

(1949) 01 CAL CK 0033
In the Calcutta High Court
Case No : O.O.C.J. Appln

In the goods of Gagan Chandra Das

Date of Decision : 12-01-1949

Acts Referred:

Succession Act, 1925 — Section 372, 373, 383

Citation : AIR 1950 Cal 578 : (1950) 2 ILR (Cal) 112

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : K.P. Khaitan, Amicus Curie, T.K. Ghose, for the Appellant;

Judgement

Banerjee, J.—I regret I cannot accede to the prayer of the petitioner. I know what the refusal means. The applicant will have to make an application for a fresh certificate of succession Even though it is to collect the debt foe which a certificate had already been taken and the duty paid, the duty prescribed by the Court-fees Act must be again paid: In Re: Saroje Baehini 20 C. W. N. 1125 : (A. I. R. 1917 Cal. 380). This means further depletion of a loan fund. The debt for which the certificate was taken is a small one

2. I wish I could grant the prayer. If the point involved were a technical one, I would have ignored it, and granted the prayer.

3. But, in my view, the point is not a technical one at all. It is one of substance. It touches the jurisdiction of the Court.

4. The fact may be said in two or three sentences. The certificate was granted to several persons jointly. One of them has died. The survivors ask that the name of the deceased be deleted in the certificate, so that they may act on it. Counsel calls it a "partial revocation" of the certificate.

4a. Has the Court jurisdiction to do what is asked for ? In order to do that, the Court must amend the order on which the certificate was issued. The order has been drawn up and completed. Can the Court amend the order now ? Section 152, Civil P. C. gives power to Court to amend judgment, decrees or orders only in specific cases. If the decree or order sought to be amended does not come

within Section 152, the Court can correct the errors only under the review section; or under the inherent power of the Court to amend or vary its own decree or order so as to carry out its own meaning. But the amendment asked for is not within the rules mentioned above. It follows therefore that I cannot amend the order. How can I then amend the certificate ?

5. I felt great doubt in the matter when the application was first moved. I asked counsel under what section he was making the application and whether he had any authority for it. Counsel on that day asked for time to consider the matter. I gave him time. Next day he referred me to a judgment reported in *Musammat Sharif-Un-Nissa Vs. Qazi Masoom Ali and Another*, ; counsel relies on a passage at p. 352. The passage is:

"We are of opinion that it a ... certificate has once been granted in respect of the entice debt, and it becomes apparent to the Court that circumstances have subsequently changed so as to bring into operation Clause (d) or (e), or both, of Section 18 of Act VII [7] of 1889, it is open to the Court to pass orders having the effect of a partial revocation of the succession certificate once granted, or to modify the terms of that grant in such manner as the interest of justice may seem to require."

6. Section 18 of Act VII [7] of 1889 has been replaced by Section 383 of the Act of 1925. There is no difference in the wording of the two sections. On the authority of that case, it was contended on behalf of the applicant that Section 383(d) authorised the Court to grant the prayer. I was not satisfied. So, I requested the learned standing counsel to appear as *amicus curies* and argue the case. He was good enough to do so. He placed the opposite view in an argument brief and lucid. I am grateful for the assistance.

7. The Standing Counsel referred me to a passage in *Tristraw and Coot's Probate Practice*, Edn. 19, p. 327. The passage is this:

"Alteration in a grant has been allowed where the error was in the surname, Christian name, address, status, date of death or place of death of the deceased."

That passage indicates what errors the Court can amend in a succession certificate. I do not suggest that the English practice must be followed in preference to our rule or practice (if any).

8. First as to our rules. The relevant rule is Rule 21 Chap. XXXV of the Original Side Rules. That rule provides for amendment of a certificate, so as to extend its effect throughout British India. That rule does not meet the point in hand.

9. Turning to the sections of the Succession Act, the material sections are Sections 370 to 390, Part 10 of the Act. These sections replace the Succession Certificate Act (Act VII [7] of 1889). There has been no material change in the phraseology of the sections, relating to the matter and consideration.

10. The Act of 1925 is a consolidating Act. It does not profess to amend or alter

the provisions of the Act consolidated. Prima, facie therefore, the same effect ought to be given to its provisions as was given to those of the Act for which it was substituted *Mitchell v. Simpson* (1890) 25 Q. B. D. 183: (59 L. J. Q. B. 355), I make this observation, as I shall refer to certain decisions on the Act of 1889.

