

(1979) 01 KL CK 0018
In the High Court Of Kerala
Case No : C.R.P. No. 1239 of 1978-H

Sankaran Nair Ramakrishnan Nair

APPELLANT

Vs

Madhavi Amma Easwari Amma

RESPONDENT

Date of Decision : 23-01-1979

Acts Referred:

Succession Act, 1925 — Section 214(1)

Citation : AIR 1979 Ker 231

Hon'ble Judges : P. Janaki Amma, J

Bench : Single Bench

Advocate : K. John Mathew, for the Appellant; O.V. Radhakrishnan and K. Radhamoni Amma, for the Respondent

Judgement

P. Janaki Amma, J.—The petitioner is the judgment-debtor in a decree for recovery of amounts passed in favour of one Chandrasekhara Pillai. While E. P. No. 100 of 1975 was pending, Chandrasekhara Pillai died on 10-2-1977 and a memo to that effect was filed by the decree-holder's Advocate. The case was thereafter posted for further steps. The present respondent got herself impleaded as the legal representative of the original decree-holder. When steps under O. XXI, R. 37 of the Civil P. C. were taken, the petitioner filed objection disputing the amount claimed and his liability for being arrested. He also contended that the respondent as the additional de-cree-holder was not competent to proceed with the execution without production of the succession certificate. The petition stood posted to 31-10-1977. On that date, the respondent and her counsel were not present and the petition was dismissed.

2. The respondent thereafter filed E. P. No. 8 of 1978 seeking execution of the decree. The petitioner was absent on the date when the execution petition came up for hearing. The court held that means of the petitioner and his refusal to make payment stood proved by the affidavit filed by the decree-holder. The executing court ordered issue of warrant against Judgment-debtor. It is against this order that the present revision petition is filed.

3. The main contention put forward on behalf of the petitioner is based on S. 214(1) of the Indian Succession Act relating to production of the succession certificate. The argument is that the Court should have insisted on the production by the respondent of the succession certificate entitling her to recover the amount before proceeding with the execution petition. Section 214(1) reads;

"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 effects 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 u/s 37 or Section 32 of the Administrator General's Act, 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, 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."

4. According to the petitioner, It was incumbent that the respondent should produce the succession certificate before she is permitted to proceed with the execution of the decree. The respondent, on the other hand, would say that production of the succession certificate is necessary only in cases where the original decree-holder did not seek execution of the decree and the legal representative for the first time moves for execution and not in cases where the decree-holder dies pending disposal of an execution petition filed by him and the legal representative is impleaded during the pendency of that execution petition. Following the above reasoning it is stated that since the respondent got herself impleaded during the pendency of E. P. 100 of 1975 filed by the original decree-holder, she is competent to execute the decree without production of a succession certificate.

5. No decisions of the Kerala High Court directly on the point have been brought to my notice. The Travancore-Cochin High Court had occasion to consider the point in *Narayana Pillai v. Narayana Panicker* 1956 Ker LT 852. After the death of the original decree-holder in that case, his legal representatives were impleaded as additional decree-holders 2 to 7 and the rights of decree-holders 3 to 7 were assigned to two persons. The assignees filed execution petition seeking to execute the whole of the decree for the benefit of all the decree-holders

impleading decree-holder No. 2 also as a party. Objections were raised by the first judgment-debtor that the assignee-decree-holders were not competent to execute the decree and the execution could not be allowed without production of a succession certificate as regards personal relief. After referring to Section 214(1)(b), the Court observed:

"So the wording clearly indicates that when a fresh execution petition is filed by the successors-in-interest a succession certificate is essential whatever be the position when it is a continuation of an execution filed by the original decree-holder."

This case was decided on 29th Aug. 1956. Earlier to the above decision another Division Bench of the same Court had occasion to consider the question in relation to the continuation by the legal representatives of an execution petition filed by the original decree-holder (See *T. Chacko v. K. Varghese*, AIR 1956 Trav.-Co. 183). The Court referred to the difference of opinion prevailing between some of the High Courts and preferred to follow the decision in *Tejraj Rajamal v. Rampyari* AIR 1938 Nag 528 and referred to the following observations of Stone C. J. and Vivian Bose J. in that case:

"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 Section 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."

