

(2006) 11 GUJ CK 0055
In the Gujarat High Court

Case No : Second Appeal No. 39 of 2006 and Civil Application No's. 12499 and 2537 of 2006

Oskar I. Rathod

APPELLANT

Vs

Minaxi Florence Semual Parmar and Another

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Gujarat Civil Courts Act, 2005 — Section 1(3), 24, 24(1), 24(2)
Succession Act, 1925 — Section 264, 265, 265(1), 299

Citation : (2007) 1 GLR 876

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : S.P. Majmudar, for the Appellant; N.R. Joshi, for the Respondent

Judgement

R.S. Garg, J.—Though the matter is listed for consideration of Civil Application No. 12499 of 2006, but with the consent of the parties, the matter is finally heard.

2. The appeal had been admitted for hearing on 7/3/2006 on the following substantial questions of law;

i. Whether the order dated 21.1.2006 passed by the learned Presiding Officer, Fast Track Court No. 2, Gandhinagar in Regular Appeal No. 24 of 2005 is without jurisdiction?

ii. Whether the learned Presiding Officer, Fast Track Court No. 2, Gandhinagar has committed a substantial error of law by entertaining the said appeal?

3. Short facts leading to the present appeal are that the present respondent made an application u/s 264 of the Indian Succession Act for grant of probate in the Court of learned Civil Judge (SD), which was registered as Civil Miscellaneous Application No. 22 of 2000, the application was contested by the present appellant and was dismissed on 6/5/2005. Being aggrieved by the said judgment

and order, the present respondents preferred Regular Appeal No. 24 of 2005 which was heard and decided by the learned Presiding Officer, Fast Track Court No. 2, Gandhinagar, who vide his judgment dtd.21/1/2006 allowed the appeal and granted the application filed by the present respondents.

4. The appellant original defendant No. 1 Oskar I. Rathod being aggrieved by the said judgment and order dtd.21/1/2006 has filed the present Second Appeal possibly u/s 100 of the Code of Civil Procedure. The appeal has been admitted for hearing the parties on the above referred questions.

5. Shri S.P. Majmudar, learned Counsel for the appellant submits that in accordance with the scheme of the Act as contained in Sections 264 and 265, an application for grant of probate can be made in the District Court only through the High Court would be authorised to delegate powers of the District Court to any judge to decide the application which is in relation to uncontentious matters. He submits that once the jurisdiction is vested either in the District Judge or his delegatee or a Civil Judge, then an appeal would lie to the High Court u/s 299 of the Act. His submission is that as the appeal preferred by the respondent No. 1 original applicant was not maintainable before the appellate court, the judgment and decree deserve to be set aside. He submits that the learned Presiding Officer, Fast Track Court No. 2, Gandhinagar has committed substantial error of law by entertaining and allowing the appeal.

6. Taking stand contrary to what has been contended by the learned Counsel for the appellant, Shri N.R. Joshi, learned Counsel for the respondent No. 1 submits that the argument of the learned Counsel for the appellant could hold the field if Gujarat Civil Courts Act, 2005 (Act No. 21 of 2005) had not come into force. He submits that the Act has been published in the extraordinary gazette on 23/3/2005 and has been made effective and brought in force on and from 9/5/2005. According to him, in view of the said Act especially Section 24, an appeal against order passed by the learned Civil Judge would lie to the District Judge only and as the present appeal was filed by the appellants on 13/6/2005, the appeal was very much maintainable before the first appellate court.

7. I have heard the parties at length.

8. Gujarat Civil Courts Act, 2005 (Act No. 21 of 2005) undisputedly has been published in the extraordinary gazette on 23/2/2005. Sub-section (3) of Section-1 provides that the Act shall come into force on such date as the Government may, by notification in the Official Gazette, appoint. In exercise of the powers conferred by Sub-section (3) of Section-1 of the Gujarat Civil Courts Act, 2005, State Government vide its notification No. GK/4/2005/BCA/102004/2664/D has appointed 9/5/2005 as the date on which the Act shall come into force.

9. Once the Act No. 21 of 2005 was brought into force or has come into operation, all the provisions contained in the said Act shall become operative.

10. Section 24 of the said Act provides as under;-

Section 24. Power to invest Senior Civil Judges with jurisdiction under certain Acts:

(1). The High Court may by general or special order invest any Senior Civil Judge, within such local limits and subject to such pecuniary limitation as may be specified in such order, with all or any of the powers of a District Judge or a Court of District Judge, as the case may be, under the Divorce Act, 1869, the Succession Act, 1925, the Special Marriage Act, 1954, or the Guardians and Wards Act, 1890.

(2) Every order made by a Senior Civil Judge by virtue of the powers conferred upon him under Sub-section (1) shall be subject to an appeal to the High Court where the amount or value of the subject matter exceeds rupees five lakhs or to the Court of District Judge where the amount or value of the subject matter does not exceed rupees five lakhs.

(3). Every order of a Court of District Judge passed on appeal under Sub-section (2) from the order of a Civil Judge shall be subject to an appeal to the High Court under the rules contained in the Code applicable to the appeals from appellate decrees.

11. According to Sub-section (1) of Section 24, High Court by general or special order invest any Senior Civil Judge, within such local limits and subject to such pecuniary limitation as may be specified in such order, with all or any of the powers of a District Judge or a Court of District Judge, as the case may be. Under the Divorce Act, 1869 Succession Act, 1925, Special Marriage Act, 1954, and Guardians and Wards Act, 1890. If the High Court in exercise of the powers conferred upon it under the provisions of the Letters Patent, provisions of Indian Succession Act and provisions of Gujarat Act No. 21 of 2005 has conferred certain powers upon Civil Judges then conferral of such power cannot be challenged in these collateral proceedings. The appellant was not well-advised to challenge the Gujarat Civil Courts Act, 2005.

12. Sub-section (2) of Section 24 of Act No. 21 of 2005 clearly provides that every order made by Civil Judge shall be subject to an appeal to the High Court if the value of the subject matter exceeds rupees five lakhs or to the Court of District Judge where the amount of the subject does not exceed rupees five lakhs. Undisputedly the subject matter in dispute is below rupees five lakhs and under the circumstances the appeal before the subordinate court was maintainable.

13. Shri Majmudar, learned Counsel for the appellant submits that on true interpretation of Section 265 of the Indian Succession Act, 1925, High Court may appoint such judicial officer within any district as it thinks fit to act for the District Judge as delegatee to grant probate and letter of administration in contentious cases, within such local limits as it may be prescribed and therefore,

conferral of powers upon any Civil Judge must be deemed to be conferred u/s 265(1) and such Civil Judge should be taken to be a District Judge for the purposes of Section 299 of the Act and orders passed by such Civil Judge can be subjected to appeal to the High Court.

14. In the opinion of this Court, the argument loses sight of the fact that the present is not a case of authorisation u/s 265(1) of the Act, but present is a case where the High Court has exercised its power of superintendence, general control and statutory powers conferred upon it u/s 24 of the Gujarat Civil Courts Act, 2005.

15. By no stretch of imagination it can be held that the appeal before the learned first appellate court was not maintainable or order dtd.21/1/2006 passed by the learned first appellate court was without jurisdiction. It may also be held that the learned first appellate court did not commit a substantial error of law by entertaining the said appeal.

16. The appeal deserves to and is accordingly dismissed. No costs.

17. Let a decree framed accordingly.

18. Consequently, Civil Application Nos. 2537 and 12499 of 2006 are rejected. Interim relief is vacated.