11. I now proceed to examine the relevant sections. Section 370 places restriction on grant of certificates. Section 371 defines which Court has jurisdiction to grant certificates. Section 372 prescribes what particulars are to be given in the application for a certificate. Section 373 lays down the procedure on the application. Section 374 provides for the content of a certificate. It reads:

"Where the District Judge grants a certificate, he shall therein specify the debt and securities set forth in the application for the certificate, and may thereby empower the person, to whom the certificate is granted,"

to do the things specified in that section. Section 376 makes provision for extension of a certificate to any debt or security, not originally specified therein. Section 377 speaks of forms of the certificate and the extended certificate. The forms are rather important. I take a specimen form. It is addressed to the person to whom the certificate is granted.

"To A. B.

Whereas this certificate is accordingly granted to you and ... empowers you to collect those debts (debts specified in the application)."

12. I have underlined (here italicised) the word "you" to emphasise that the grant is made to named person or persons and he is or they are the only person or persons who is or are empowered by the Court to collect the debt, etc.

13. Section 378 empowers the Court to amend a certificate. That section is:

"Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Judge may, on application made by petition and on oath shown to his satisfaction amend the certificate by conferring any of the powers mentioned in Section 374 or by substituting any one for any other of those powers."

14. The most important section for our purpose is Section 383. That section deals with revocation of certificate. That section is:

"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 debt or securities specified in the certificate renders it proper that the certificate should be revoked."

15. I have said in an earlier part of the judgment that counsel relies on Sub-section (d). Section 383 provides for revocation of a certificate. It does not make any provision for what counsel calls a partial revocation. It is clear that Sub-sections (a), (b), (c) and (e) provide for revocation of the certificate in its entirety, e. g., if a certificate is obtained by fraud or misrepresentation, etc. These sub-clauses strike at the root. Having regard to its setting, I do not think Sub-section (d) permits revocation of a different nature.

16. It will be observed that Section 383 authorises revocation of "a certificate granted (d) that the certificate becomes useless and inoperative through circumstances." I have underlined (here italicised) the words "a" and "the". The revocation is to be of the certificate which was granted. It is not a partial revocation. The whole certificate may be revoked if at all but not partially. Section 383 does not permit "partial revocation".

17. The words of Sub-section (d) have been judicially interpreted. I shall consider only three important decisions. They are decisions on the old Act, but the Act of 1925 being a consolidating Act, as I have said before, these decisions are applicable to the 1925 Act.

18. Construing the words "becomes useless and inoperative," it was held that the words imply the discovery of something which, if known at the date of the grant, would have been a good ground of refusing it. *Bal Gangadhar Tilak v. Sakwarbai* 26 Bom. 792 (4 Bom. L. R. 637), *Gour Chandra v. Sarat Sundari* 40 Cal. 50 ; (15 I. C. 44). This Calcutta case follows the Bombay case, a judgment of Sir Lawrence Jenkins, C. J. These decisions say that the discovery must be of something which existed at the time of the grant but was not known then e. g. the discovery of a later will or codicil; or discovery that the will was forged, or that the alleged testator is still living.

19. *Gour Chandra v. Sarat Sundari* 40 Cal. 50 : (15 I. C. 44) is a decision on Explan. (4) to Section 50, Probate and Administration Act (Act V [5] of 1881) which is reproduced in Section 263(d), Succession Act, 1935. Clauses (a), (b), (c) and (d) of Sections 263 and 383 respectively are identical. Therefore, *Gour Chandra v. Sarat Sundari* 40 Cal. 50 : (15 I. C. 44) is an authority for the construction of Section 383 (d) of the Act of 1925.

20. These decisions, however, have not been followed in *Surendra v. Amrita* 47

Cal. 115 : (A. I. R. 1920 Cal. 584). That is a judgment of a Bench presided over by Sir Ashutosh Mukherjee and Walmsley JJ. After a review of a large number of cases including the Bombay, the Calcutta and the Allahabad cases, I have cited above, their Lordships observed at p. 123 :

"We must consequently take it as settled law that the circumstances which make the grant useless and inoperative and thus "justify revocation may have come into existence after the original grant was made." According to Surendra v. Amrita 47 Cal. 115 : (A.I.R. 1920 Cal. 584) an event which happens subsequent to the grant may affect the original grant itself.

21. That then being the principle, the question is whether the death of one of the donees is an event which comes within Sub-section (d) of Section 383.

22. In cases of probate or letters of administration, there are specific sections making provision for the death of one of the granters where the grant is made to several persons jointly. But, there is no such provision in the sections relating to the grant of a succession certificate. There being no express provision, can such a provision be implied ?

