

(1995) 07 OHC CK 0037

In the Orissa High Court

Case No : Civil Revision No. 109 of 1995

Gaya Prasad Bhoi and Another

APPELLANT

Vs

Loknath Budhia Bhoi and Another

RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Succession Act, 1925 — Section 372, 384

Citation : AIR 1996 Ori 44 : (1995) 2 OLR 307

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

**Advocate : S.K. Mund, D.P. Das, J.K. Panda and S.N.B. Ray, for the Appellant;
A.K. Sahoo and S.B. Das, for the Respondent**

Judgement

A. Pasayat, J.—Decision of learned District Judge, Sambalpur holding that the appeal filed by the petitioners was not maintainable in terms of Section 384 of the Indian Succession Act, 1925 (in short, the "Act") is the subject-matter of challenge.

2. A brief reference to the factual aspects is necessary for disposal of the application under consideration.

Loknath Budhia, opposite party No. 1 in the present proceeding filed an application styled as one u/s 372 of the Act for grant of certificate in his favour to receive the amount mentioned in the schedule, claiming to be the son and legal heir of Kailash Chandra Bhoi (hereinafter referred to as the "deceased"). The application was registered as Misc. Succession Case No. 25 of 1993 in the Court of learned Subordinate Judge (presently Civil Judge, (Senior Division), Sambalpur. Prior to the filing of application u/s 372 of the Act, an application had been filed before the Tahasildar, Lakhanpur for grant of a legal heir certificate wherein claim was made that he was the adopted son of the deceased. Said application was dismissed.

The matter was carried an appeal but without any result. Subsequently the application u/s 372 of the Act to which reference has been made earlier was filed. The present petitioners claiming to be brothers of the deceased also filed an application for issue of legal heir certificate in their favour before the Tahasildar, Lakhanpur and same was granted. In the proceeding before the learned Civil Judge, petitioners were not impleaded as parties, Prayer for grant of succession certificate was allowed by order dated 18-2-1994 in the aforesaid succession Misc. Case No. 25 of 1993. When the petitioners learnt about grant of such certificate, they filed an application styled as one u/s 383 of the Act with a combined prayer for revocation of the certificate issued and for grant of certificate in their favour. Learned Civil Judge (Senior Division), Sambalpur, who dealt with the application rejected the same on the ground that the application for revocation was not tenable. There was no specific finding regarding the claim of grant of certificate in favour of the petitioners. The order was assailed in appeal before the learned. District Judge, who by the impugned order refused to entertain the appeal with the conclusion that the same was not maintainable as it did not come within the ambit of Section 384 of the Act.

3. Mr. S. K. Mund, learned counsel for petitioners submitted that the learned District Judge proceeded on erroneous premises by merely going by nomenclature of the petition before the learned Civil Judge (Senior-Division), and the substance and, essence of prayers. Though the petition was styled as one u/s 383 of the Act, it contained two prayers, namely, one for revocation, in terms of Section 383 and the other for grant of certificate in terms of Section 372 of the Act. Though in the first paragraph of the order the learned. Civil Judge referred to nature of prayer made, while adjudicating the petition no reference was made to the prayer relating to grant of certificate. Since the petition was a combined one, the appeal in terms of Section 384 is maintainable.

4. According to Mr. A. K. Sahoo, learned counsel for opposite party No. 1, the prayer for grant of certificate was misconceived, and in any event prayer was not maintainable because requisite Court-fee had not been paid. Further it is stated that the application under consideration before the learned Civil Judge (Senior Division) being one u/s 383 of the Act, the appeal has been rightly held to be not maintainable by the learned District Judge.

5. For resolution of the controversy raised, it is necessary to take note of a few relevant provisions, they being Sections 372, 383 and 384 of the Act. They read as follows:

"372. Application for certificate. -

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:--

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death, and if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment u/s 370, or under any other provision of this Act or any of her enactment to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true; that person shall be deemed to have committed an offence u/s 198 of the Indian Penal Code.

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof."

"383. Revocation of certificate.-- A certificate granted under this Part may be revoked for any of the following causes, namely:--

- (a) that the proceedings to obtain the certificate were defective in substance;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
- (c) 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 allegation was made in ignorance or inadvertently;
- (d) that the certificate has become useless and inoperative through circumstances;
- (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."

"384. 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 therefor, to grant it accordingly, in supersession 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."

Appeal u/s 384 inter alia relates to refusal or revocation of a certificate under Part X of the Act. The provision has application where an order refusing to grant a certificate or revoking a certificate is made. The appellate Court has jurisdiction, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted, and direct the trial Court on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted. If there would not have been a combined prayer for grant of certificate and for revocation, and the prayer would have been restricted to only revocation, the conclusions of the learned District Judge about non-maintainability would have been appropriate. It is not in dispute that the petition contained two prayers. It was open to the Court considering it to deal with them and decide about non acceptability of either or both of "the prayeps. But unfortunately no finding was recorded on the prayer for grant of certificate. In a case where the prayer is a combined one, and prayer for grant of certificate has not been considered specifically, the only conclusion possible is that the prayer Has been rejected by application of the principle contained in Section 11, Expln. 5 of the Code of Civil Procedure, 1908. In such a case Section 384 of the Act would be applicable and the appeal would be maintainable. The learned District Judge appears to have gone by the nomenclature of the petition filed before the original Court. It is trite law that substance and not form is material and determinative. Emphasis has to be on the former and not on the latter. This view has been consistently foilowed by several High Courts of the country. See *Mancharam v. Kalidas* ILR (1895) Bom 821 ; *Musammat Sharif-Un-Nissa Vs. Qazi Masoom Ali and Another*, ; and *Mrs. S. Misra @ S. Lazarus Vs. Sm. Mangala Kumari Devi*, . The decisions referred to by the learned District Judge in the impugned judgment related to cases where the prayer was for revocation alone and had not been accepted. Those decisions are not applicable to cases where there is combined prayer for grant of certificate and for revocation. Learned District Judge's conclusion that the appeal was not maintainable is indefensible.

The appeal before the learned District Judge, if otherwise free from defect, shall be entertained and decided on merits. The Civil Revision is allowed, but in the circumstances without any order as to costs.