6. The view taken by the Nagpur High Court in the above case has also been followed in *Shah Ramji Ladha v. Hoti Harisangji Versalji* AIR 1955 Kut 6 and by a Division Bench of the Rajasthan High Court in *Ganeshmal Vs. Smt. Anand Kanwar and Others*, . D. S. Dave, C. J. observed in the latter case:

"Thus, it is clear that Section 214(1)(a) comes into play at the stage where a suit is pending in a civil court and where a decree still remains to be passed. It would be proper to read clause (b) of Section 214(1) in this context. This clause applies to the case where during the pendency of an application for execution, the decree-holder dies, and his legal representative presents an application to be substituted in his place to continue the execution of a decree or when a fresh application for execution is made by the legal representative of the deceased decree-holder, because the decree or order for payment of debt remains unsatisfied. It enjoins upon the court that if an application for execution is made by the legal representatives of the deceased decree-holder, then the executing court shall not proceed upon an application of a person claiming on succession to be entitled to the effects of the deceased decree-holder to execute a decree or order for payment of debt, except on the production by that person of one of the

documents enumerated in the subsequent clauses. The use of the words "claiming to be so entitled" appearing in clause (b) shows that the Legislature meant this clause to be read in the context of clause (a). These words were used to avoid repetition of the words "claiming on succession to be entitled to the effects of the deceased person" appearing in clause (a). If clause (b) is read without the context of clause (a), the word "so" would become redundant and meaningless. The words "so entitled" mean "claiming on succession to be entitled to the effects of the deceased person and nothing else." Similarly, the words "such a debtor" appearing in clause (b) mean "a debtor of a deceased person" used in clause (a). Thus, clause (b) has got to be read in the context of clause (a) to understand it in its real sense."

7. Though *Basappa v. Siddamma* (AIR 1966 Mys 198) is referred to in the above decision, the execution petition in that case appears to have been filed by the legal representatives after the death of the decree-holder. The point whether a legal representative is entitled to continue an execution petition filed by the original decree-holder, without production of succession certificate has not been considered there.

8. In *Raman Namboodiri v. C. S. Bank Ltd.* 1959 Ker LT 702 the matter arose pending suit and it was held that Section 214 is mandatory and the Court cannot pass a decree against the terms even if it is otherwise satisfied that the plaintiff is the real heir or successor of the original creditor.

9. In *Valli v. Madhavan* 1970 KLJ 312 the question arose as to whether an execution petition filed by a legal representative of the decree-holder without production of the succession certificate was a petition in accordance with law. After review of the decisions on the point, Subramonian Poti, J. observed that the use of the word "proceed" in Section 214 of the Indian Succession Act is in contradistinction to the word "entertain" and held that an application for execution filed by a legal representative need not be accompanied by a succession certificate and that an application would be one in accordance with law notwithstanding the non-production of a succession certificate along with the execution petition. The point involved in the present case did not arise for consideration there.

10. A different note is struck in *Mohomed Yusuf v. Abdur Rahim Be-pari*, ILR (1899) Cal 839a case which arose u/s 4 (1) (b) of the Succession Certificate Act, 1889. The reasoning of Banerjee J. is contained as follows:

"But there is another reason why we think that the contention of the appellant in this case would fail, and that is this, that Section 4, Sub-section (1), clause (b), which is the only provision of the Succession Certificate Act under which the case would possibly come, can have no application to the present case. For, that clause provides that no Court shall "proceed upon the application of a person claiming to be entitled to the effects of a deceased person" to execute against a debtor of such deceased person a decree or order for the payment of his debt,

Now, in the present case, the Court was not proceeding upon the application of a person claiming to be entitled to the effects of a deceased person, but was proceeding originally upon the application of the creditor himself, and it was only during the pendency of the execution proceedings that the original mortgagee-decree-holder, died, and his legal representative, the present respondents, were brought on the record. In such a case we do not think that Section 4 of the Succession Certificate Act was any bar to the Court proceeding with the execution.

