

(2001) 01 KAR CK 0072

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2249 of 1997

Smt. Ningamma and Others

APPELLANT

Vs

Smt. Sakamma and Others

RESPONDENT

Date of Decision : 11-01-2001

Acts Referred:

Succession Act, 1925 — Section 372, 373

Citation : AIR 2001 Kar 339 : (2002) 3 CivCC 431 : (2001) ILR (Kar) 2586 :
(2002) 3 KarLJ 248 : (2001) 4 KCCR 402 SN : (2002) 3 RCR(Civil) 661

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : R.B. Sadashivappa, for the Appellant; H. Basavaraju, for the Respondent

Final Decision : Dismissed

Judgement

Chidananda Ullal, J.—This appeal is directed against the order dated 30-11-1996 in case No. P and SC 70 of 1987 on the file of the XV Additional City Civil Judge, Bangalore City. In passing the said order, the learned City Civil Judge while allowing the application filed by the respondents 1 to 3 held that the respondents 1 to 3 (they were the petitioners before the City Civil Judge) were entitled to for a succession certificate to an extent of 3/4th of the total amounts available in the hands of the Bangalore City Corporation on account of the death of late V. Puttaswamy, the husband of the respondent 1 and the father of the respondents 2 and 3 who was working as "Malaria Gangman" in "Q" sub-division.

2. The City Civil Judge in the impugned order had also directed further the respondents 1 to 3 herein to obtain the details of the total amount of money available towards death relief fund and DCRG, family pension and other monies available in the account of the said V. Puttaswamy for the purpose of issue of succession certificate.

3. Before proceeding further, I feel it appropriate to set out the facts of the case

in brief.

4. The appellants were the respondents, whereas the respondents herein were the applicants before the XV Additional City Civil Judge, Bangalore City, henceforth referred to as the "City Civil Court"; so also for the purpose of convenience, henceforth in this order, the parties are referred to as they were before the City Civil Court.

5. That the petitioner 1 claimed herself to be the duly wedded wife of deceased Puttaswamy and the petitioners 2 and 3 claimed themselves as sons born to the said Puttaswamy out of the wedlock with him by the petitioner 1. That the said Puttaswamy was working as a "Malaria Gangman" in the Corporation of the City of Bangalore, in brief "the Corporation" and he died while in service on 30-8-1986. That there was certain monies in the hands of the Corporation, in the account of the said Puttaswamy and when, they on the one hand and the respondents on the other approached the Corporation for the purpose of disbursement of the monies, the Corporation had issued an endorsement to the petitioner 1 on the one side and the respondent 1 on the other to approach the appropriate Court for redressal of their grievance, copy as at Ex. P. 11 and that the succeeding party may thereafter approach the Corporation to settle the claims in question. Upon that, the petitioners had filed a petition u/s 372 of the Indian Succession Act for issue of a succession certificate in their names. In filing the petition, the petitioners had arrayed the respondents as the contesting parties.

6. That the respondents having entered appearance in the said P and SC No. 70 of 1987 had opposed the said application. They also filed detailed objection statement. In doing so, when the respondent 1 claimed herself to be the duly wedded wife of V. Puttaswamy, the respondents 2 and 3 claimed to be the sons of the said V. Puttaswamy, whereas the respondent 4 claimed herself as the mother of Puttaswamy.

7. Based on the pleadings of the parties before the City Civil Court, the City Civil Court had fixed the following points for its consideration, for according to it, the said points arose for its consideration. They are:-

(1) Whether the petitioners prove that they are the wife and children of the deceased V. Puttaswamy?

(2) Whether the petitioners are entitled to a Succession Certificate and if so, to what extent?

8. To prove the above points, the petitioners 1 to 3 had examined themselves as P.Ws. 2 to 4 and they also examined one C.R. Byrappa, an official witness who was summoned from the Corporation and he had been examined as P.W. 1. In support of their case, they marked as many as 30 documents and they included Ex. P. 1, an authorisation letter issued by the Corporation, authorising F.W. 1 to give evidence for and on its behalf, Ex. P. 2, the Xerox copy of the Service

Register, Ex. P. 2(a), the copy of the nomination made by the deceased in favour of the petitioner 1 (P.W. 2) before the Corporation, Ex. P. 10, the insurance document to show that the insurer had paid certain amounts under a policy wherein petitioner 1 (P.W. 2) was shown as a nominee and wife of the deceased, Ex. P. 11, the endorsement referred to above, Exs. P. 13 to P. 15, the school certificates of the petitioners 2 and 3, Ex. P. 16, the Xerox copy of the ration card and Exs. P. 17 and P. 18, the extract of voters' list and enumeration respectively.

