

(2007) 04 AP CK 0069
In the Andhra Pradesh High Court
Case No : CMA No. 1442 of 2004

Kummuru Appala Swamy @ Sanjeeva Rao	APPELLANT
Vs	
P.V. Prasada Rao and Others	RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Evidence Act, 1872 — Section 32
Hindu Succession Act, 1956 — Section 15
Succession Act, 1925 — Section 384

Citation : (2007) 5 ALD 251 : (2007) 6 ALT 233

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Mamidi Rama Rao, for the Appellant; M. Bhaskara Lakshmi, for Respondent No. 1, Tushin Kumar and Dhananjaya, for the Respondent

Judgement

P.S. Narayana, J.—The appellant herein Kommuru Appala Swamy @ Sanjeeva Rao aggrieved by the Decree and Order made in S.O.P. No. 223/1996 on the file of Additional District Judge, Vizianagaram, dated 21-1-2002 had preferred the present civil miscellaneous appeal u/s 384 of the Indian Succession Act, 1925 (hereinafter in short referred to as "Act" for the purpose of convenience).

2. The appellant herein as petitioner filed the said S.O.P. No. 223/1996 on the file of Additional District Judge, Vizianagaram praying for Succession Certificate in his favour for the amounts specified in the schedule and for costs of the petition. The first respondent herein who was shown as respondent in the said S.O.P. No. 223/1996 resisted the matter by filing counter. The learned Judge recorded the evidence of P.Ws. 1 to 3 and R.W.I and also marked Exs. A.1 to Ex. A.9 and ultimately came to the conclusion that the appellant-petitioner is not entitled for the relief of Succession Certificate and dismissed the said S.O.P. Hence, the present civil miscellaneous appeal was preferred.

3. In view of the findings recorded by the learned Additional District Judge, Vizianagaram, C.M.P. No. 384/2007 was filed to implead the sister of the

appellant Smt. D. Papayamma and this Court by order dated 20-3-2007 ordered the said application and in view of the same, the said D. Papayamma was impleaded as 2nd respondent. Likewise, inasmuch as it was brought to the notice of this Court that another A Uma Devi filed C.M.P. No. 1169/2005 to implead herself as a party, this Court ordered the said application today bringing her on record as the 3rd respondent. Here itself it may be stated that an objection was raised to this implead application C.M.P. No. 1169/2005 on the ground that even in the light of the provisions of the Hindu Succession Act 1956 and the schedule thereunder, she would not be a heir at all. However, this application had been ordered subject to the further findings which may be recorded in this regard as specified infra.

4. Contentions of Sri Mamidi Rama Rao :--Sri Mamidi Rama Rao, the learned Counsel representing appellant had taken this Court through the evidence of P.Ws. 1 to 3 and RW. 1 and also Ex. A.1 to Ex. A.9 and would maintain that even in the light of the findings which had been recorded by the learned Judge inasmuch as the present appellant and the 2nd respondent Papayamma who is the sister, alone will be the heirs of the husband of Annapurnamma. In view of the fact that the said Papayamma was not made a party, she is also brought on record as 2nd respondent in the present C.M.A. and automatically in the light of the no objection reported by the said Papayamma, either Succession Certificate to be granted in favour of the appellant or in the alternative in favour of both the appellant and 2nd respondent, the brother and the sister of the deceased Appadu Dora. The Counsel also would further maintain that the original Will - Ex. A.6 executed by the deceased Appadu Dora also had been duly proved by examining P.Ws. 2 and 3 apart from the evidence of P.W.I. The Counsel also would maintain that it is not as though for the first time this Will is being produced but the same had been agitated in yet another litigation and the same was duly proved and in fact the scribe of the original Will also was examined and inasmuch as the scribe is no more, the certified copy of the deposition of the said scribe in the prior litigation in E.A. No. 110/89 in E.P. No. 27/78 was marked as Ex. A.5. In the light of this evidence, the Counsel would contend that since the attestors had been examined and the deposition of the scribe being a deceased person had been duly marked by virtue of Section 32 of the Indian Evidence Act inasmuch as such deposition is admissible, the Will had been duly proved. Hence, in the alternative, the learned Counsel would submit that though it is a summary proceeding, requesting for the grant of Succession Certificate, even a further declaration can be given in relation to the Will in question to put an end to the other further litigations if any. The learned Counsel also pointed out that these suits which had been referred to O.S. No. 15/1991 and O.S. No. 132/92 are no more pending and these were dismissed. Further the learned Counsel pointed out that the other O.P. which had been filed O.P. No. 187/92 by the first respondent herein no doubt styling himself to be representing some Kommuru Appadu Dora and Annapurnamma Vidya Peeth, a trust, also had been dismissed as withdrawn and permission to file fresh O.P. had been specifically negated. Even in the light of

