

(2011) 08 JH CK 0119

In the Jharkhand High Court

Case No : Appeal From the Original Decree No. 68 of 1996 (R)

Junas Amrit Theophil Turkey

APPELLANT

Vs

Anandini Tigga and Others

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Constitution of India, 1950 — Article 244(1)

General Clauses Act, 1897 — Section 6

Succession Act, 1925 — Section 10, 100, 101, 102, 103

Citation : AIR 2012 Jhar 9 : (2012) 1 JCR 54

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This appeal u/s 299 of Indian Succession Act 1925 is directed against the judgment dated 01.10.1992 passed in Probate Case No. 52 of 1991 by Judicial Commissioner, Ranchi whereby he granted probate in favour of original Respondent No.

2. It appears that original Respondent No. 1 filed an application for grant of probate with reference to a will dated 3.9.1990 executed by Roseline Tigga (wife of Appellant). It is stated that Roseline Tigga was the daughter of original Respondent No. 1 and was married to Appellant. It is further stated that Roseline Tigga died on 16.12.1990 in suspicious condition at Tara Nurshing Home, Saraidhela, Dhanbad. It is then stated that the said Roseline Tigga executed her last will on 3.9.1990 in favour of her father in respect of her all movable and immovable property it is further stated that said will was executed by her in presence of witnesses Sukhdeo Oraon, Ash Kumar Singh and Anandani Tigga. It is further stated that original Respondent No. 1 is the executor of the will, hence he is entitled for probate. It is further stated that Appellant filed an application for grant of succession certificate in respect of properties, debt and securities left behind by Roseline Tigga vide succession case No. 30/1991 suppressing material

facts. It is further stated that he succeeded in getting the succession certificate. However, original Respondent No. 1 filed a miscellaneous case vide miscellaneous case No. 44 of 1991 and the same was disposed of in his favour and the succession certificate granted, was set aside.

3. On the other hand, Appellant (O.P. No. 1) contested the probate case and contended that the application is not maintainable. It is stated that the parties are Oraon, a scheduled tribe and governed by their customary law. It is further submitted that as per the Notification No. 550 dated 2.5.1913 issued by Home Department, Government of India, tribes, namely, Mundas, Oraons, Santhals, Ho's, Bhumijis etc dwelling in the province of Bihar and Orissa will be governed by their customary rules of succession and inheritance and the provision of Indian Succession Act not applicable in their cases. It is stated that in view of the aforesaid legal position, present probate application is not maintainable. It is further stated that signature of Roseline Tigga on the will in question is not genuine. It is also stated that she has not put her signature on the said will in presence of witnesses as claimed by original Respondent No. 1. It is stated that Roseline Tigga was suffering from mental depression for which she was under the treatment of Dr. S. Kumar from 18.12.1989 to 22.10.1990. Accordingly, it is stated that she has not executed the will out of her full consciousness. Accordingly, it is prayed that probate case be dismissed.

4. It appears that in the learned court below, parties adduced their evidences in support of their cases, both oral and documentary. It appears that the learned court below after disbelieving the case of Appellant, allowed the probate case and granted probate in favour of original Respondent No. 1 by the impugned judgment, against that present appeal filed.

5. It is submitted by Sri Shekhar Prasad Sinha, Learned Counsel appearing for the Appellant that as per the Notification No. 550 dated 3.5.1913, the Governor General in Council is pleased to exempt all Mundas, Oraons, Santhals, Hos, Bhumijis, Khariyas, Ghasis, Gonds, Kandhs, Korwas, Kurmis, Male saurias and Pans dwelling in the province of Bihar and Orissa from the operation of the provisions of the Indian Succession Act. Thus, the probate case filed u/s 276 of the Indian Succession Act is not maintainable because Roseline Tigga was Oraon a scheduled tribe.

6. On the other hand, Sri A.K. Sahani, Learned Counsel appearing for the Respondents submits that Notification No. 550 dated 3.5.1913 was issued under the Indian Succession Act, 1865. It is submitted that said act repealed by Indian Succession Act 1925, thus, said Notification lost its force. Accordingly, it is submitted that the probate case is maintainable. It is also submitted that the district of Ranchi comes under the Scheduled Area Regulation Act. It is submitted that as per Article 244(1) of the Constitution of India, the provisions enumerated in 5th Schedule of the Constitution of India, will apply. It is submitted that for application and/or non application of any provision of law in scheduled area, an order of Governor is required. It is submitted that there is no Notification issued

by the Governor of the State declaring that the Indian Succession Act will not apply in the district of Ranchi. Under the said circumstance, the Indian Succession Act, 1925 is applicable. Accordingly, it is submitted that probate case is maintainable.

