
(2002) 03 OHC CK 0044

In the Orissa High Court

Case No : Original Jurn. Case No. 16245 of 1998

Kinkar Santananda Sanyasi

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Banking Regulation Act, 1949 — Section 45Z
Contract Act, 1872 — Section 126
Transfer of Property Act, 1882 — Section 122

Citation : AIR 2002 Ori 114 : (2003) 113 CompCas 449 : (2002) OLR 586 Supp

Hon'ble Judges : M. Papanna, J;B. Panigrahi, J

Bench : Division Bench

Advocate : S.K. Sarangi, B.D. Tikayat, K. Dash and S.K. Sarangi, for the Appellant; P.V. Ramdas and P.V. Balakrishna Rao, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—The petitioner has filed this case for issuing a writ of mandamus to the opp. parties 1 & 2 as to why the amount lying in deposit to the tune of Rs. 1,00,000/- shall not be given to him.

2. The facts leading to the writ petition are as follows :

One Charubala Das, the deceased-mother of the opp. Party No. 3 had maintained a term deposit account with the opp. party No. 1. It is alleged that she renounced the world and wanted to donate the aforesaid money to the math after her death. Accordingly the testatrix had executed a Will in favour of Shri Bithal Ramanuj disciple of Shri Sitaram Das Onkar Nath.

3. The aforesaid amounts were kept in deposit in joint names, i.e. the name of the petitioner and late Charubala Das in savings Bank account bearing No. 83/3851 SBD and in term deposit bearing receipt No. TD/A/3 132328 for a sum of Rs. 56,552/-vide Annexure-1 series. It is further alleged that the opp. party No. 3, the only son of the deceased Charubala Das driven her out of the house,

as a reason whereof she took shelter in the petitioners' institution and became a disciple of Guru Sitaram Das Onkar Nath. Out of love devotion and also for public good, she decided to donate the entire savings to the Ashram. Accordingly, she executed her last Will in favour of the petitioner. Charubala Das died on 30-12-1993. After her demise, the petitioner who is the chela of Guru Sitaram Das Onkar Nath approached to the opp. party No. 1 for encashment of the deposits. Although the petitioner made several requests to opp. party No. 1, but when all such requests did not evoked any response, therefore, the petitioner had filed a claim before the District Redressal Consumers' Forum. But the claim was however rejected by the consumer Redressal Forum, as a reason whereof, he filed this present case. The opp. party No. 1 has filed counter. In the counter, it is although admitted that late Charuhala Das had kept a deposit of Rs. 1,00,000/-, but it is denied that she had executed a Will in favour of the petitioner. The amount lying in deposit could not be disbursed to the petitioner inasmuch as there was a rival claim filed by one Gopal Chandra Das, son of late Charubala Das. The petitioner was asked to get the succession certificate. But he could not produce the same, on the contrary, when opp. party No. 3 produced the succession certificate, the Bank had no other option, but to release the amount in his favour. Accordingly the payment was made on 30th June, 1998. After such payment, the opp. party Nos. 1 and 2 could not do anything further nor they are necessary parties in this case.

4. In the event, the petitioner has a claim over the amount, he can work out his remedy available under Common Law. But no direction can be issued by this court in exercise of writ jurisdiction for releasing the money to the petitioner as it has already been paid to the opp. party No. 3. Opp. Party No. 3 had filed the succession certificate after having been obtained from Alipore district delegatee.

5. Mr. Sarangi, learned counsel appearing for the petitioner has strongly contended that the action of the opp. party No. 1 should be held as unilateral, whimsical and illogical in view of the fact that the late disciple Charubala Das kept, the amount in the joint name of the petitioner and herself with pro- vision of "Either or survivor". In the event of death of Charubala Das, the amount ought to have been paid to the petitioner, particularly when the testatrix Charubala had authorised the petitioner to receive all the amount kept by her during her life time. The opp. party No. 3 although received the copy of the summons, did not choose to contest the case.

6. Mr. Ramdas, learned advocate appearing for the opp. parties 1 to 3 while refuting the petitioner's contention has however argued that in this case when a deposit is made in joint name with the provisions of "either or survivor". In such event the amount shall be disbursed to any person whosoever shall obtain the succession certificate. It does not however mean that on the death of one of the depositors, the amount shall be disbursed to the other. It has been further submitted that even assuming that there was a will though not admitted to have been executed by Charubala Das, it has not been probated. Therefore, in the

aforesaid situation, the Bank had to rely upon the succession certificate obtained by opp. party No. 3. Although Charubala died sometime in 1993, till filing of this case in this Court the petitioner deliberately did not take any steps to obtain the succession certificate from which it appears that the Will might not be genuine as a result of which the petitioner failed to approach the Civil Court.

7. In this case, reliance was placed on a decision reported in *Krushanadas Nagindas Bhate Vs. Bhagwandas Ranchhoddas and Others*, where it has been held as follows : (Para 27)

" The learned Advocate-General submits that in the present case there was no question of any presumption of advancement as the relation between Dwarkabai and defendant No. 3 was one of natural love and affection between her and her brother's son. He contended that in view of the evidence of defendant No. 3 and the declaration made by Dwarkabai in her letter (Ext. 26/3) it must be held that although the account was a joint account and the amount was payable either to Dwarkabai or to defendant No. 3 or survivor, Dwarkabai intended to complete her gift to defendant No. 3 of the amount in the joint account. He submitted that Dwarkabai had admittedly strained relations with the plaintiff and the members of the family of the plaintiff as she had to fight a litigation upto this Court to get the amount for her maintenance and therefore, having recovered the amount, she could never have intended that the amount should go to anyone other than her brother's son who was living with her and for whom she had great love and affection."

