(1992) 03 AP CK 0035

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3204 of 1990

G. Shiva Kumari — APPELLANT

Vs

Md. Nasim and Others — RESPONDENT

Date of Decision : 13-03-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, 115
Succession Act, 1925 — Section 214, 214(1), 381

Citation : (1992) 3 ALT 458

Hon'ble Judges : Neeladri Rao, J

Bench : Single Bench

Advocate : V. Ravinder Rao, for the Appellant;

Final Decision : Dismissed

Judgement

Neeladri Rao, J.—Whether the heir of the decree-holder has to be directed to produce the succession certificate for withdrawing the amount in court deposit to the credit of the deceased decree-holder is the point that falls for consideration in this revision petition.

2. The facts which are relevant are as under: Late Bhagwan Narayana, the son of the revision petitioner, sustained injuries in motor accident on 11-5-1988. He filed O.P. No. 230 of 1988 on the file of the Additional District Judge-cum- Motor Accidents Claims Tribunal, Adilabad u/s 110-A of the Motor Vehicles Act, 1939. An award for Rs. 1,30,000/- was passed as per order dated 28-4-1989. Later i.e., on 25-1-1990 Bhagwan Narayana, the son of the revision petitioner, expired. The judgment debtor i.e., the Insurance Company deposited an amount of Rs. 80,000/- in the Court to the credit of the decree-holder in O.P. No. 230 of 1988. Then I.A. No. 489 of 1990 was filed by the revision petitioner herein and her husband and daughter in March, 1990 under Order XXII, Rule 3 C.P.C. with a prayer to permit them to come as L.Rs. of the deceased and that they may be permitted to withdraw the amount in deposit to the credit of late Bhagwan Narayana, the decree-holder in O.P. No. 230 of 1988. The said petition was

allowed. Then LA. Nos. 890/90,891/90 and 892/90 were filed by the revision petitioner herein, her husband, and daughter respectively praying for issue of cheques in favour of each of them for Rs. 26,666-65 ps. thus claiming 1/3rd of the amount in deposit by each of them. The lower tribunal dismissed all the three petitions by observing that though the revision petitioner is the preferential legal heir of the deceased, her husband and daughter also have come on record as the legal heirs of late Bhagwan Narayana and it was not averred that the deceased Bhagwan Narayana was unmarried, and as such the cheque petitions cannot be ordered unless the succession certificate is produced. The said order is challenged in this revision petition. It is stated that the husband and daughter of the revision petitioner have not filed revision petitions assailing the same.

3. One mode of paying money under decree is by deposit into the Court and the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post acknowledgment due, and interest, if any, shall cease to run from the date of service of notice referred to above. It is evident from Order XXI, Rule 1 C.P.C. and the relevant portion can be conveniently extracted.

Order XXI Rule 1: (1) All money payable under a decree shall be paid as follows, namely;-

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b).......

(c)......

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(3)......

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2)."

An amount of Rs. 80,000/- was deposited by the judgment-debtor, i.e., the Insurance Company towards the award amount in O.P. No. 230 of 1988. It amounts to discharge to that extent. (It is not stated as to why only Rs. 80,000/- out of the award amount was deposited. It is immaterial for consideration in this revision petition). Thus the amount of Rs. 80,000/- belongs to late Bhagwan Narayana. While considering the scope of occupation ''debt'' as defined in the Malayan Ordinance 42 of 1948 Chief Justice Rajamannar held in Muthupalaniapa Chettiar Vs. Alagamai Achi and Others, that:

"The term ''debt'' no doubt, is commonly used to describe liabilities which have an origin in contract; but we see no reason why we should restrict the connotation of that term to such liabilities only. Anything due and payable is a debt."

I feel that the same meaning can be attributed to the word ''debt'' used in Sections 381, 214 and other provisions of the Indian Succession Act, 1925 (for short ''Succession Act''). Section 381 of the Succession Act lays down that the succession certificate issued under part X of the Succession Act shall be conclusive as against the persons owing the debts or liable on securities referred to in the succession certificate and it affords full indemnity to all such persons as regards all payments made or dealings had in good faith in respect of such debts or securities to or with the person to whom the certificate was granted. But the succession certificate issued does not bind the rightful claimant and he may receive the whole or any part of debt or security or any interest or dividend on any security from the person to whom the certificate was given as envisaged u/s 387 of the Succession Act.

4. The amount in deposit in Court to the credit of the decree-holder can be construed as a ''debt'' as referred to in various provisions of the Succession Act as it is the amount due and payable to the decree-holder. If such decree-holder expires before withdrawing the said amount, the question arises as to whether the heirs of such decree-holder can be directed to produce the succession certificate when they apply for withdrawing the amount in the Court deposit to the credit of the deceased decree-holder. If the judgment-debtor knows the heirs of the decree-holder and if the judgment-debtor admits that the petitioners in the cheque petitions are the heirs and only heirs of the deceased decree- holder and if the Court feels that there is no collusion between the judgment- debtor and the decree-holder, the Court may allow the cheque petition without insisting upon the heirs of the deceased decree-holder to produce the succession certificate, for the cheque application is not an application for execution of the decree coming within the ambit of Section 214(1)(b) of the Succession Act. But when the judgment-debtor is an Organisation or institution just like the Insurance Company in this case, it is not possible for such judgment-debtor to make enquiries as to whether the applicants in the cheque petitions are the heirs of the deceased decree-holder or that they are the only heirs of the deceased decree-holder. It is not possible for the Court to make an effective enquiry in an application praying for issue of cheque filed by the heirs of the deceased decree-holder to determine as to whether they are the heirs of the deceased decree-holder. If one applies for u/s 371 of the Succession Act for issual of a succession certificate in regard to the amount in deposit due to the deceased decree-holder, the said Court issues general notice by ordering it to be published in newspaper before considering the application and if the Court is satisfied that the person who applied for the succession certificate is the heir, it may even direct such applicant to furnish sufficient security before granting a succession certificate. It is for this reason that the Government, Government Organisations, Companies and Banks insist upon the production of succession certificate, if any one claims as a heir to the amounts due to the deceased. If the amount due to the deceased