7. Having heard the submission, I have gone through the record of the case. From perusal of impugned order, I find that the learned court below after discussing the contention of counsel for the parties on the issue of maintainability at paragraph 18 had stated:

I am not inclined to hold that the probate case is not maintainable, keeping in view, the notification No. 550 dated 2.5.1913, issued by the Home Department, Government of India. I am inclined to hold that the probate case is maintainable. The prayer of the Petitioner for grant of probate with reference to the will in question will be allowed if it is held that the will in question is a genuine document. I will discuss the genuineness of the will in the later paragraphs.

Learned court below had not given any reason as to why the notification No. 550 dated 3.5.1913 is not applicable in this case.

8. It appears that aforesaid finding of learned appellate court is on the teeth of a judgment of Patna High Court, Ranchi Bench delivered in *Jusia Tirkey v. Joseph Ekka* reported in 1990 (2) PLJR 649 wherein it has been held that probate case filed by a scheduled tribe exempted from the operation of the said Act by Notification No. 550 dated 3.5.1913, is not maintainable and the learned court below have no jurisdiction to grant probate in respect to any will executed by Oraon. In the said decision the Hon"ble Patna High Court, Ranchi Bench rejected the contention that Notification dated 3.5.1913 had lost its force after coming into force of Indian Succession Act, 1925 by holding that Section (6) of General Clauses Act saved aforesaid Notification, therefore, the aforesaid Notification shall be deemed to remain operative despite the repeal of Indian Succession Act, 1865.

9. In this connection, it is also worth mentioning that even after coming into force of Indian Succession Act, 1925, another Notification bearing Notification No. 2563-J dated 8.12.1931 issued, which published in the Bihar and Orissa Gazette dated 16.12.1931 wherein also Oraons and other tribes dwelling in the province of Bihar and Orissa are exempted from the provisions of Section 5 to 49, 58 to 191, 212, 213 and 215 to 369 of Indian Succession Act. Thus, on the date of impugned judgment there exist a notification under the Indian Succession Act 1925 exempting Oraons tribes from the operation of Indian Succession Act, 1925 and it was also declared that they will be governed by their customary rules of succession and inheritance. Thus, in view of subsequent notification, the learned court below has no jurisdiction to grant probate with respect to a will executed by Oraon tribes.

10. Next contention raised by Sri A.K. Sahani that no notification issued by the Governor under Fifth schedule of the Constitution of India directing that Indian

Succession Act, 1925 will not apply in the district of Ranchi, appears to be misconceived. Provision contained under Clause 5(1) of 5th Schedule of the Constitution of India reads as under:

5. Law applicable to Scheduled Areas.-(1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Areas or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

From the plain reading of aforesaid provision, it is clear that the Governor of the State may by public notification direct that any Act, which is already in operation in schedule area, will not apply or any Act, which was not applicable in the schedule area, shall apply from the date of notification. Thus, if certain provisions of an Act have no application in any scheduled area prior to commencement of Constitution of India then same will not apply even after commencement of Constitution of India unless a notification issued by Governor directing that the said Act will henceforth apply in the scheduled area. In the instant case, as noticed above, Oraons and Ors. tribes are exempted from the certain provisions of Indian Succession Act, 1925 by notification issued u/s 3 of the Indian Succession Act, thus unless another notification issued by the Governor under Clause 5(1) of 5th Schedule of the Constitution of India, or u/s 3 of Indian Succession Act, 1925, the same will not apply in the scheduled area i.e. in the district of Ranchi. Nothing has been brought on record to show that Governor of unified Bihar and/or Governor of Jharkhand issued any notification under Clause 5(1) of 5th schedule of Constitution of India or u/s 3 of Indian Succession Act, 1925 directing that the provisions of Indian Succession Act 1925 henceforth apply to Oraon and other tribes of the district of Ranchi. Thus, I hold that Oraons and other tribes mentioned in notification No. 550 dated 3.5.1913 read with notification No. 2563-J dated 8.12.1931 are exempted from the Indian Succession Act. Thus, Section 276 and 299 of Indian Succession Act, 1925 have no application in the case of Oraon. Accordingly, this probate case is not maintainable.

11. Since, I come to the conclusion that the probate case filed by original Respondent No. 1, is not maintainable, therefore, I am not discussing other issues involved in this case, because same have no bearing on the result of the case.

12. In view of the discussions made above, this appeal is allowed. The impugned judgment is set aside. However, parties shall bear their own cost.