
(2006) 04 AP CK 0066
In the Andhra Pradesh High Court
Case No : CRP No. 6872 of 2006

Gavi Reddi Chinnammalu

APPELLANT

Vs

Koraka Simhachalam and Others

RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 9, Order 43 Rule 1, Order 9 Rule 13, Order 9 Rule 9, 141
Constitution of India, 1950 — Article 227
Succession Act, 1925 — Section 373, 383, 384

Citation : (2007) 1 ALD 54 : (2007) 1 ALT 25 : (2007) 5 RCR(Civil) 705

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Subramanyam, for the Appellant; B.M. Patro, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This appeal is filed u/s 384 of the Indian Successions Act, 1925 (for short "the Act") against the order of the learned District Judge, Vizianagaram dated 19.12.2003 in LA. No. 1475 of 2002 in S.O.P. No. 221 of 1997.

2. Respondent Nos. 1 and 2 filed O.P. No. 221 of 1997 in the Court of District Judge, Vizianagaram for a Succession Certificate in respect of the amounts payable to late Satyam, who was employed as driver in A.P.S.R.T.C. The first respondent claims to be his wife and the second respondent, as his son. The employers, respondents 3 and 4 herein were also impleaded in the O.P. Petitioner claims that she is the daughter of late Satyam. According to her, her father did not marry anyone after death of her mother and that respondents 1 and 2 have nothing to do with her father. She was impleaded as third respondent in the O.P.

3. On a consideration of the material before it, the trial Court granted Succession Certificate in favour of respondents 1 and 2 through its order dated 17.5.1999.

4. Even before the O.P. was filed by respondent Nos. 1 and 2, the petitioner filed O.S. No. 209 of 1996 in the Court of Junior Civil Judge, Srungavarapukota for a declaration that the first respondent is not the wife of late Satyam and the second respondent herein is not his son. Respondent Nos. 1 and 2 herein remained ex parte in the suit. An ex parte decree was passed in O.S. No. 209 of 1996 on 27.7.2001. Based on this decree and judgment, the petitioner filed LA. No. 1475 of 2002 in S.O.P. No. 221 of 1997 before the District Judge, Vizianagaram to revoke the Succession Certificate issued in favour of Respondent Nos. 1 and 2. The ground pleaded by her was that once a competent civil Court had declared the first respondent as not the legally wedded wife and the second respondent as not the son of late Satyam, the Succession Certificate cannot hold the field. Through his order, dated 19.12.2003, the learned District Judge dismissed the LA.

5. Learned Counsel for the appellant Sri K. Subrahmanyam, submits that one of the circumstances, under which a certificate once issued can be revoked, stipulated u/s 383 of the Act is the existence of decree which, in effect, disentitles the holder of a certificate for the right thereunder. He contends that the declaratory decree in O.S. No. 209 of 1996 brings about such a circumstances and, as such, there was no justification for the learned District Judge in refusing to revoke the certificate. He relied upon the judgment of the Supreme Court in *Joginder Pal Vs. Indian Red Cross Society and Others*, .

6. Learned Counsel for Respondent Nos. 1 and 2, Sri B.M. Patro, raises an objection as to the maintainability of the appeal itself. According to him, an appeal is provided for u/s 384 of the Act, against the order revoking a Succession Certificate but not the one refusing to revoke a certificate. On merits, learned Counsel submits that the decree in the suit is ex parte in nature and cannot be said to be an adjudication on merits. It is his case that the petitioner has permitted the order in O.P. No. 221 of 1997 to become final and it is not open to her to file an application u/s 383 of the Act. He places reliance upon the judgment of the Calcutta High Court in *Mulukh Raj Sharma Vs. Raj Narain Sharma and Others*, .

7. The objection as to the maintainability of the appeal needs to be taken up at the outset. Part X of the Act prescribes the procedure for grant of Succession Certificates and withdrawal thereof. u/s 373 of the Act, a District Judge is empowered to issue such certificate, after following the procedure prescribed therefore, if he is satisfied. Section 383 of the Act empowers the Court to revoke the certificate under five circumstances enumerated therein. Section 384 of the Act provides for an appeal against the orders passed at various stages, under Part X. It reads as under:

Appeal:-(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and

direct the District Judge, on application being made therefore, to grant it accordingly, in superession of the certificate, if any, already granted.

(2) An appeal under Sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908.

(3) Subject to the provisions of Sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, as applied by Section 141 of that Code, an order of a District Judge under this part shall be final.

8. A reading of the section discloses that an appeal is provided to the High Court, from the order of the District Judge, a) granting b) refusing to grant or c) revoking a certificate issued under this part. No appeal is provided against an order refusing to revoke the certificate. When the Legislature provides for appeal only against a particular category of orders, the same cannot be expanded through the process of interpretation. It may appear logical that an appeal ought to have been provided even against an order refusing to revoke a certificate, when an order revoking a certificate is made appealable. However, it is not for the Courts to add to the nature of orders, which are appealable.

9. Section 384 of the Act, insofar as it relates to the orders passed in an application to revoke a certificate, is similar to clauses (c) and (d) of Rule 1 of Order XLIII of the Code of Civil Procedure. It is only the orders rejecting the applications filed under Rule 9 or 13 of Order IX of the Code of Civil Procedure, that are made appealable. The object underlying such provisions is beyond the scope of examination in the interpretative process.