the same, absolutely there is no sustainable ground available to the first respondent to oppose the present S.O.P. No. 223/96. While further elaborating his submissions, the learned Counsel would submit that the 3rd respondent who is brought on record is no doubt, the sister of the appellant's wife and another daughter of the sister, but however, she would not fall within the preferential category and inasmuch as the brother and sister of the husband of Annapurnamma, being the preferential heirs, automatically, her claim cannot be considered since she won't fall within the ambit and though she is shown as a party, no relief as such can be granted in favour of the 3rd respondent. The Counsel also pointed out to the other documentary evidence - Ex. A.1-Death extract of the scribe; Ex. A.2-Death extract of Rama Krishna; Ex. A.3-certified copy of Order in E.A. No. 110/89 in E.P. No. 27/78; Ex. A.4-certified copy of the decretal order in E.A. No. 110/89 in E.P. No. 27/78; Ex. A.7-certified copy of order in S.O.P. No. 187/92 on the file of District Court, Visakhapatnam; Ex. A.8-certified copy of the petitioner in S.O.P. No. 187/92 specified above; and Ex.A.9-certified copy of Order in E.A. No. 420/93 on the file of Subordinate Judge, Chodavaram.

5. Contentions of Smt. Bhaskara Laxmi :--Per contra, Smt. Bhaskara Laxmi, the learned Counsel representing the 1st respondent in the C.M.A., the only respondent in S.O.P. No. 223/96 made the following submissions:

6. The learned Counsel would submit that the 1st respondent is none other than the sister's son of deceased Annapurnamma and in that way he is closely related. The Counsel also would submit that Appadu Dora never executed a Will - Ex. A.6 in favour of the appellant-petitioner but Appadu Dora executed a Will in the year 1983 in favour of the wife of Appadu Dora and Appadu Dora in turn executed yet another Will dated 16-4-1992 in favour of Annapurnamma Vidya Peeth. The Counsel would contend that in the light of the same, since the 1st respondent is interested in protecting and managing these properties and also with an intention to carry on with the pious wishes of deceased Annapurnamma, the 1st respondent contested the matter and in fact instituted certain suits also and filed O.P. aforesaid but however the same was withdrawn and the 1st respondent is contemplating to initiate the necessary further legal proceedings in this regard. Hence, the Counsel would contend that when such complicated questions are involved, it would not be just and proper to decide such questions in a summary proceeding of this nature and the parties to be driven to a competent civil Court.

7. Contentions of Sri Tushin Kumar:-- Sri Tushin Kumar representing 2nd respondent Papayamma, the sister of appellant, had taken this Court through the counter-affidavit filed before this Court and would submit that these brother and sister are amicable and in fact she is under the care and protection of the brother and she has absolutely no objection for the Succession Certificate being granted in favour of the appellant- her brother. Certain further submissions also had been made in relation to the Will which had been executed by her brother in favour of

yet another brother i.e., the present appellant.

8. Contentions of Sri Ch. Dhananjaya:-- Sri Ch. Dhanumjaya, the learned Counsel representing 3rd respondent-the sister of the wife of the appellant, who is incidentally the daughter of the deceased sister, made the following submissions:

9. The learned Counsel had taken this Court through the averments made in the affidavit filed in support of the application and the stand taken in paras 3, 4 and 5 of the affidavit and would submit that in the light of the same, she is also entitled to her respective due share in the assets which had been left by the deceased Appadu Dora.

