
(2018) 11 MP CK 0025
In the Madhya Pradesh High Court
Case No : Writ Petition No. 10768 Of 2013

Lalji S/o Bihari Lal

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 30-11-2018

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 31, 32
Code of Civil Procedure, 1908 — Section 151
Indian Succession Act, 1925 — Section 214, 214(ii)

Citation : (2018) 11 MP CK 0025

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : Mohd. Adil Usmani, Nikhil Tiwari

Final Decision : Dismissed

Judgement

1. At the request of the learned counsel for the parties, the matter is heard finally.
2. By the instant petition, the petitioners are seeking quashment of the order dated 15.03.2013 (Annexure-P-4) which has been passed by the Executing Court in Execution Case No.25/2011, pending before the First Additional District Judge, Raisen.
3. That the petitioners are legal heirs of Lalji S/o Bihari Lal in whose favour award has been passed under Section 11 of the Land Acquisition Act, 1894 (for brevity 'Act, 1894') as his land got acquired under the provisions of the Act, 1894 and an award of Rs.96,334/- per acre for irrigated land and Rs.89,891/- for unirrigated land has been passed. Thereafter, a reference was made under Section 18 of the Act, 1894 and the said amount has been enhanced by the Reference Court vide award dated 06.05.2011 (Annexure-P-1). Thereafter, an execution was proceeded by the land owner, namely, Lalji S/o Bihari Lal and during the pendency of the execution proceeding, the award holder Lalji expired on 25.12.2012.

4. The application under Section 151 of the Code of Civil Procedure was filed by the present petitioners claiming themselves to be the legal heirs of the original land owner Lalji. The judgment debtor/State Government raised an objection to the application saying that since the decree holder died during the pendency of execution case, therefore, provisions of Order 22 of the Code of Civil Procedure would not be applicable and accordingly the said application be rejected. The Executing Court considering the objection raised by the respondent/State, passed an order on 15.03.2013, which is impugned in this petition holding that the petitioners are required to obtain succession certificate and then only their names can be substituted in place of the decree holder Lalji.

5. The petitioners by the instant petition are assailing the order of the Executing Court saying that the direction for production of succession certificate is contrary to law and contended that the Court below has illegally rejected their application filed under Section 151 of the Code of Civil Procedure.

6. The learned counsel for the petitioners has contended that the amount of compensation already deposited cannot be treated to be a debt as per the requirement of Section 214 of the Indian Succession Act, 1925 (for brevity 'Act, 1925'), therefore, in case of death of the decree holder in the execution proceedings initiated for implementing the award, direction for production of the succession certificate is not proper.

7. In support of his contention, the learned counsel for the petitioners has relied upon the decisions reported in AIR 1953 Madras 28, parties being Aparanji Chetti V. Arunachalam Chettiar and others and AIR 1999 Kerala 56, parties being Resilikutty Chacko and others V. State of Kerala.

8. On the other hand, the learned Panel Lawyer for the respondent/State supported the order of the Executing Court saying that the same does not suffer from any infirmity and prays for dismissal of the petition.

9. Arguments heard.

10. As per the facts of the case, it is undisputed that the execution proceedings pending before the Court below is arising out of the award passed by the Reference Court after entertaining the reference under Section 18 of the Act, 1894 and passed the award dated 06.05.2011 enhancing the amount of compensation awarded by the Land Acquisition Officer while passing the award under Section 11 of the Act, 1894. However, from the order impugned it is clear that the awarded amount was not deposited by the judgment debtor and, therefore, the Court was inclined to issue warrant of attachment against the respondents.

11. As per the learned counsel for the petitioners, the amount of compensation awarded in favour of the land owners in lieu of the execution proceedings initiated under the provisions of Act, 1894 cannot be considered to be a debts and accordingly Section 214 of the Act, 1925 would not be applicable.

12. Before weighing the arguments advanced by the learned counsel for the petitioners, it is necessary to see Section 214 of the India Succession Act, 1925, which reads as under:-

"214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.- (1) No Court shall-

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of-

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator-General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889 (7 of 1889), or

(v) a certificate granted under Bombay Regulation No.VIII of 1827, and, if granted after the first day of May, 1889 having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes."