10. Section 384 of the Act fell for consideration before various High Courts, from 1920 onwards. The High Courts of Bombay, Lahore, Patna and Allahabad took the view that an order refusing the revoke a certificate is also appealable. All these decisions were dealt with by a Division Bench of the Calcutta High Court in Mulukh Raj's case (supra). It was held therein that in all the cases, which were decided earlier, the applications filed u/s 383 of the Act were for dual purposes viz., for grant of a Succession Certificate and revocation of an existing certificate and those situations cannot be compared to cases where the applications are filed exclusively for revocation of certificates. The same ratio applies to this case also. The petitioner filed an application for revocation of Succession Certificate issued in favour of Respondent Nos. 1 and 2. There is no corresponding prayer, for issuance of a certificate in her favour. In that view of the matter, the appeal is not maintainable u/s 384 of the Act.

11. This, however, is not the end of the matter. Even where an appeal is not provided for, this Court has ample jurisdiction to scrutinize the order passed by a Subordinate Court, in exercise of its power under Article 227 of the Constitution of India. Instead of driving the petitioner to initiate another set of proceedings, this Court feels it appropriate to consider the matter on merits, treating the appeal as a revision. Learned Counsel for both the parties addressed arguments

on merits also.

12. As observed earlier, Section 383 of the Act enumerates five circumstances under which a certificate granted under Part X of the Act can be revoked. The ground on which the petitioner applied for revocation of the certificate is that the suit, filed by her for declaration that the first respondent is not the legally wedded wife of late Satyam and the second respondent is not his son, was decreed. This contention fits into Clause (e) of Section 383 of the Act. It reads as under:

Revocation of Certificate:- A certificate granted under this part may be revoked for any of the following causes, namely:

(a) ...

(b) ...

(c) ...

(d) ...

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

Normally, whenever a Court adjudicates a matter, the outcome thereof becomes final, unless it is carried in appeal or in revision. The Court, which passed such order or decree, is not empowered to meddle with it, except by way of review under Order XLVII, or to effect arithmetical or clerical corrections as provided for u/s 152 of the Code of Civil Procedure. Section 383 of the Act provides for revocation of certificate by the very Court, which issued it. The reason is that no contested adjudication in its ordinary sense, takes place in the proceedings for issuance of Succession Certificates. The enquiry in these proceedings is summary in nature and confined to the subject-matter of certificate. If it emerges that any Court of competent jurisdiction has pronounced upon the rights and obligations of the same parties in a broad based set of proceedings, such as a suit for declaration, the succession certificate, insofar as it runs against such declaration, cannot be permitted to hold the field. It is for this reason that as and when the circumstances provided for under Clauses (a) to (e) of Section 383 of the Act emerge, that the same Court can revoke the certificate issued by it.

13. In this case, it has emerged that even before Respondent Nos. 1 and 2 filed O.P., the petitioner filed O.S. No. 209 of 1996 in the Court of Junior Civil Judge, Srungavarapukota for a declaration as to the status of Respondent Nos. 1 and 2 visa-vis late Satyam. Respondent Nos. 1 and 2 were served with notices, but have chosen to remain ex parte. An ex parte decree was passed on 27.7.2001. Based on this, the petitioner sought for revocation of Succession Certificate.

14. The trial Court refused to exercise its jurisdiction u/s 383 of the Act on the ground that the petitioner did not prefer any appeal against the order granting

Succession Certificate. This reason hardly constitutes any basis for not exercising the jurisdiction u/s 383 of the Act. Exercise of jurisdiction under this section is not restricted to those cases where the order granting Succession Certificate is not appealed. On the other hand, if an appeal is preferred, it may disentitle the Court, which granted the Succession Certificate to exercise jurisdiction u/s 383 of the Act, because its order merges in that of the appellate Court. Once it is evident that the circumstances pleaded by the petitioner fits into Section 383 of the Act, which in fact is a matter of record, the trial Court ought not to have refused to exercise its jurisdiction.

15. Another ground indicated by the trial Court is that the decree passed in O.S. No. 209 of 1996 is only ex parte in nature. In this context, it needs to be observed that an ex parte decree carries the same weight as does a decree passed on the strength of a reasoned judgment. Neither in CPC nor in any other law, any distinction is maintained between an ex parte decree and a decree on contest. Such an approach to ex parte decree would only embolden the defendants to remain ex parte and to plead that an ex parte decree is not binding on them. Therefore, the view taken by the trial Court, in this regard, cannot be sustained in law.

16. Learned Counsel for Respondent Nos. 1 and 2 submits that his clients are taking steps to get the ex parte decree set aside and revocation of certificate at this stage may complicate the things, in the event of the decree being set aside. Inasmuch as the Succession Certificate is to be revoked on the strength of the decree passed in O.S. No. 209 of 1996, it is axiomatic that the revocation would co-exist along with the decree in the suit and any variation therein would have its corresponding effect on the Succession Certificate so revoked. In other words, if the decree in the suit is set aside either in an application under Order 13 Rule 9 of the CPC or in an appeal, the Succession Certificate would get resurrected and revived.

17. For the reasons stated above, the appeal, which is treated as a revision under Article 227 of the Constitution of India is allowed. The appellant-petitioner shall pay the deficit Court-fee. The Succession Certificate issued in favour of Respondent Nos. 1 and 2 in O.P. No. 221 of 1997 on the file of District Judge, Vizianagaram shall stand revoked in view of the decree dated 27.7.2001 passed in O.S. No. 209 of 1996 on the file of the Junior Civil Judge, Srungavarapukota. It is, however, made clear that incase the decree in O.S. No. 209 of 1996 is set aside, the Succession Certificate shall stand revived, unless and otherwise observed by the Court passing such orders.