10. Heard the Counsel on record and perused the oral and documentary evidence available on record and the findings recorded by the learned Judge.

11. It is needless to say that the 2nd and 3rd respondents were brought on record in the C.M.A. and the 1st respondent alone was shown as a party in S.O.P. No. 223/96. In the light of the rival contentions between the parties, the following points arise for consideration in this C.M.A.:

(1) Whether the appellant is entitled to the relief of Succession Certificate which had been prayed for in the facts and circumstances of the case?

(2) Whether the parties to the litigation to be driven to a competent civil Court in the facts and circumstances of the case?

(3) If so, to what relief the parties would be entitled to?

12. Points 1 and 2: The parties hereinafter, for the purpose of convenience, would be referred to as appellant, respondents 1, 2 and 3. The appellant as petitioner pleaded in S.O.P. No. 223/96 as hereunder:

The petitioner is the brother of late Kommuru Appadu Dora. Kommuru Annapurna is the wife of late Kommuru Appadu Dora. The petitioner and late Kommuru Appadu Dora are the sons of late Kommuru Appalaswamy. Kommuru Appadu Dora died on 16-7-1989 leaving behind him, the petitioner and his wife as his Class-I legal heirs. During the lifetime of Kommuru Appadu Dora he executed a Will on 9-3-1989 in favour of the petitioner in a sound and disposing state of mind bequeathing all his properties. As per the said Will the petitioner has alone succeeded the estate of Kommuru Appadu Dora both under Will and also under the natural succession. Annapurna died on 2-8-1992 leaving behind her the petitioner as her nearest Class-I legal heir. Thus, the petitioner has succeeded the estate of Annapurna and Appadudora. Appadudora during his lifetime purchased some National Saving Certificates in his name and also in the name of his wife Annapurna. He also obtained some decrees mentioned in the schedule. The petitioner approached the postal authorities for getting the amount withdrawn as they are matured long time back. The postal authorities insisted the petitioner to obtain Succession Certificate from competent Court. The

respondent is the sister's son of Annapurna. He is not the legal heir either to Annapurna or to Appadu Dora. Without any right, the respondent is making hurdles in respect of the properties belonging to Appadudora and Annapurna. The petitioner is in possession and enjoyment of all the movable and immovable properties belonging to Appadudora and Annapurna. The respondent with a view to harass the petitioner is trying to make some hurdles in getting the amounts shown in the schedule.

13. The first respondent as respondent in the said S.O.P. resisted the same by filing a counter stating that appellant-petitioner and late Kommuru Appadu Dora had partitioned their joint family properties and had been living separately and enjoying their separate properties. It is also pleaded the appellant-petitioner is not a Class-I legal heir of late Kommuru Appadu Dora under Hindu Succession Act, 1956. Kommuru Appadu Dora died leaving behind him his wife Annapurna as Class-I heir. He also executed a registered Will in a sound and disposing state of mind on 7-4-1983 bequeathing all his properties to Annapurna. The registered Will dated 7-4-1983 is the last Will of Appadu Dora. All the properties of Appadu Dora including the petition schedule properties devolved upon Annapurna after the death of Appadu Dora. She got the said properties not only as his Class-I heir but also as a legatee under the registered Will dated 7-4-1983. It is false to state that Appadu Dora executed a Will on 9-3-1989 in a sound and disposing state of mind bequeathing all his properties including the schedule properties in favour of the petitioner. Annapurna filed a suit against the petitioner in O.S. Nos. 15/91 and 132/92 on the file of Senior Civil Judge's Court, Vizianagaram, stating that the Will dated 9-3-1989 was brought into existence to grab the properties of late Appadu Dora. The Will dated 9-3-1989 is not true and it is fabricated. Annapurna, w/o. Appadu Dora created a Trust by name Kommuru Annapurnamma and Appadu Dora Vidya Peeth and bequeathed all her properties to the said Trust under the Will dated 16-4-1992. The respondent is the Managing Trustee of the Board of Trustees of the said Trust. The Trust is entitled to all the properties mentioned in the schedule.

