
(1969) 06 KAR CK 0015
In the Karnataka High Court
Case No : Misc. First Appeal No. 103 of 1965

H.H. Dodda Gangadharaiah	Vs	APPELLANT
V.H. Channabasavaiah and Another		RESPONDENT

Date of Decision : 24-06-1969

Acts Referred:

Succession Act, 1925 — Section 230, 299

Citation : AIR 1970 Kar 139 : AIR 1969 Kar 139 : (1969) 2 MysLJ 261

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : C. Nagaraja Rao, for the Appellant; E.S. Venkataramaiah and B.S. Puttasiddaiah, for the Respondent

Judgement

Somnath Iyer, J.—On June 24, 1960 an application was presented to this Court in Civil Petition No. 282 of 1960 for the grant of a probate of a will stated to have been executed on May 14, 1958 by a certain Chikkachannananjappa. That application stood transmitted to the Court of the District-JudExecutorshipsge of Kolar, and Doddagangadharaiah who is the appellant before us produced a caveat on August 29, 1960. He repudiated the genuineness of the will and opposed the grant of the probate.

2. The application for a probate had been presented by Channabasavaiah who is respondent before us, and he claimed to be the executor under the will.

3. On August 31, 1963 Channabasavaiah made an application to the District Judge u/s 230 of the Succession Act. In that application to which he affixed his signature, he made a statement that he had renounced his executor-ship under the will and sought permission of the Court to withdraw his application for probate.

The relevant part of that application reads:

"2. The respondent who is the petitioner"s elder brother, objects for the grant of Probate to him.

3. The petitioner has now been advised that under law, it is unnecessary to obtain a probate of the said will and further as the petitioner's health has been seriously impaired of late, he has now been advised to refrain from undertaking any serious tasks entailing physical or mental strain (vide medical certificate enclosed).

4. The petitioner therefore renounces his Executorships under the will and seeks permission of this Hon"ble Court to withdraw the petition for Probate." But his application was opposed by Doddagangadharaiah, the caveator. In his statement of objections, he set out the reasons for his opposition.

4. When the matter was posted for a consideration of the question arising out of the renunciation of Channabasavaiah from the executorships, a memo was produced on April 24, 1965 by Channabasavaiah in which he stated that he did not press his application u/s 230 of the Succession Act and that his application under that section might accordingly be dismissed. But this application for withdrawal from the application was again opposed by Doddagangadharaiah. But the District Judge allowed the application for withdrawal, and it is against the order made in that way that this appeal is preferred u/s 299 of the Succession Act.

Section 230 of the Succession Act under which there was a renunciation of his executorships by Channabasavaiah, reads?

"230. Form and effect of renunciation of executorships. -- The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor."

This section makes it clear that when Channabasavaiah made an application on August 31, 1963 under his signature and he stated in that application that he had renounced his executorships, that renunciation became complete and opposition to such renunciation or withdrawal from the probate proceedings, by Doddagangadharaiah had no relevance or materiality. Whether Doddagangadharaiah opposed the renunciation or not, the renunciation became complete and irrevocable when the executor in writing intimated the court under his signature that he had renounced his executorships.

5. So it is clear that he could not subsequently retract from the renunciation which had become effective in that way. It was therefore not possible for the District Judge to permit Channabasavaiah to retract from the renunciation on the ground that Doddagangadharaiah had resisted the renunciation.

6. We do not accede to the argument presented by Mr. Venkataramiah that the District Judge had the power to allow retraction from renunciation. The decision in *Manchersha*, in re AIR 1929 Bom 33, on which he depended in support of his postulate was a case in which the question concerned renunciation from the position of an administrator, which, as Rangnekar, J. pointed out, stood regulated

by the practice and procedure of the Probate Division of the High Court of Justice in England, as provided by the Rules of the High Court of Bombay in its original jurisdiction. But that is not how the renunciation of executorships stands regulated, since Section 230 which is an express statutory provision on that subject excludes the application of either the common law principles to which there was an appeal by Mr. Venkataramiah or the rules analogous to those on which the decision of the High Court of Bombay rested.

7. The decision of the High Court of Calcutta in *In the goods of Meghraj Kothari* AIR 1962 Cal 131, can be of no assistance to Mr. Venkataramiah since Mallick, J. made it very clear in the course of his judgment that he would not decide the question of law which was presented by the case before him since on the facts he came to the conclusion that there was no renunciation in fact by the executors.

8. A correct statement of the law, if we may say so with great respect, was made by the High Court of Lahore in *Gadodia v. Raghubir Dayal* AIR 1931 Lah 746, which reads:

"It is true that in England renunciation may be filed and recorded in the Registry, and that until that is done retraction is possible. There is however no such provision in the Indian law. Section 230 shows that a renunciation once made in the; presence of the Judge, or by a writing signed by the renouncing person, is final and precludes him from ever thereafter applying for probate of the will." (P. 748)

9. We do not find any substance in the submission of Mr. Venkataramiah that the appellant Doddagangadharaiah is not an aggrieved party and that this appeal is therefore not maintainable. When the District Judge made the order under appeal, he overruled the opposition to withdrawal from the application presented by Channabasavaiah u/s 230 of the Succession Act and allowed retraction. So whatever might have been the antecedent stand taken by Doddagangadharaiah, at the stage when the order under appeal was made, he resisted the prayer for retraction, and if he failed in that resistance and an order was made overruling it, the appellant is clearly one who could appeal from the order so made by the District Judge. Moreover, u/s 299 of the Succession Act, every order made by a District Judge under the Act shall be subject to appeal to this Court, and that being so, the objection as to maintainability must fail.

10. So we allow this appeal and set aside the order made by the District Judge.

11. Since the renunciation by the executor in the case before us became complete, we make a direction that the probate proceedings in the Court below shall be closed.

12. Mr. Venkataramaiah asks us for a direction that since the probate proceedings in the Court below stand terminated by our order made in this appeal, there should be a direction to the receivers appointed by this Court in M.F.A. No. 2 of 1962 to hand over possession of the estates to the persons by

whom their possession was delivered to them.

13. The order by which the receivers were appointed was made in M.F.A. No. 2 of 1962, and there should be an order by this Court terminating their appointment, It is clear however that if the receivers appointment is terminated as it should now be terminated, the receivers must hand over possession of the management of the estates in their possession to the persons by whom they were delivered to them. We make an order accordingly subject to a proper accounting to be done by the receivers to this Court before they are discharged in which event alone they could get a discharge from their office. Such possession will be delivered within six weeks from this date. The receivers will by then produce up to date accounts.

14. All outstanding interlocutory applications on which orders have not been so far made do not any longer survive, and so they are dismissed.

15. Appeal allowed.