duty money is payable in respect of the said property only. Under a mistaken impression the properties located at Talcher, Rajkot, Pallahara, Deogarh and Telkoi were valued and a sum of Rs. 32,000/- was deposited as duty money on 15.12.1999 by Chalan No. 35. On an objection being raised by the State, the trial Court directed the petitioner to deposit Rs. 1,62,600/- as duty money in respect of the Angul property and as the same was not deposited, the trial Court dismissed the probate application by order dated 27.8.2001. According to the learned counsel for the petitioner, the assessment of the duty money by the trial Court in respect of the Angul property is wrong and erroneous as, according to the petitioner, the estate of the Kanchan Gouri which has come to the hands of the petitioner under the Will is valued at Rs. 4,00,000/-. Duty money in the probate proceeding payable by the petitioner is to be computed on the value of the estate which come to the hands of the petitioner at Rs. 4,00,000/-. It is further stated that on 30.6.2000, the Advocate for the petitioner filed a memo in the trial Court stating that the petitioner does not want to press for probate of the Will in respect of the properties situated at Rajkot, Talcher, Pallahara and Keonjhar. Thereafter on 27.8.2001 the petitioner filed an application u/s 151 CPC expressing his intention to include the aforesaid properties abandoned by virtue of memo filed on 30.6.2000 alleging therein that the memo filed by the Advocate to exclude the said properties was without his knowledge and instruction.

4. The Additional District Judge, Angul by his order dated 27.8.2001 rejected the said application and on the same day dismissed the Probate Misc. Case No. 227 of 1999 for nonpayment of duty money in respect of Angul property. The petitioner in this proceeding challenges the impugned order dated 27.8.2001. On that day, the order was passed rejecting the application of the petitioner to include the properties which were abandoned by virtue of memo filed in the said proceeding but the said application was dismissed on the ground that since the petitioner had earlier filed a memo abandoning his claim over the said properties, he cannot be allowed to include these properties. After rejecting the petition, the trial Court directed the petitioner to deposit the duty money by 3 P.M. on the same day, i.e., on 27.8.2001. It is worthwhile to mention here that the computation of duty money as revealed from the record was done by virtue of order dated 2.5.2001. The said order is not under challenge in this proceeding. However, learned counsel for the petitioner submitted that the estate of Kanchan Gauri at Angul which has come to the hands of the petitioner under the Will is valued at Rs. 4,00,000/- and the duty money under the probate proceeding is payable on Rs. 4,00,000/-. According to the petitioner, no duty money is payable in respect of the properties at Talcher, Rajkot, Pallahara, Deogarh and Telkoi as provided u/s 57 of the Indian Succession Act and by mistake only the petitioner

has deposited the duty money in respect of the aforesaid properties, i.e., to the tune of Rs. 32.000/- and the same can be taken to be the duty money towards the Angul property on the valuation of Rs. 4.00.000/- which comes to Rs. 27.000/-. Learned counsel for the petitioner from the inception drew my attention to the Orissa Gazette and Section 57 of the Indian Succession Act as well as Section 213 of the Indian Succession Act saying that no probate is necessary in case of the properties at Talcher, Rajkot, Pallahara, Deogarh and Telkoi as it is covered under Clause-A of Section 57 of the Indian Succession Act. I have stated earlier that it is only the order dated 27.8.2001 which is under challenge in which the application u/s 151 CPC was dismissed. My consideration is confined only as to whether the order dated 27.8.2001 is correct or not. It is a fact that a memo was filed by the counsel for the petitioner to exclude the properties situated at Talcher, Pallahara, Telkoi, Deogarh and Rajkot and accordingly an order was passed on 2.5.2001 permitting the petitioner to abandon his claim on the properties located in the aforesaid places. When a regular application was filed u/s 151 CPC to include the properties, which were abandoned by virtue of the memo, in my considered opinion, the Additional District Judge, Angul, should not have rejected the said application on the ground that as the same was abandoned by virtue of a memo, the order cannot be reversed. That too, the petitioner comes up with a plea that the memo has been filed without instruction of the petitioner.

5. Accordingly, I set aside the order dated 27.8.2001 passed by the Additional District Judge, Angul. The petitioner is allowed to include the properties at Rajkot, Pallahara, Talcher, Telkoi and Deogarh. So far as the question of computation of the valuation of the property at Angul is concerned, as the order dated 2.5.2001 passed by the Additional District Judge is not under challenge in this proceeding, however, in view of this order, liberty is granted to the petitioner to file an application before the Additional District Judge, Angul for reconsideration of the valuation made regarding the Angul property highlighting the grounds taken in this Civil Revision and the provisions of law as pointed out before this Court. In that event, the Additional District Judge shall reconsider the same and pass necessary order in accordance with law.

The Civil Revision is accordingly allowed. No cost.

L.C.R. be sent back forthwith.