(1986) 02 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Revision No. 290 of 1980

Seva Ram and Others — APPELLANT

Vs

Smt. Saudine Jawahar and Another — RESPONDENT

Date of Decision : 05-02-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Succession Act, 1925 — Section 371

Citation : (1986) 2 WLN 436

Hon'ble Judges : Dwarka Prasad Gupta, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dwarka Prasad Gupta, C.J.—The question which arises in this revision petition is as to whether the District Judge, Udaipur, had jurisdiction to entertain the application for grant of Succession Certificate in respect of the Estate of deceased Jawahar Hingorani.

2. Jawahar Higorani at the time of his death was posted as Principal of the Government College at Jaisalmer. His wife, petitioner, who filed the application for Succession Certificate before the learned District Judge, Udaipur, was at the relevant time posted as Senior Lecturer in Meera Girls College at Udaipur and their son Ajay Jawahar was also residing with his mother Smt. Saudine Jawahar at Udaipur. The jurisdiction of the Court granting Succession Certificate is governed by the provisions of Section 371 of the Indian Succession Act, which reads as under:

371. Court having jurisdiction to grant certificate : The Distirct Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at the that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part.

3. Thus, the District Judge, Udaipur, could have jurisdiction to grant Succession Certificate in respect of the estate of the deceased Hingorani if he ordinarily resided at the time of his death at Udaipur or if at that time he had no fixed place of residence, or if he left part of his property at that place.

4. Learned Counsel for the petitioners referred to the decision of the Madras High Court in Krishnammal Vs. R. Lakshmi Ammal, wherein it has been observed that if the deceased had a fixed place of residence then he could be considered to be ordinarily resident of that place. But if he has no fixed place of residence then the place where any part of the property of the deceased was located could come within the provisions of Section 371 of the aforesaid Act.

5. Similar view was expressed by the Rangoon High Court in Chan Chor Khine AIR 1923 Rang 238 where the deceased did not at the time of his death ordinarily reside within the jurisdiction of a court then that court would have no jurisdiciton to grant a Succession Certificate unless part of the property of the deceased was found within the jurisdiction of that court.

6. Thus, where there was a fixed place of residence, the deceased should be considered to be ordinarily resident of that place. A person may have temporarily gone to another place for purposes of business or in connection with employment. But if that is not the fixed place of the residence of the person, then the place where the part of the property of the deceased may be found may be the place which may cover the decision of the grant of Succession Certificate.

7. In the present case the deceased was employed at Jaisalmer, as such, Jaisalmer may be considered to be the ordinary place of residence of the deceased but at the same time as the wife and child of the deceased resided at Udaipur and he used to go to Udaipur during holidays, it appears that Udaipur was also the place of ordinary residence of the deceased. It is not that a person can be ordinarily resident of one place only but if the home of a person is a situated at a particular place, where he is expected to go as soon as he is free from his employment or business then it cannot be held that the person cannot be said to be ordinary resident of that place. It often happens that people whose family reside in the suburbs, go for attending their employment or business activities in metropolitan or other big cities. In such cases it cannot be held that because the person usually works for gain at a particular place, either doing his business or attending to his employment, then he can be said to be ordinary resident of that place alone while he returns to his family after attending to his business. In my view, a person can be deemed to be ordinarily residing in a place where the home of the person is located. In this respect it may be pointed out that the language ''employment'' in Section 20 CPC is widely different. Under that provision a suit can be instituted against a defendant where he actually and voluntarily resides or carries on business or personally works for gain. Therefore, the provision relates to actual residence of the person or his carrying on business or personally working for gain. The provisions of Section 371 of Succession Act do not speak of actual residence of the deceased but the jurisdiction is confirmed

if the deceased ordinarily resided at a particular place. Thus, the residence need not be a permanent residence but may be place where a person "ordinarily" resided.

8. In the present case the wife and child of the deceased resided at Udaipur and whenever he had holidays he used to return to his home and resided with h>s family. Thus, it cannot be held that Udaipur was not the place where the deceased ordinarily resided.

9. It is also not disputed that the part of the property of the deceased was at Udaipur where his family was residing. In this view of the matter I hold that the court at Udaipur, had jurisdiction to entertain the application for grant of Succession Certificate.

10. The revision petition, therefore, has no force and it is dismissed.

11. The parties are left to bear their own costs.