From a bare perusal of Section 214 of the Act, 1925, it is clear that the provision provides the requirement of producing succession certificate before the Court which is dealing with the proceedings of recovery in pursuance to a decree or order for payment of debts. Sub-section (ii) of Section 214 although provides that the meaning of word "debts" but the same cannot be considered to be exhaustive.

13. As far as the case of Aparanji Chetti (*supra*) relied upon by the petitioners is concerned, especially paragraph-7, which is reproduced hereinbelow:-

"7. It may however be examined whether a succession certificate is necessary for a claim of the nature as in the present case. The compensation money is in respect of an acquisition made by Government after the lifetime of the owner of the land, Kanniya Chetti, and during the lifetime of his widow, the limited owner. The petitioner who claims through a reversioner would be entitled to it as he would be entitled to the other properties of Kanniya Chetti after the lifetime of Bangaru. If he could inherit the other properties of Kanniya without the necessity of the production of any succession certificate, is it any reason that he should be

asked to produce a succession certificate only in respect of this money since it happened to be converted into money, not during the lifetime of Kanniya but after his lifetime, and kept in court deposit by reason of a person who is the next heir having had only a limited interest.

It is not justifiable to insist on the reversioners to produce succession certificates in respect of amounts which have come into the hands of the limited owner after the lifetime of the last maleholder. Further, from a reading of Section 214 of the Succession Act, a succession certificate is necessary only in respect of the debt due to a deceased person. It cannot be said that this debt was due and owing to Kanniya Chetti whose properties only the petitioner is claiming, not the properties of Bangaru. It is obviously a case where it could not be said to be the recovery of a debt to the deceased person, Kanniya. That is sufficient to dispose of the contention that Section 214 would not be applicable to this case.

I am therefore unable to agree with the conclusions arrived at by the learned Judges in --'Abinash Chandra v. Probodh Chandra', 15 Cal W N 1018, the correctness of which has been doubted and also to a great extent shaken by the judgment of Rankin C. J. in the Full Bench decision in - 'Brojendra Sunder Banerjee v. Niladrinath Mookerji' 33 Cal W N 1177. I am therefore of the view that it is not necessary for a reversioner who claims he is entitled to compensation moneys in respect of lands acquired after the death of the last male holder to produce a succession certificate to entitle him to receive the amount." and also examining Section 214 of the Indian Succession Act, 1925, it is observed that it is not justifiable to insist on the revisioners to produce the succession certificate in respect of amount which has come into the hands of the limited owner after the lifetime of the last maleholder.

14. From the facts of the case of Aparanji Chetti (supra), it is clear that there was an acquisition proceeding initiated and an award was passed by the Land Acquisition Officer and the amount so awarded, has to be deposited by the Land Acquisition Officer as per the requirement of Section 31 of the Act, 1894 to the Court to which a reference under Section 18 would be submitted. But, there was no reference made under Section 18 of the Act, 1894. The facts of case in hand are not similar to the facts of the case of Aparanji Chetti (supra), because in that case, the amount was deposited before the Court as per the requirement of Section 31 of the Act, 1894 and as per Section 32 it was a duty of the Court to entertain the application for payment of the deposit money and for discharge of that duty it was necessary on the Court's part to enquire into the claims of the contending parties, it goes without saying that the Court is competent to give a finding as to who are the persons entitled to the money irrespective of the fact whether a succession certificate necessary or not, and even if one is produced it does not preclude the Court from going into the question whether the person in whose favour succession certificate is issued is the only person i.e. entitled to the money. The production of succession certificate, therefore, is not conclusive as to right of the parties claiming amount who might not have been parties to the

proceedings where succession certificate had been obtained. It is, therefore, observed by the Court that it was not necessary for the Court to consider whether the person in whose favour the Court might ultimately decide should in any event produce a succession certificate.