On a careful reading of the judgment it appears that the facts stated in the above case is some how akin to the present case as well as the principle decided therein. Merely because the deposit was made in joint name of Charubala Das and the petitioner either or survivor there could be no presumption that amount will be released in favour of depositor only. In the aforesaid circumstances, the natural legal heirs could not be deprived of getting the benefits accrued from the deposit.

8. Mr. Ramdas placed reliance on the judgment reported in *Indranarayan Vs. Roop Narayan and Another*, In this case the Hon'ble Supreme Court held as follows (Para 21) :

"The transfer with which we are concerned in this case cannot be gift because Dr. Pandit continued to be the owner of the amounts in question till his death. There is no presumption of advancement in this country but yet if there had been satisfactory evidence to show that the transfers in question are genuine and further that Dr. Pandit intended that the amounts in question should go to the 1st defendant exclusively after his death, we would have held that the advancement put forward had been satisfactorily proved and the presumption rebutted."

It remains no more in doubt that a person holding a succession certificate and receives the deposited amount, and keeps the money with him as a trustee on behalf of the persons who have a claim in the said amount.

9. In the case First National Bank Ltd. (In Liqn.) Vs. Shri Devi Dayal, it has been held as follows : (Para 2)

"The parties agreed that no oral evidence was to be led. The records of the succession certificate case were in the Court and it was agreed that arguments shall be addressed on the basis of the material on that file. From the perusal of the application made in the Court at Delhi for obtaining the succession certificate, it is clear that besides Surlnder Kumar Marwah applicant the only other near relations mentioned in paragraph 3 were Devi Dayal father and three sisters of the deceased. It is, however, clear that according to the Schedule to the Hindu Succession Act, after the relations mentioned in Class 1, of which none exists, in Class II father is the most preferential heir and brothers and sisters come next. It is therefore, clear that Devi Dayas was the next heir of the deceased Suresh Kumar Marwah and any amount which was payable to Suresh Kumar Marwah became payable to Devi Dayal as his successor. Now a succession certificate is not a final adjudication of the question as to who is the next heir and as such entitled to the estate of the deceased. Bakshi Tek Chand J., in Mt. Charjo v. Dina Nath. AIR 1937 Lah 196 (2) at p. 198 observed as follows :

.....That the legislature has laid down that the enquiry in such proceedings is to be summary, and the Court, without determining questions of law or fact, which seem to it to be too intricate and difficult for determination, should grant the certificate to the person who appears to have prima facie the best title thereto. In such cases the Court has not to determine definitely and finally as to who has the best right to the estate. All that it is required to do is to hold a summary enquiry into the right to the certificate, with a view, on the one hand, to facilitate the collection of debts.....and, on the other hand, to afford protection to the debtors by appointing a representative of the deceased and authorising him to give a valid discharge for the debt. The grant of a certificate to a person does not give him an absolute right to the debt nor does it bar a regular suit for adjustment of the claim of the heirs interse....

Thus, it is obvious that the grant of succession certificate merely clothes the holder of the succession certificate with an authority to realise the debts of the deceased and to give valid discharge. He has however, to dispose of the amount so relied in accordance with the rights of the persons who are entitled to it. The succession certificate therefore, in no way prevents the liquidator to come to this Court to say that his debt may be got realised by obtaining the payment from the Secretary Company Law Board of the amount which in fact, belongs to its judgment debtor Devi Dayal notwithstanding the fact that the succession certificate for realising the same has been granted to some other person. The aforesaid succession certificate will, therefore, obviously be inoperative and will not stand in the way of this Court to seize the amount and utilise it in satisfaction of the amount due to the bank."

On a bare reading of the judgment it appears that grant of succession certificate is not final adjudication of inter se rights between the parties and it shall abide

by the decision from a competent Court, in" case either party approaches.

10. A deposit by a person of his money in the Bank in the joint names of himself and another person and the terms that it is payable to either or survivor does not on ones" death constitute a gift by him. There is a resulting trust in his favour in the absence of proof of a contrary intention, there being no presumption of intended advancement in favour of another person. Therefore, on his death, the amount in deposit is payable to his heirs as absolute property.

11. Charubala Das was enjoying the benefit herself from deposit till her death. Even assuming the Will, she executed in favour of the petitioner, and although Charubala died sometimes in 1993, till date no steps has been taken by the petitioner to get the same probated nor any attempt was made to obtain the succession certificate claimed in this case.

12. We therefore, in the aforesaid circumstances, are unable to hold that the bank has committed any illegal in releasing the fund to the opp. party No. 3. It is however open to the petitioner for approaching common law forum, but no writ can be issued against the opposite party No. 1 for paying the amount, which was said to have been deposited by late Charuabala to the petitioner.

Accordingly the writ petition does not merit any consideration and the same is dismissed without cost.

M. Papanna, J.

13. I agree.