
(2006) 08 CHH CK 0016
In the Chhattisgarh High Court
Case No : C.R. No. 1588 of 1997

Managing Director, Sail, Bhilai Steel Plant	APPELLANT
Vs	
D. Tarinamma	RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, 144, 2(14), 2(2)
Succession Act, 1925 — Section 374, 375(2), 377

Citation : (2008) 1 MPJR 31

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Advocate : Gautam Bhaduri, for the Appellant;

Final Decision : Allowed

Judgement

S.K Sinha, J.

This revision is mainly directed against the order dated 26.06.1997 and also against the order dated 21.07.1997 passed by the Second Addl. Judge to the Court of District Judge, Durg, in Execution matter pertaining to Succession Case No. 58/1995 decided by the said Court on 09.02.1996.

This brief facts are that the husband of the Respondent namely D.V.N. Rao died leaving certain amount in his C.P.F. and Gratuity. It is stated that a sum of Rs. 2,28,103.00 was the amount of C.P.F. to be paid and a sum of Rs. 79,077/- was the amount of gratuity. She applied for succession certificate before the Court below and a Succession Certificate to this effect was granted by the said Court in Succession Case N.58/1995 vide order dated 09.12.1996.

While granting the aforesaid certificate by the said order, the said court also passed an order that the amount of requisite stamp duty and the amount of cost of proceeding in sum of Rs. 2000/- shall be paid by the Petitioner, the employer Bhilai Steel Plant.

It is stated by learned Counsel for the Petitioner that thereafter, the Respondent herself paid the amount of stamps and she did not take any action to release the amount of costs ordered against the Petitioner.

Learned Counsel further states that in fact, the Management was inclined to file an appeal against the said order dated 09.02.1996, but in view of the memo dated 04.06.1996, written by the Respondent to the Management that she is ready to deposit the stamp duty and she will not claim the cost imposed upon the Management, the Management did not challenge the said order and ultimately the Succession Certificate was issued to the Respondent on the stamp paper for which the stamp duty was paid by her. Thereafter, on the strength of the certificate, the aforesaid amount was paid to her and after receiving the said amount, the Respondent filed a proceeding for execution of that part of the order which shows about payment of amount of stamp duty and also about the cost imposed upon the Petitioner. When the Petitioner took an objection in the execution proceeding that the Respondent cannot realize these amounts from the Petitioner, in view of the letter written by her to the Management, the Court below without considering the objection on merits dismissed the same and directed for issuance of warrant of attachment for payment of sum of Rs. 16,295/- as the amount of stamp duty and the amount of cost which was to be paid by the Management as per the order dated 09.02.1996. Learned Counsel further submits that thereafter another application was moved before the Executing Court that the order dated 26.06.1997 was passed without giving proper opportunity to the Petitioner to substantiate their objection. The same was also dismissed and the Court again directed for issuance of warrant of attachment in view of the order dated 26.06.1997 passed in the said succession case. Here before me, learned Counsel for the Petitioner submits that in fact, the order passed in a succession case is not a decree and no proceedings for execution can be instituted in view of the said order. He also submits that when an objection in relation to maintainability of such proceeding was raised in view of the letter written by Respondent to the Petitioner, which ultimately operates as an estoppel against the Respondent, the Court below should have decided the same on merits instead of superficially passing the order of rejection of the said objection and ordering for issuance of warrant of attachment.

For the first point, he refers to a decision rendered in the matter of Employment Officer, Mandya v. S. Sevarinathan AIR 1986 Kar 167. The said High Court in the above matter held that as per Section 2(2) of C.P.C., "decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default" and in this manner since the succession certificate does not conclusively determine the rights of the parties in the matter of disputes between the parties,

therefore, the grant of succession certificate will not amount to a "decree" within the meaning of Section 2(2) of the CPC. Saying this, the said Court held that as is evident from the provisions under Sections 374, 375(2) and 377 Succession Act, the Succession Certificate granted by the court is merely to declare that the grantee is entitled to recover the amount stated therein and is itself not a "decree" or "order" as defined respectively in Section 2(2) and 2(14) of CPC. Therefore, the Succession Certificate is not capable of being executed as a decree or order of the Court under Order 21 of the Code. The grantee could recover the amount only by filing a suit for the purpose.

For the second point regarding estoppel, learned Counsel has relied on a decision of the Apex Court rendered in the matter of *B.L. Sreedhar and Ors. v. K.M. Munireddy (Dead)* and other AIR 2002 SCW 5221, in which it is held that though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive rights as against the person estopped. An estoppel, which enables a party as against another party to claim a right of property which in fact, he does not possess is described as estoppel by negligence or by conduct or by representation or by holding out ostensible authority. Estoppel, then, may itself be the foundation of a right as against the person estopped, and indeed, if it were not so, it is difficult to see what protection the principle of estoppel can afford to the person by whom it may be invoked or what disability it can create in the person against whom it operates in case affecting the rights. Where rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. The Apex Court also referred to the observation made in *Depuru Veeraraghava Reddi Vs. Depuru Kamalamma and Another*,

After hearing counsel for the Petitioner and after going through the records filed before this Court and also records of the original Succession Case No. 68/1995, I am of the opinion that the Succession Court erred in law in not taking into consideration these legal Objections raised by counsel for the Petitioner. When the Petitioner had raised such objections which go to the root of the matter as they were related to the very jurisdiction of the Court to entertain such a petition in the form of execution case which is normally filed under Order 21 of C.P.C., it was incumbent upon the Succession Court to decide all these objections which the said Court has not decided and the plea of non-maintainability of the execution proceeding and also the plea with respect to estoppel has not been considered and decided by the said Court and the objections have been over ruled in superficial manner.

In the opinion of this Court, these two orders passed by the Executing Court/ Succession Court deserve to be set aside. These orders dated 26.06.1997 and 21.07.1997 are set aside. It is directed that the Executing Court/Succession Court shall decide the objections raised by the Petitioner particularly pertaining to the above two points raised before this Court and shall pass an appropriate order on merits in accordance with law.

With the above direction, the petition stands allowed.