11. The same reasoning has been adopted in *Balmukund v. Gobind Ram* (AIR 1936 Pesh 17); *Raghubir Narain Singh Vs. Raj Rajeshwari Prasad Singh and Others*, ; *Akula Mabukhan v. Rajama* (AIR 1963 Andh Pra 69); *Lal Kumari Devi and Others Vs. Fulmati Kuer and Others*, , *Ramanatha Reddy Vs. K.V. Kuppuswami Mudaliar and Others*, ; *Shrinath Khandelwal Vs. Bishwanath Prasad*, and *Benode Chatterjee Vs. Purnendu Nath Tagore*,

12. On an anxious consideration of the matter, I prefer to follow the view taken by the High Courts of Nagpur, Travancore-Cochin and Rajasthan in the cases already referred to.

13. It is a well-known principle that in construing a Statute, effect should be given to the intention of the legislature as gathered from the object of the enactment and the attendant circumstances. Even in cases where two interpretations are possible that which advances the object of the Statute and that which is more reasonable should be adopted. Common sense dictates that the purpose of Section 214 of the Indian Succession Act is to protect the interest of the debtor by ensuring that payment is made to the person who in law is entitled to the effects of the deceased creditor. There is no scope for a difference in view that u/s 214, the legal representative of the deceased creditor has to produce succession certificate for obtaining a decree for realisation of a debt due to the latter, There is also no difference in view in that if the decree-holder dies before filing any execution petition or after the disposal of an execution petition filed by him, his legal representative has to produce succession certificate if he is to file an application for execution of the decree. If that be so, there is neither rhyme nor reason in saying that no succession certificate need be produced if the decree-holder dies pending an execution petition and the legal representative wants to continue that petition.

14. In construing a provision in a statute, it is open to the Court to consider any other parts of the Act which throw light upon the intention of the legislature and which may, serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act. (See the observation of Lord Herschell in *Colquhoun v. Brooks*, (1889) 14 A. C. 493 at p. 506)), It may so happen that a deceased person was at the time of his death prosecuting a suit for realisation of a debt against one person and was also executing a decree for realisation of debt against another person. If the purpose of Section 214(1) is to protect the interest of the debtor and to see that the real

person entitled to succeed to the assets of the deceased alone is allowed to realise the debt there is no reason in saying that for the continuation of proceeding a succession certificate need be produced only in the former case and not in the latter. If that be so, the word "application" in Section 214(1)(b) should be interpreted to mean not only a fresh application for execution but also an application for continuation of the execution petition already filed. Such an interpretation gains strength from the meaning given to the word "proceed" in Chambers's Twentieth Century Dictionary 1977 Edn. at page 872. The word means "to go on, to continue, to advance, to pass on, to begin and go on, to act according to a method, to go from point to point..... to take legal action....." From the context in which the word occurs in Section 214(1)(b) it would include not merely starting of execution proceedings for the first time by the legal representative but also continuation of pending execution proceedings on the application of the legal representative. The context in which the word is used does not warrant the limited meaning given to it by the High Court of Calcutta in *Mahomed Yusuf v. Abdur Rahim Bepari* ILR (1899) Cal 839 and in the other decisions which follow that case,

15. In the instant case, the revision petitioner had raised the objection based on the non-production of the succession certificate even while E. P. 100 of 1975 was pending. That petition was dismissed for non-prosecution, There is no reason for not calling upon the respondent to produce succession certificate before proceeding with the present execution petition.

16. The revision petition is, therefore, allowed. The executing Court may direct production of succession certificate by the respondent before proceeding with the execution petition. The objection relating to arrest and detention of the revision petitioner will be considered afresh after the production of the succession certificate by the respondent.