9. From the side of the respondents, the respondent 4 was examined as R.W. 1, the respondent 1 as R.W. 3, whereas they both examined a witness, one Channamma as R.W. 2. In support of their case, they also produced 8 documents and they included Ex. R. 1, the marriage invitation, Ex. R. 2, the extract of voters' list, Exs. R. 3 and R. 4, school certificates pertaining to the respondents 2 and 3, Ex. R. 7, the ration card and Ex. R. 8, the ESI Card.

10. The learned City Civil Judge on appreciation of the material evidence on record, both oral and documentary had allowed the petition of the petitioners holding that they were entitled to for a succession certificate as they prayed for and further directed them to secure necessary details with regard to the allowance in the hands of the Corporation for the purpose of payment of the requisite stamp duty for issuance of the succession certificate.

11. Being aggrieved by the impugned order passed by the City Civil Judge, the respondents are before this Court.

12. The learned Counsel for the respondents Sri R.B. Sadashivappa had argued that the City Civil Judge had erroneously concluded that the petitioners were entitled to a succession certificate as they applied for, for, according to him, the City Civil Court had failed to note that the respondent 1 was the legally wedded wife of late V. Puttaswamy and the respondents 2 and 3 were his legitimate children born to the respondent 1 and as such, they were entitled to the service benefit in the hands of the Corporation. It was also argued by him that his parties have produced sufficient evidence in Ex. R. 1, the marriage invitation, Ex. R. 2, the copy of the voters' list, wherein the name of the deceased V. Puttaswamy had appeared along with the names of the respondents 1 and 4 showing therein the relationship between them inter se, Ex. R. 7, the ration card showing therein the name of the respondent 4 and further that the name of the deceased V. Puttaswamy had also appeared along with the names of the respondents 1 to 3, very well showing their relationship as "father".

13. Yet another point the learned Counsel for the respondents Sri Sadashivappa argued before this Court was that the City Civil Court having found the contestants in the case, would have as well converted the P and SC case into a regular suit to try the same after framing issues based on the pleadings and therefore, according to him, the City Civil Court had entered into an error in law in not following the said course. He had also pointed out that the City Civil Court had treated the proceedings as a summary proceedings as if there was no

challenge for the claim of the petitioners before him.

14. It was also argued by him that the City Civil Court had also entered into an error in working out the shares of the petitioners on the one side and the respondents 2 and 3 on the other. This appears to be an alternative argument Sri Sadashivappa had put forth before this Court, for, according to him, worst come, the City Civil Court would have treated the respondents 2 and 3 as the illegitimate children of the deceased born to the respondent 1 and as such, he would have as well apportioned certain shares out of the monies in the account of deceased V. Puttaswamy in the hands of the Corporation.

15. Therefore, he submitted that the impugned order passed by the City Civil Judge either be set aside or in the alternative be modified by granting the legitimate share what the respondents 2 and 3 are entitled to under law.

16. Sri Sadashivappa had also cited before me the following decisions in support of his case:

1. Rameshwari Devi Vs. State of Bihar and others, ;
2. Singhai Ajit Kumar and Another Vs. Ujayarsingh and Others, ;
3. Gur Narain Das and Another Vs. Gur Tahal Das and Others, ;
4. Birendra K. Singh Vs. State of Bihar, ;
5. P.S.E.B. And Others Vs. Ram Rakhi,

17. The learned Counsel appearing for the petitioners Sri H. Basavaraju on the other side while supporting the impugned order passed by the City Civil Court counter-argued that the respondents 1 to 3 had falsely claimed both before the Corporation, as well as before the City Civil Court that they were the wife and children of the deceased V. Puttaswamy. It was also pointed out by him that the said parties were instigated by the respondent 4, the mother of the deceased only to defeat the legitimate claims of the petitioners out of ill-will. In this context, he had also drawn my attention to the evidence of P.W. 2 (petitioner 1) that the mother of the deceased was not in good terms with her and as such, they were not seeing eye to eye. He further submitted that in her evidence P.W. 2 had clearly deposed before the Trial Court that the respondent 4 was not in good terms with deceased V. Puttaswamy during his lifetime and that she was staying in an "ashram" what was called as "Obamma Math" in Gavipuram Extension. While taking me through the evidence of his parties, more particularly, Sri Basavaraju submitted that the petitioners had not only adduced their side of the evidence but also examined one Byrappa, an official witness from the office of the Corporation, as P.W. 1 and further examined yet another independent witness Thammaiah as P.W. 3. He has also submitted that the evidence adduced by his parties was cogent and acceptable and it is for that good reason, the learned City Civil Judge had accepted the said evidence adduced by his parties and allowed the petition filed by ordering for issuance of

