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(2006) 12 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Mrs. Madhu Bala and Others — APPELLANT

Vs

General Public — RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Estate Duty Act, 1953 — Section 50, 56, 57, 67, 73
Succession Act, 1925 — Section 372

Citation : AIR 2007 P&H 55 : (2007) 146 PLR 367 : (2007) 2 RCR(Civil) 215

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioners herein filed an application u/s 372 of the Indian Succession Act for grant of succession certificate in respect of the estate of Ashok Kumar, who died on 30th of August, 1980. The evidence in this case was recorded on 6th of June, 1983 and the applicants were directed to file an estate duty clearance certificate. However, the same was not filed. Counsel for the applicants made a statement on 28th February, 1982 to the effect that the estate duty clearance certificate had not been secured, the case be adjourned sine die. It was thereafter on 18th November, 1985 an application was filed for getting the case restored for grant of succession certification on the plea that as the period of five years has elapsed, so no estate duty was liable to be paid in view of Section 73-A of the Estate Duty Act, 1953 (for short the ''Act''). Section 73-A of the Act reads as under:

73-A Limitation for commencing proceedings for assessment or reassessment - No proceedings for the levy of any estate duty under this Act shall be commenced

(a) in the case of a first assessment, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable; and

(b) in the case of a re-assessment, after the expiration of three years from the

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date of assessment of such property to estate duty under this Act.

However, the plea of the petitioners was rejected on the ground that as the petitioners had failed to get the estate duty clearance certificate, the case was consigned to record room till the estate duty clearance certificate was filed. As the petitioners had failed to place on record any application showing that the estate duty clearance certificate was applied for, no benefit could be granted to the petitioners and the learned trial Court dismissed the application for grant of succession certificate. The petitioners challenged the said order by way of appeal which was also dismissed in view of provisions of Section 56(2) of the Act. Section 56(2) of the Act reads as under:

56(2) : In all cases in which a grant of a succession certificate is applied for, a copy of the application shall be furnished by the applicant to the Controller and no order entitling the applicant to the grant of such a certificate shall be made upon his application until he had produced a certificate from the Controller under Sub-section (2) of Section 57 or 67 that the estate duty payable in respect of the property mentioned in the application has been or will be paid, or that none is due, as the case may be.

The learned Appellate Court, therefore, came to the conclusion that on the failure of the production of the estate duty clearance certificate, no succession certificate could be granted.

2. Mr. Akshay Bhan, learned Counsel, appearing on behalf of the petitioners, contended that in terms of Section 372 of the Indian Succession Act, there is no requirement of a certificate from the Collector to be produced at the time of making an application for grant of succession certificate. He further contended that in any case in view of Section 73-A of the Act, no duty was payable after five years of the death of a person regarding whose property the succession certificate is required and, therefore, the learned Courts below were wrong in rejecting the application moved by the petitioners for grant of succession certificate after the same was got revived on the expiry of 5 years from the date of death.

3. I have considered the arguments raised by the learned Counsel for the petitioners and find that in view of Section 56(2) of the Act, the order entitling the applicant for grant of a succession certificate is subject to furnishing by the applicant a certificate from the Controller under Sub-section (2) of Section 57 or Section 67. Section 57(2) of the Act reads as under:

57(2). Upon a provisional assessment being made under Sub-section (1), the person so assessed shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of, the estate duty, if any, payable on the provisional assessment, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid or that none is due, as the case may be in respect of the property mentioned in the certificate.

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The provisions of Section 57(2) came up for consideration before the Hon''ble Madras High Court in the matter of the In the matter of the Estate of Saradambal Ammal and Others, , wherein the Hon''ble Division Bench was pleased to lay down as under:

2. The question is whether this section will apply to the grant of succession certificate. The answer appears to be clear in view of the definition of the term "representation" in S, 2(18), Estate Duty Act. The definition is as follows:

''representation'' means probate of a Will or letters of administration.

Executor is defined as "the executor or administrator of a deceased person". It is obvious that it is only when a probate of a will and letters of administration are granted that the provisions of Section 57 would apply.

(3) The learned Government Pleader, who appears on behalf of the Controller of Estate Duty referred us to Section 50, which mentions a succession certificate along with probate and letters of administration for the purpose of reduction of the amount of the estate duty by the amount of court-fees paid before obtaining them. The marginal note of this provision runs as follows:

Relief from estate duty where court-fees have been paid for obtaining representation to estate of deceased.

It is suggested "representation" in this marginal note has evidently been used to include also a succession certificate. We do not think that it is safe to base any decision on the strength of a marginal note. When there is a definition of the term "representation" in the body of the Act itself, we cannot resort to a marginal note to another section to enlarge the scope of the definition for the purpose of construing Section 57. The circular in so far it purported to include the grant of a succession certificate within its scope is misconceived.

Thus keeping in view the law laid down by the Hon''ble Madras High Court as well as keeping in view the provisions of Section 73-A of the Act, it was not open to the learned Courts below to have rejected the application moved by the petitioners for grant of succession certificate.

4. Accordingly, this revision petition is allowed, the impugned orders are set aside and the learned trial Court is directed to decide the application moved by the petitioners for grant of succession certificate on merit.

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