23. The donees of a certificate of succession have no estate in them. They are authorised only to collect the debt and to do nothing more. There cannot be any question of survivorship, as in the case of executors or administrators, (see Sections 311 and 312, Succession Act).

24. Take an illustration : if A, B, C, are collectively given the power to collect a debt and give discharge, it is only reasonable to think that no two of them, or no one of them can give the proper discharge. That is common sense. The reason of the thing is this : that the Court has not given to the two or to the one, the power.

25. It follows, therefore, that on the death of one of the grantees of a succession certificates the other two cannot give proper discharge. There must necessarily have to be a fresh certificate to empower the survivors to collect the debts and give the discharge.

26. I may refer to an observation in the case of Sukumar Deb Roy and Another Vs. Parbati Bala and Others, :

"Where a certificate granted to two or more persons has become inoperative on account of the death of one of the grantees the existing certificate should be revoked before any fresh certificate is granted."

The point under consideration did not specifically arise in that case, but the observation I have quoted above is of B.K. Mukherji J. which is entitled to great respect. I respectfully agree with it. That is the law.

27. The only thing that now remains for me is to consider the Allahabad judgment on which counsel for the applicant's so much relied. If the facts are analysed, it will be seen that the judgment does not support counsel's

contention. The facts of the case are these : A Muhammadan lady died leaving as her heirs her husband (h), a daughter (D) and a brother (B). The shares inherited by them were, respectively, one fourth, one-half, and one-fourth. A sum of Rs. 25,000 was alleged to have been due to the lady on account of her dower. After her death, B applied for a succession certificate in respect of the dower. D was a minor, and was made a party to the proceedings for the certificate and the notice issued to her was accepted by H, her father. No objection was raised on the score of H's interest in the matter being adverse to that of D. A certificate was granted to B for the entire amount. On the strength of that certificate B brought a suit against H for the recovery of his own share only of the dower debt, and got a decree accordingly. D then applied for either the revocation of the certificate which was granted to B and the granting of a certificate to D for her share of the debt, or, in the alternative, for the addition of her name to that of B in the certificate which had been granted to B. The trial Court was of opinion that there was no ground on which the certificate granted to B could be revoked and that the said certificate being extant, no further certificate could be granted. It was also of opinion that there was no provision of law by which the name of D could be inserted in the original certificate. It, therefore, dismissed the application of D.

28. From this order there was an appeal to the High Court. The learned Judges remarked at p. 381:

"We think that the Court below could have revoked the certificate granted to Hussain Ali, or at least have revoked the same in part, on more than one ground. In the first place the proceedings which took place when Hussain Ali obtained his certificate were seriously defective in substance within the meaning of Clause (a) of Section 18 of Act VII [7] of 1889. Mt. Sherif un Nissa was at the time a minor, and her father, whose interest in this matter was obviously opposed to hers, he being the debtor whose liability it was sought to enforce by means of the application, was allowed to accept service of notice on her behalf."

It will be observed that the original proceeding was defective in substance because there was no proper notice to a person who was vitally interested in the grant.

29. The last portion of that judgment is instructive:

"We revoke the certificate granted in favour of Hussain Ali to the extent of half of the sum specified in the said certificate, namely, to the extent of Rs. 12,500 and we direct that a certificate for the realisation of this amount, as a debt alleged to be due from Hussain Ali to Mt. Keifayat Fatima, be granted in favour of the appellant Mt. Sharif-un-Nissa. (D)."

What happened in that case, is this : B had already obtained his decree for his share of the debt. Further certificate to him or to anybody else on his behalf was unnecessary. The debtor (the husband of the lady who died) was a creditor to the extent of a fourth share. Therefore, there was merger of the two interests.

The only outstanding debt was the debt for Rs. 12,500 to D. What did the learned Judges do? They granted a new certificate to D to enable her to realise her Rs. 12,500. It was really a new grant and I consider on the fact of the case that the old grant was revoked. But if this case means that under the Succession Act there can be a partial revocation by the death of one of the donees, I respectfully differ the judgment.

30. As I said, the debt is a small one. If the particulars of Section 372 were in the petition, I would have on this application ordered a new certificate to issue in favour of the applicant. But the particulars are not there.

31. I cannot allow an amendment of the petition. There is no doubt that, where the defect is a minor one, for example, in the name of the person whose estate is in question, and the petitioner takes up the correct position by putting in another petition, an order may be made--small error like this may be corrected--Sukumar Deb Roy and Another Vs. Parbati Bala and Others, .

32. In this case, the defect is not of that nature, I do not think, I can allow amendment of the petition.

33. I must, therefore, dismiss the application.