

(2009) 10 KAR CK 0044

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 11500 of 2005

Smt. Vidya Udaykumar Toranagatti and Others

APPELLANT

Vs

Smt. Shobha and Another

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Succession Act, 1925 — Section 372, 373

Citation : (2011) 3 KarLJ 304 : (2011) 1 KCCR 817

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Santosh B. Malagoudar, for the Appellant; Santosh S. Nagarale, for Respondents 1 and 2, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the Counsel for the parties.

2. The facts are as follows: The Appellant No. 1- claimant is the widow of one Uday Kumar, to whom she is said to have been married in the year 1996. Late Uday Kumar was working as a Constable under the Armed Reserve Police, Belgaum. Appellants-2 and 3 are children born to the first Appellant through late Uday Kumar. He is said to have died in the year 2001, at Belgaum. The Appellant is said to have applied for a survivorship certificate from the employer. In view of the objections having been raised by Respondent No. 1, who also claims as the widow of Uday Kumar, the Appellant was constrained to file an application u/s 372 of the Indian Succession Act, 1925 (hereinafter referred to as the "Act" for brevity). This was contested by the Respondents herein. The Court below after examining the rival contentions, has expressed its opinion on the relationship between the first Appellant and the Late Uday Kumar as being adulterous and that Respondent No. 1 was the legally wedded wife of Uday Kumar and that the first Appellant having married Uday Kumar during the lifetime of first Respondent, who was not divorced by Uday Kumar, her marriage was invalid and therefore, she was disentitled to be granted the Succession Certificate. While the lower Court has further opined that Appellants-2 and 3, though are found to be

illegitimate children of late Uday Kumar, are entitled to the succession certificate, jointly with the Respondents, who are the legally wedded wife and son of late Uday Kumar. It is this, which is sought to be challenged, in the present appeal.

3. The Counsel for the Appellants would seek to contend that there is ample material on record to indicate that Appellant No. 1 and Uday Kumar lived for several years as husband and wife and long years of such relationship raises a presumption that the couple are husband and wife and in this regard places reliance on the judgment of the Supreme Court reported in the case of S.P.S. Balasubramanyam Vs. Suruttayan alias Andali Padayachi and others, and further, Respondent No. 1 having been away from Uday Kumar for over 15 years, there was no continued relationship of husband and wife. He would further contend that the Court below was not justified in disentitling the first Appellant from benefits conferred on her by Uday Kumar, only on the ground that her marriage was invalid. The further circumstance that the Court below has itself found that Appellants-2 and 3 were entitled to benefits conferred on them by late Uday Kumar in respect of certain securities, there was no justifiable reason to deny the grant of Succession Certificate to the first Appellant and therefore, would submit that the mere fact that Respondent No. 1 was drawing family pension did not disentitle the Appellants from also laying claim to the same and such other benefits. They were entitled to claim as the widow and children of the late Uday Kumar.

4. On the other hand, the Counsel for the Respondent would seek to justify the grant of Succession Certificate in favour of Respondent No. 1 and others.

5. In addressing this appeal, the scope of Section 373 of the Act (hereinafter referred to as the Act) needs to be kept in view. Section 373 merely lays down that the Court is required to satisfy that there is ground for entertaining the application viz., that it is by a person, who desires to make a claim. It is not necessary for the Court to enter upon other questions. This entitlement of the benefits or other issues, which would be questions of such a character, which cannot be litigated upon on an application for a succession certificate, A Full Bench decision of the Calcutta High Court in the case of Brojendra Sundar Banerji Vs. Niladrinath Mukerjee and Others, is explicit in its exposition on the same, which is as follows:

Section 372, Succession Act, provides that an application for a succession certificate must be verified like a plaint and shall set forth inter alia the right under which the Petitioner claims and the debts and securities in respect of which the certificate is applied for. Section 373 provides that if the Judge is satisfied that there is ground for entertaining the application, he shall fix a date for hearing and issue certain notices and upon the date fixed or as soon thereafter as may be practicable shall proceed to decide in a summary manner the right to the certificate." "Clauses 2 and 3 are as follows:

(2) When the Judge decides the right thereto to belong to the applicant, the

Judge shall make an order for 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 him 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.