14. On behalf of the appellant-petitioner P.Ws. 1 to 3 were examined and Ex.A.1 to Ex.A.9 were marked and on behalf of the first respondent - R.W.1 was examined. It appears that Ex.A.7 to Ex. A.9 were marked through R.W. 1 during his cross-examination. The learned Judge pointed out certain circumstances and ultimately came to the conclusion that the Will dated 9-3-1989 cannot be held to be true and valid and further observed that even if it is to be taken that Annapurnamma died intestate, since no other material had been placed before the Court, then apart from the appellant-petitioner, his other sister Papayamma who is impleaded as 2nd respondent herein also would be entitled to the grant of Succession Certificate. P.W. 1 deposed in detail about the execution of the Will - Ex. A.6 by Appadu Dora. P.W.I also deposed relating to E.A. No. 110/89 in E.P. No. 27/78 wherein the appellant-petitioner was recognized as the legal heir to continue the execution proceedings and Ex. A.5 - the deposition of Kama Raju, the scribe of Ex. A.6, who is no more, was marked, who had supported the

version in relation to Ex. A.6. P.Ws. 2 and 3 in one voice has deposed relating to the execution of Ex. A.6. It is true that Ex. A.6 is an unregistered Will. Certain circumstances had been pointed out and the same had been disbelieved. It is no doubt true that this is a summary proceeding. However, it is pertinent to note that the 1st respondent contested the litigation and in fact certain suits O.S. Nos. 15/91 and 132/92 had been instituted and those suits were dismissed for default. It is also pertinent to note that S.O.P. No. 187/92 which was filed by him also had been dismissed as withdrawn and the request made seeking permission to file fresh O.P. had been specifically negated. However it is stated that in the suits such liberty had been granted. Ex. A.7 and Ex. A.8 are the certified copies of the order and the petition in S.O.P. No. 187/92. So, it is clear that the 1st respondent made all abortive attempts to resist the claim of the appellant in relation to obtaining Succession Certificate and had been unsuccessful but however it is stated that the 1st respondent is likely to institute fresh suits in this regard. This Court is not inclined to express any opinion relating to the said aspect. However, having taken a ground that a Trust Deed was brought into existence and a Will had been executed by deceased Annapurnamma in favour of the Trust, the said Will was not produced before the Court in the present proceeding and the suits which had been instituted also had been withdrawn, for whatever reasons. S.O.P. No. 187/92 filed for similar relief also had been withdrawn wherein the permission to file yet another O.P. also had been specifically negated. In such circumstances, this Court is of the considered opinion that refusing to grant Succession Certificate in favour of appellant-petitioner especially when the other living sister Papayamma, the 2nd respondent, has absolutely no objection for grant of such Succession Certificate in favour of the appellant, would not be just and proper. As far as the claim of the 3rd respondent is concerned, she may be a close relative -another daughter of the deceased sister, who died long back but she will not come within the range of successors under the provisions of Section 15 of Hindu Succession Act 1956 read along with Schedule.

Hence, viewed from any angle, the impugned order refusing the granting of Succession Certificate cannot be sustained. It is no doubt true that this is a summary proceeding, but prima facie acceptable evidence had been placed in relation to the proof of Ex. A.6. Inasmuch as the registration of a Will is not always mandatory, to view a Will with suspicion on the mere ground that the document is an un-registered document may not be the correct view. The other suspicious circumstances which had been pointed out also prima facie may not be sustainable in the light of the evidence available on record, the evidence of P.W. 1 well supported by P.Ws. 2 and 3 and further the deposition of the deceased scribe Ex. A.5. It is needless to say that certain findings had been recorded in this regard by the learned Subordinate Judge, Chodavaram, as reflected in Ex. A.4. However, inasmuch as, this is a summary proceeding, this Court is not inclined to express any further opinion relating to this aspect. But, however, it is made clear that the appellant-petitioner is entitled to the relief of

Succession Certificate as prayed for in S.O.P. No. 223/96 on the file of Additional District Judge, Vizianagaram.

15. Point No. 3 :--In the light of the findings recorded above, the appellant is bound to succeed and accordingly, the Civil Miscellaneous Appeal is hereby allowed. No order as to costs.