
(2014) 04 GAU CK 0004
In the Gauhati High Court
Case No : CRP No. 213 of 2011

Mrs. Wahida Begum and Miss Ishmat Jahan	APPELLANT
Vs	
Md. Majid and Others	RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 198
Succession Act, 1925 — Section 370, 371, 372, 373

Citation : (2015) 1 GLD 482 : (2014) 4 GLT 208

Hon'ble Judges : Abhay Manohar Sapre, C.J

Bench : Single Bench

Advocate : T.J. Mahanta, Advocate for the Appellant; S. Murarka, Advocate for the Respondent

Final Decision : Allowed

Judgement

Abhay Manohar Sapre, C.J.—This is a civil revision filed by the applicant/petitioner u/s 115 of the Constitution of India against the order 9.3.2011 passed by District Judge, Tinsukia in Misc. (S.C.) Case No. 28/201.

2. By impugned order, the learned District Judge dismissed the petitioner's petition filed u/s 371/372 of the Indian Succession Act (for short hereinafter called "The Act") on the first date of hearing summarily without issuing any notice to the non-applicants/respondents.

3. So the short question which arises for consideration in this civil revision is whether learned District Judge was justified in dismissing the petitioner's petition filed u/s 371/372 of the Act?

4. Facts of the case lie in a narrow compass.

5. One Md Isa - a Muslim by cast and resident of Teen Sukhia died on 11.1.2010. According to the petitioner no. 1, she is deceased's widow and whereas the petitioner no 2 is the minor daughter born out of their wedlock. The deceased also has another widow-Nasreen Fatma and five children born from her. Since

deceased left behind considerable movable and immovable property in his name and hence dispute arose amongst his legal representatives/heirs which led to filing of the petition by her one widow and minor daughter i.e. petitioners herein before the district Judge u/s 371/372 of the Act for grant of succession certificate in their favour in relation to the estate left by the deceased.

6. It is this application, which came up for orders on 9.3.2011. The District Judge then directed registration of the petition and on the same day, formed an opinion that since the petition u/s 372 ibid is required to be disposed of in a "summary way" and hence he perused the petition and dismissed it "summarily" without even issuing any notice to the other side and going into its merits. While dismissing, he directed the petitioners to approach the civil court for obtaining the relief's. It is this order, which is impugned by the petitioner in this civil revision.

7. Having heard the learned counsel for the parties and on perusal of the record of the case, I am inclined to allow the revision and while setting aside the impugned order remand the case to the District Judge for deciding the petition afresh in accordance with law after issuing notice to the respondents/non applicants.

8. Section 372 and Section 373 of the Act, which are relevant for disposal of this revision, reads as under:

372. Application for certificate.-(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, (5 of 1908.) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:--

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment u/s 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence u/s 198 of the Indian Penal Code. (45 of 1860.)

1*[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]

373. Procedure on application.-(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing-

(a) to be served on any person to whom, in the opinion of Collected by the All India Christian Council, www.christiancouncil.in Page 110 of 123 the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit, and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

9. Section 372 sets out the particulars, which are required to be pleaded by the petitioner in the application for obtaining the succession certificate whereas section 373 provides a procedure as to how the application is to be decided by the District Judge.

10. Section 373 clearly provides that in order to decide as to whether succession certificate can be granted to the petitioner/applicant, it is necessary for the District Judge to peruse the petition and be prima facie satisfied as to whether it contains necessary particulars as specified in Section 372 and then direct issuance of notice to the non applicants. On written statement being filed by non-applicants, the court can consider whether it is necessary to frame issues to enable the parties to know the controversy arising in the case and then decide the petition after recording evidence, if found necessary.

11. The expression "summary manner " means the petition need not be tried like a civil suit by following the detail procedure prescribed in Code of Civil Procedure, but it certainly does not mean that notice to non-applicant is also dispensed with.

12. Indeed reading of Sub section(1) along with sub section (3) of Section 373 *ibid* indicate that in order to decide the questions arising in the case, the District Judge is required to issue notice to the other side to enable him to decide as to whether he can grant succession certificate to the petitioner or not. Sub-section 3 empowers the District Judge to grant certificate, if he is of the view that petitioner has a *prima facie* better title as against the other claimants. This he can do only when notice is issued to the non-applicants and their stand is also considered. As observed *supra*, the expression "summary manner" does not mean that the court can dismiss the petition on the first date of hearing itself by mere perusal of the contents of the petition without notice to the other side.

13. Learned Counsel for the respondents who appeared for the first time before this court pursuant to the notice issued of this revision contended by pointing out the factual issues that petitioners have no case on facts.

14. To say the least, the factual submissions urged by the respondents cannot be entertained for the first time by the revisionary court for want of any factual foundation not being laid in the case before the District Judge. In such case, the remedy of the respondent lies in submitting to the jurisdiction of the District Judge, and file the written statement in answer to the petition and contest the matter both on facts and law.

15. I have perused the petition and find that it contains all such necessary particulars, which are required to be pleaded in terms of Section 372 *ibid*. It was therefore a fit case for issuance of notice to the non applicants before passing any final order. In other words, there was no case made out for dismissal of the petition without issuing notice to the non-applicant.

16. In the light of foregoing discussion, the revision petition succeeds and is allowed. The impugned order is set aside. The case out of which this revision arises is restored to its file. The respondents having appeared before this court pursuant to the notice issued is not entitled to any fresh notice of the petition filed by the petitioner u/s 372. They would now appear before the District Judge on 12th May. The District Judge would then grant reasonable time to the respondents to file the written statement in answer to the petition filed by the petitioners.

17. The District judge then would decide the petition keeping in view the procedure prescribed in Section 372 and other relevant provisions of the Act coupled with the principal of Muslim law and pass final orders strictly in accordance with law.

18. Before parting with the case, I consider it apposite to mention that I have not applied my mind to the merits of the case of the petition and confined the inquiry with a view to find out as to whether impugned order could be passed without notice to the non-applicant and then formed an opinion that District Judge was not justified in passing the impugned order. It is for this reason, the District Judge would now decide the petition afresh only after issuing notice to the non-

applicants.

19. Let the proceedings be completed within six months from the date of parties appearance before the District Judge on 12.5.2014.

20. The record of the case be sent back to the District Judge Tinsukia, if it was requisitioned for deciding this case so as to reach the District Judge court before 12.5.2014.

21. No cost.