
(1974) 11 AP CK 0014

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1657 of 1973

In Re: Mandadi Narayanamma and Others

Date of Decision : 18-11-1974

Acts Referred:

Succession Act, 1925 — Section 372
Succession Rules, 1925 — Rule 13A

Citation : AIR 1975 AP 267 : (1975) 1 APLJ 126

Hon'ble Judges : Raghuvir, J

Bench : Single Bench

Advocate : B.S.A. Swamy, Amicus Curiae, assisting the Court, M.B. Rama Sarma, for the Appellant;

Final Decision : Allowed

Judgement

Raghuvir, J.—This is a petition u/s 115, C.P.C. to revise the order dated 25-9-1972 made in C. F. No. 2877/72 on the file of the District Munsif, Kandukur, directing the petitioner to present the Succession Certificate Application u/s 372 of the Indian Succession Act to the proper court.

2. The 1st petitioner is a minor represented by her paternal uncle as next friend and guardian and petitioners 2 and 3 are majors and sisters of the 1st petitioner. The learned District Munsif, relying on Rule 13-A of the rules framed under the Indian Succession Act, held that unless the guardian representing the minor 1st petitioner obtains an order from a competent court under the Guardians and Wards Act, appointing him as a guardian the petition cannot be entertained.

3. Shri M. B. Rama Sarma, the learned counsel for the petitioners, assails the above order as not proper.

4. Rule 13-A has been added in the year 1947, which is as follows:--

"13-A. Where any person applies for the issue of a succession certificate on behalf of a minor, such person shall unless the aggregate amount or value of the debts or securities specified in the application does not exceed five hundred rupees or the court otherwise orders, present an application under Guardians

and Wards Act praying for his appointment as guardian of the property of the minor. Unless the court otherwise orders no succession certificate shall be granted to him unless he has been appointed as such guardian."

According to this rule, in all cases where a succession certificate is sought for on behalf of a minor, unless the court otherwise orders, the guardian has to present an application under the Guardians and Wards Act, seeking for the appointment of a guardian and then the succession certificate could be issued.

5. The learned District Munsif, placing reliance upon the decision in *In Re Narayan Khanderao*, AIR 1933 Bom 436, held it is mandatory that in all cases where the succession certificate is sought for on behalf of a minor the guardian must first go before the appropriate Court for his appointment as guardian and then, subsequently seek for the certificate. On a closer reading of this judgment, it would be clear that the Bombay High Court in the judgment did not hold that a minor cannot be given a succession certificate without his guardian obtaining an appointment order under the Guardians and Wards Act. By reading the following sentences it does not appear to have been so held :

"In that case the Court held that a succession certificate can be granted to the guardian of a minor who had been appointed as such under the Guardians and Wards Act; but the case did not decide that a certificate could not be granted in the absence of such an appointment."" Later on, they posed the question :

"The question then remains whether a certificate in that form should be granted to a guardian who has not been appointed under the Act."

In answering this question, they relied upon the practice of the Bombay High Court and the judgment in *Gulabchand v. Moti* ILR(1900) 25 Bom 523 :(8 Bom LR 795) and directed the guardian to be appointed under the Guardians and Wards Act before a certificate is granted to her. Therefore, it is not an authority for the proposition that in the absence of an appointment order under the Guardians and Wards Act no succession certificate could be granted to an applicant u/s 372 of the Indian Succession Act.

6. I have also been referred to a judgment of the Madras High Court in *Krishnam Charlu v. Venkammah* (1912) ILR 36 Mad 214 by a reading of which it is possible to state that even in the absence of an appointment order under the Guardians and Wards Act, the minor represented by the next friend-guardian, could be granted a Succession Certificate.

7. In this case, the paternal uncle filed affidavit before the Court stating that he is prepared to give immovable security to the extent of the share of the minor, and I am satisfied that if the share of the minor's interest is thus safe-guarded by the security tendered by the guardian under Rule 13-A, an order dispensing with the appointment as guardian under the Guardians and Wards Act should have been passed,

8. In the result, the order of the District Munsif is set aside. The Civil Revision

Petition is allowed. There shall, however, be no order as to costs. The lower Court is directed to register the petition u/s 372 of the Indian Succession Act. This is a matter of the year 1972. The learned District Munsif would dispose of this matter expeditiously.