An examination of this section leads me to the conclusion that the legislature contemplated first that the District Judge should be satisfied not that a succession certificate will be necessary or exigible u/s 214 or otherwise, but that there is "ground for entertaining the application." That is to say, that it is a serious and sensible application by a person who desires to make a claim in the representative character which he seeks. Clauses 2 and 3 contemplate that the Judge shall endeavour to determine whether applicant is the proper person or a proper person to be clothed with the representative character and it is made abundantly clear that any intricate questions of fact or law bearing upon this question may be solved in a summary manner. The legislature by exacting fees and by making provision for the requirement of a bond would seem to have taken away all temptation to apply for a succession certificate save in cases where a succession certificate will enable the grantee to prosecute a claim as a representative of the deceased with greater advantage than he would have been able to do in the absence of this representative right. Section 387 provides that no decision under this part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties. In my opinion nothing could be more misguided, unnecessary and objectionable than that questions of the exact character of an applicant's claim should be litigated upon an application for a succession certificate and in the absence of the party or authority against whom the claim is made. The objector in the present case, for example, is in no way damnified by the grant of the certificate. He is entitled to object before the Land Acquisition Judge to any order for payment out of compensation money upon any ground which he can establish showing that the money was not due to the deceased but is money which in the events that have happened, is payable to him. If he has any grievance against the order of 18th April, 1928, he has his remedy. To insist upon litigating the questions at issue between the parties under the provisions of Section 373, Succession Act, is merely the tactics of obstruction.

On the other hand, it would clearly be inconvenient if in a case such as this the Land Acquisition Court should take the view that the nature and character of the claim was such as to entitle it to require the production of a succession certificate, while at the same time the Judge to whom application for such certificate must be made purported to decide between these parties that the debt in question could not be regarded as having been due to the deceased and that accordingly no right to represent the deceased for the purpose could be given to anyone. In my opinion it is not the law that the Court upon an application for a

certificate has to decide for itself, as a condition of granting the certificate, that the case is one in which the debt was due to the deceased person within the meaning of Section 214. A reasonable and sensible claim to be enabled to proceed against a third party as being a debtor of a deceased person is sufficient for the purpose of clothing the Court with jurisdiction u/s 373 and may be regarded as ground for entertaining the application.

Even in a contentious proceeding for probate u/s 295 of the Act, though the proceedings shall take as nearly as possible the form of a regular suit, the issues to be tried in such a suit are, however, limited to the questions as to whether the testator was of sound disposing mind and whether the Will was duly executed and attested. It is not the duty of the probate Court to consider any issue as to the title of the testator to the property with which the Will propounded purports to deal or as to what disposing power the testator may have possessed over such property or as to the validity of the bequests made. A proceeding under the Act would not be a suit properly, so called, but merely takes the form of a suit according to the provisions of the Code of Civil Procedure, 1908.

6. In the case on hand, the Trial Court has proceeded to examine the entitlement or otherwise of the parties to the benefits in respect of which the succession certificate was claimed. While also examining the validity or otherwise of the relationship of marriage of Appellant No. 1 with Uday Kumar vis-a-vis the relationship between Respondent No. 1 and Late Uday Ku mar, it would have been sufficient if the Court below had satisfied itself prima facie as to the person being eligible to make a claim in a representative character, which he or she seeks and the Trial Court having prima facie found that Respondent No. 1 was indeed married to late Uday Kumar, prior to the marriage of Appellant No. 1 to Uday Kumar, the grant of Certificate in favour of Respondent No. 1 would have been in order. The Trial Court having granted the succession certificate in favour of several persons, viz., Appellants-2 and 3 as well as the Respondents herein, is unusual and is not the procedure contemplated. The grant of succession certificate only enables the holder to recover debts and securities due to the estate of the deceased and payment to such grantee would be a good discharge of such debt insofar as the third parties are concerned. The grant of such certificate does not however render any finality to rival claims to the benefits, nor does it conclude other question of fact or law, which may exist as between the rival claimants, as in the case on hand. Therefore, the mere grant of succession certificate in favour of Respondent No. 1 and others does not disentitle the Appellant No. 1 from raising a claim in appropriate proceedings before a competent Court of law, which shall then, address any contentious issues as regards the entitlement and status of parties, as have been addressed in the course of the impugned order of the lower Court, Opinions expressed and finding on such issues by the lower Court will not operate as *res judicata* in such proceedings that may be brought by Appellant No. 1. Any payments that may be made to Respondent No. 1 on the basis of the succession certificate would necessarily have to be accounted for and Respondent No. 1 would have to

indemnify and keep indemnified of any such claims that are raised by Appellant No. 1.

7. In any event, the grant of succession certificate in favour of several parties, as has been done by the Trial Court is not contemplated under the provisions of the Act.

8. Accordingly, the appeal is allowed in part. The succession certificate granted in the form by the Court below is made subject to such claims that the Appellants may raise in independent proceedings before a competent Court of law and it would be open to the Appellants to seek such interim reliefs, if so warranted, to protect their interest in those proceedings.