15. Likewise in a case of *Resilikutty Chacko (supra)*, the Bench of Kerala High Court has observed that in a proceeding arising out of the land acquisition proceeding and a reference under Section 18 of the Act, 1894 was pending before the Court for enhancement of the compensation awarded by the Land Acquisition Officer, if the award holder dies, the legal heir of the award holder can be brought on record by moving an application of their substitution and no succession certificate would be required to be produced. In a proceeding pending before the Reference Court what is being done is to find out whether the compensation awarded by the Land Acquisition Officer is adequate and whether the parties before the Court are entitled to enhanced compensation. It is also observed by the Kerala High Court that in a reference proceeding, the Court can determine whether the persons claiming to be a legal heir or to prosecute the reference in the event of death of the award holder, are really a legal heir or not. It is further observed by the Court that the said proceeding cannot be considered to be a proceeding for recovery of a debt. Therefore, the facts of the case of *Resilikutty Chacko (supra)*, are not similar to the present case and accordingly the observations made by the Court are not applicable in the present case as the same are not similar to the case in hand.

16. But, in the case at hand, during the pendency of the execution proceedings before the Executing Court, the award holder died and an application has been filed by the present petitioners claiming them to be legal heirs. Thus, the Executing Court is not the Court of competence to decide the entitlement of the petitioners considering them to be legal heirs and to hold that they are entitled to recover the amount of compensation awarded in favour of the original land owner. Thus, in my opinion, the law relied upon by the Executing Court as laid down by the Division Bench of Nagpur in a case reported in AIR 1938 Nagpur 528 parties being *Tejraj Rajmal Marwadi Vs. Rampyari*, which was later on followed in case of *Tarabai Jain and others Vs. Shivnarayan Kothari*, 1997 (Part-II) MPLJ 287, would be applicable, which is reproduced as under:-

"Now it is said she was not proceeding on her application but on his application and therefore S. 214(1)(b) does not apply: 26 Cal 839.1 and 57 IC 9022 which simply follows 26 Cal 839.1 26 Cal 8391 dissents from a Full Bench judgment reported in 16 All 259.3 The latter case however appears to us to be distinguishable, for it was concerned with a suit, not with execution proceedings. Since the new Rule, O. 22, R. 12, was made the old question whether execution proceedings abate on death has been set at rest. Abatement does not apply to execution proceedings. The result of that is however that the heirs need not take steps for substitution under O. 22, R. 3 but may apply to carry on the proceedings or may file a fresh application. In other words, execution

proceedings do not abate but live on and, as some one must take the next step and death terminates all agencies, the person entitled, i.e. the personal representative or heir, can come before the Court. That person when he comes will be claiming for himself, at least where he, or she, is heir or beneficially interested.

The proper application is for leave to carry on (or proceed with) the pending execution proceedings. Such an application would fall within the words "upon an application of a person claiming to be so entitled." "To be so Entitled" means, as is plain from S. 214(1)(a) "to be entitled to any part of the deceased's estate." This widow claims to be so entitled and she makes an application, which is necessary before the Court can proceed with a pending execution. The Court cannot, on that application, proceed with the execution unless a succession certificate is produced. The appeal is accordingly dismissed with costs. We cannot but observe that in this case execution has been avoided for three and a half years because a succession certificate was not produced. We understand there is no difficulty or expense involved in producing a succession certificate and it would seem to be wise in such cases whether a succession certificate is strictly necessary or not to take the course taken by counsel in 16 All 2593 and ask for time to produce the succession certificate."

Thereafter, this Court in case of Tarabai Jain (supra) has observed as under:-

"8. In the instant case, the decree-holder is trying to get fruits of litigation arising out of compromise decree. Since the debt is nothing but is a sum of money payable, therefore, under the present decree the sum of money alone is payable to the legal representatives. Considering the view, taken by the Division Bench of Nagpur High Court in the case of Tejraj Rajmal Marwadi (supra), the money due to the legal representatives is a debt."

17. Being a similar fact involved in the present case, I have no hesitation to say that there is no infirmity in the order passed by the Court below rejecting the application of the petitioners for substitution of the original owner in whose favour the award had been passed and was initiating execution proceedings, asking them to produce succession certificate.

18. Thus, in view of the law laid down by the Division Bench in case of Tejraj Rajmal Marwadi (supra), there is no substance in the contentions raised by the petitioners that they are not required to produce succession certificate for prosecuting the pending execution proceedings. Accordingly, I do not find any infirmity in the order passed by the Court below asking the petitioners to produce succession certificate to prosecute the execution proceedings pending for recovery of compensation amount awarded by the Reference Court in a reference made under Section 18 of the Act, 1894.

19. Accordingly, the petition filed by the petitioners is hereby dismissed.