succession certificate. Sri Basavaraju had also canvassed that the evidence of the official witness P.W. 1 before the Trial Court was more clinching, for deceased V. Puttaswamy himself had declared in the nomination made in the service records of the Corporation that the petitioner 1 (P.W. 2) was his legally wedded wife and that the nomination had duly been accepted by the Corporation, evidenced by Ex. P. 2, a Xerox copy of the Service Register and Ex. P. 2(a), the Xerox copy of the nomination. While taking me through the petition u/s 373 of the Indian Succession Act, Sri Basavaraju had also argued that in the said provision of law, the procedure as to the disposal of application by the District Judge is set out. While referring to Sub-section (3) of Section 373 thereof, it was also pointed out by him that the District Judge is bound to issue a succession certificate to a party who makes out a prima facie case showing the best title for issuance of the certificate. While countering the argument of the learned Counsel for the respondent Sri Sadashivappa that the City Civil Court would have converted the P and SC case into a suit, Sri Basavaraju argued that what was canvassed is not found in the provision of law u/s 373 of the Act. Therefore, according to him, there is no substance in the said argument advanced by the learned Counsel for the other side before this Court in the instant appeal.

18. While referring to the provision in Sub-section (4) of Section 373 of the Act, Sri Basavaraju had also submitted that even in the case where there were to be more than one application in respect of the service benefits, it was not contemplated therein to try the claims by way of suit. While literally taking me through the said provision in Sub-section (4) of Section 373 of the Act, even in cases where there were to be more than one application putting forth claims and counter-claims, the District Judge is supposed to issue the succession certificate to such applicant or applicants by setting out interest in the estate of the deceased.

19. Neatly, the learned Counsel Sri Basavaraju had also argued that it was not at all available for the other side to put forth the alternate case before this Court, particularly when there was no pleadings before the Trial Court while opposing the applications filed by the petitioners. He had also reminded the Court that the simple case of the respondents 1 to 3 as well as the respondent 4, the mother of the deceased was to the effect that when the respondent 1 was the legally wedded wife, the respondents 2 and 3 were the legitimate children born to the said Puttaswamy to the respondent 1. Therefore, according to him, the alternative argument advanced now is neither based on pleadings nor based on evidence before the City Civil Court to say that the respondents 2 and 3 would have been held alternatively as illegitimate children of deceased Puttaswamy and respondent 1 to claim shares in the property of deceased V. Puttaswamy. According to him, the said argument of the other side does not hold water and hence he prayed, even that alternative argument advanced by Sri Sadashivappa for and on behalf of the respondents 2 and 3 be rejected summarily.

20. In support of the arguments of Sri Basavaraju, he had also cited before me

the following decisions:

1. Smt. Radhamma Vs. Union of India and Others, ;
2. Ammini Ammal Vs. Lekshmi and Others, ;
3. Smt. Ram Pyari Vs. Dharam Das and Others, ;
4. Mohan Singh Vs. State Officer Public Premises Eviction Act and Others, ;
5. Madhwapathi Venkatakrishna Rao v. Panditha Narasubhai and Anr. AIR 1954 AP 23;
6. Brojendra Sundar Banerji Vs. Niladrinath Mukerjee and Others,
7. P.R. Subramania Pattar Vs. Porathana Andi,

I feel it appropriate to refer to the relevant decisions out of the above seven decisions cited by Sri Basavaraju.

21. According to me, the decisions at serial No. 2 in Ammini Ammal's case, supra, Mohan Singh's case, supra and Madhwapathi Venkatakrishna Rao's case, supra, have got relevance.

22. In Ammini Ammal's case, supra, the Kerala High Court held that under Sections 372 and 373 what the District Judge has to determine in a petition is whether the applicant is the proper person to be clothed with the representative character and the Court has to satisfy itself that the person to whom it grants certificate has got a prima facie right for such a grant._____

23. In Mohan Singh's case, supra and Madhwapathi Venkatakrishna Rao's case, supra, it was held that, merely because complicated Questions of fact and law arise in an application for grant of succession certificate, do not entitle the Judge to dismiss the application and that Clause (3) of Section 373 of the Act makes it clear that the Court has nevertheless to grant the certificate to the person having prima facie the best title thereto.