is paid to the heir of deceased on production of the succession certificate, such certificate affords full indemnity to any debtor including the Government, Government Organisation, Bank etc. So, it has to be stated as to whether the direction has to be given to the heir of the deceased decree-holder to produce the succession certificate in an application filed by him for the amount in Court deposit to the credit of the deceased depends upon the facts in each case. As already observed, if the judgment-debtor knows the heir of the deceased decree-holder and if he (judgment-debtor) admits to that effect and the Court is satisfied that there is no collusion between the judgment-debtor and the person who claimed to be the heir of the deceased decree-holder, the Court may allow the cheque petition without insisting upon the production of the succession certificate. But if it is a case where the judgment-debtor could not have known about the heirs of the deceased decree-holder with certainty, it is not only just and proper for the Court but also necessary for it to direct the person, who claims to be the heir of the deceased decree-holder to produce the succession certificate. Such a certificate not only affords indemnity to the Court but it can be certain in almost all cases, if not in all cases, that the amount is paid to the proper heir/heirs.

5. The learned counsel for the revision petitioner referred to various decisions to contend that as the O.P., filed by late Bhagwan Narayana is not a petition filed for realisation of the debt, this cheque petition filed by the revision petitioner cannot be held to be an application in execution of a decree for realisation of the debt due by the date of the suit and hence the succession certificate cannot be insisted upon as envisaged u/s 214(1)(b) of the Succession Act. To appreciate the said contention, the relevant portion of Section 214 of the Succession Act can be read and it is as follows:

"214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons:-

(1) No Court shall-

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of-

(i) ...

(ii) ...

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) ...

(v) ...

(2) The word ''debt'' in Sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes."

Section 214(1)(a) of the Succession Act refers to ''debt'' due by the date of the suit. The words ''such a debtor'' and debt in Section 214(1)(b) of the Succession Act are admittedly in regard to the debt due from the debtor referred to in Section 214(1)(a) of the Succession Act. Hence, this Court held in S. Rajyalakshmi Vs. S. Sitamahalakshmi, that an application for execution of the decree for costs does not come within the ambit of Section 214(1)(b) of the Succession Act for the costs for which the decree was passed was not a debt due by the date of the suit. An application for execution of money decree for which a charge was created by the decree was also held to be not an application for execution of the decree for the debt as it is a case of application for enforcement of the charge created by the decree and thus such an application also does not come u/s 214(1)(b) of the Succession Act. (Vide AIR1982 A.P. Page 207).

6. In Anehakana Sur and Ors. v. Abani Bhusan Sur and Ors., AIR 1982 Cal. 378 and Narayanaswami Naidu v. Chellammal and Ors., 1970 (2) MLJ 633 it was stated that a decree for damages or a decree in a suit for unascertained amount cannot be construed as a suit for recovery of the debt as contemplated u/s 214(1)(a) of the Succession Act and hence the heir of the deceased decree-holder, in such a case, is not enjoined to produce the succession certificate in an application filed for execution of such a decree. But I feel that there is no need to discuss the same for the disposal of this revision petition. As already held that an application for a cheque filed by the heirs of the deceased decree-holder in regard to the amount in Court deposit to the credit of the deceased decree-holder is not an application in execution. As already noticed the deposit in Court by the judgment-debtors towards the money decree is valid discharge under Order 21, Rule 1 C.P.C. Hence there cannot be any question of execution of the decree when it (the decree) is discharged. In such a case, the only right of the decree-holder or his heirs is to withdraw the said amount by filing a cheque petition. As such amount is deposited in Court, it is an amount due and payable to the decreeholder. So, it has to be held as a debt coming within the ambit of Section 381 of the Succession Act. It is not as if that succession certificates have to be obtained only in regard to the cases covered u/s 214 of the Succession Act. As the payment of a debt to the person in whose favour the succession certificate is issued affords full indemnity in cases of such payment u/s 381 of the Succession Act, any debtor who has no knowledge about the heirs of the deceased creditor can insist upon the production of succession certificate, if any one who claims to be the heir of the deceased creditor requests the debtor for payment of the amount due to the deceased creditor. I already referred to the circumstances under which even the Court has to direct the person who claims to be the heir of the deceased decree-holder to produce the succession certificate for realisation of the amount in deposit to the credit of the decree-holder and this

is one such case. The lower Court is right in directing the revision petitioner to produce the succession certificate in the circumstances referred to.

7. There are, thus, no merits in this revision and accordingly it is dismissed.