24. To sum up, Sri Basavaraju submitted that the instant appeal does not merit any consideration in the hands of this Court. He therefore prayed that the instant appeal be dismissed.

25. Before taking up other contentions by the learned Counsel appearing for the contending parties before me, I feel it appropriate to take the point, the one the learned Counsel for the respondent Sri Sadashivappa had argued and that point was with regard to converting the P and SC case into a suit by the Trial Court.

26. The learned Counsel for the petitioners Sri Basavaraju on the other side submitted that such a procedure was not at all contemplated under the scheme of things in Sections 372 and 373 of the Act. Therefore, such a procedure pointed out by Sri Sadashivappa was totally extraneous to the said provisions in

the Act. I find sufficient force in the argument of Sri Basavaraju, for I too do not find anything in the scheme of things in Sections 372 and 373 of the Act. Probably, the learned Counsel for the respondents were inspired to make such an argument, for u/s 295 of the Act, it is provided therein that in any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Civil Procedure Code, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant. I do not think the said provision of law is applicable to the application to seek succession certificate under Sections 372 and 373 of the Act. If one reads the said provision of law, it is clear there from that the procedure in the matter of disposal of applications applied for succession certificate is very well set out therein. As pointed out by the learned Counsel for the petitioners Sri Basavaraju, that even in the case of applications and counter-applications, converting a P and SC case into a suit was not at all contemplated even in Clause (4) of Section 373 of the Act. Therefore, at the outset, I do not find any merit in the said limb of the argument of the learned Counsel for the respondents. Accordingly, I reject that argument of Sri Sadashivappa at the threshold.

27. From the provision in Section 373 as well as the catena of decisions of this Court as well as of other Courts, it is clear that, when a party makes out a prima facie case for grant of succession certificate, the Court has to grant the same, particularly when the lis between the parties will not be conclusively decided in issuance of a succession certificate for the reason that the same is liable to be challenged in a regularly framed suit. In the instant case, as I see, the clinching evidence that had been produced by the petitioners was the evidence of P.W. 1, the official witness. Admittedly, the said witness had clearly deposed before the learned City Civil Judge that during the lifetime of deceased V. Puttaswamy, he did declare that the petitioner 1 (P.W. 2) was his legally wedded wife and that was very well-found in the very declaration filed by him in the official record marked as Ex. P, 2(a) as well as the service record Ex. P. 1(a). As a matter of fact, I had asked the learned Counsel for the respondents Sri Sadashivappa whether the evidence of the said witness before the learned Civil Judge was in any way challenged by his parties. That I did for the reason that the said evidence of the official witness had remained totally unchallenged.

28. During the course of the discussion in the impugned judgment, the learned City Civil Judge had also observed that the marriage of petitioner 1 (P.W. 2) came to be solemnised earlier to 1970 as P.W. 2 was born in that year. The City Civil Court had made that observation based on the evidence on record. Admittedly, the case of the respondents before the learned City Civil Judge to oppose the application of the petitioners was to the effect that the marriage of the petitioner 1 had taken place in the year 1972. As I see, the City Civil Court had not accepted the marriage invitation produced by the respondent, copy as at Ex. R. 1 as that appeared to be of recent origin. Therefore, it is clear from the

evidence that the marriage of the petitioner 1 had taken place earlier to the year 1970 and therefore it is obvious that the learned City Civil Judge found prima facie case in favour of the petitioners for grant of the succession certificate they applied for. It is in the said circumstances, as I see, the City Civil Court had ordered for grant of succession certificate in favour of the petitioners.

29. In the instant case, it is clear that the respondents on their own did not choose to file the applications for grant of succession certificate in their name as the petitioners did in filing the application in P and SC No. 70 of 1987 and as I further see, all that they did was only to oppose the grant of succession certificate by the City Civil Judge as prayed for by them in filing the application in question. I do not find any good reason as to why the respondents did not take recourse to filing of similar application as the petitioners did, particularly when they were also addressed with common endorsement as at Ex. P. 11, calling upon them to approach the City Civil Court and thereafter approach the Corporation for the purpose of settling the dues in the account of the deceased V. Puttaswamy.

30. In that view of the matter, I do not find any merit in the instant appeal. The appeal therefore fails and accordingly stands dismissed.

31. In the peculiar facts and circumstances, I do not want to award cost in the appeal.