
(2005) 10 AP CK 0023
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5113 of 2001

Sreeram Rangaiah (died) per LRs.

APPELLANT

Vs

Gajula Krisnaiah

RESPONDENT

Date of Decision : 26-10-2005

Acts Referred:

Hindu Womens Right to Property Act, 1937 — Section 3(2)
Succession Act, 1925 — Section 214(1)

Citation : (2006) 1 ALD 757 : (2006) 1 ALT 186

Hon'ble Judges : G. Yethirajulu, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : O. Manohar Reddy, for the Appellant; A. Prabhakar Sarma, for the Respondent

Judgement

B. Prakash Rao, J.—This case has come up before us on a reference made by a learned single Judge Sri Justice J. Chelameswar for an authoritative pronouncement, having regard to the conflict situation arising in view of two decisions reported in Life Insurance Corporation of India Vs. Tada Tirupathayya, and Akula Rangappa (Died by L.Rs.) Akula Satyamaiah and Others Vs. Narayana Swamy, on the question as to whether a succession certificate is absolutely necessary for laying execution by the legal representatives of the deceased decree-holder.

2. The few facts, as necessary for consideration of this case, are that the suit was filed for recovery of certain amounts from the respondent and the same was decreed. However, subsequent to passing of the decree, the plaintiff died. The petitioners herein, claiming to be the sons of the deceased plaintiff/decreed-holder, filed the present execution which was contested, inter alia, on the ground that in the absence of succession certificate in their favour, no such application for execution is maintainable in view of Section 214(1) (b) of the Succession Act, 1925 (for short "the Act").

3. Having heard the counsel on either side and on perusal of both the decisions

and the cases, which have been referred to across the Bar, it necessitates for us to consider the principles in this regard. However, from the facts as narrated, there is no dispute that the petitioners laid the execution subsequent to the death of their father who obtained the decree. Therefore, with this background, it takes us back to the decision in L.I.C. of India¹ wherein considering the said provision it was held that:

Under the Hindu law, there is a distinction between succession and the devolution of property by survivorship. The Succession Act, as is indicated in the preamble, covers cases of succession only and cases of survivorship are not within the ambit of that Act. Where a family is a joint Mitakshara family and the amount sought to be recovered is an asset of the joint family, the plaintiff, who claims by survivorship, cannot be compelled to take out a succession certificate to enable him to recover the amount.

From the above and from the discussion made therein, it is quite amply clear that in case of survivorship in a joint family, the question of obtaining succession certificate does not arise in contra distinction to the succession. Therefore, it necessarily follows that where the legal representatives claimed through survivorship and not by succession, there is no necessity to seek any succession certificate under the aforesaid provision. However, when the claim rests on the succession from the deceased plaintiff/ decree-holder, it mandates them to obtain a succession certificate.

4. In *Thota Venkata Subbaiah @ Vijaya Kumar v. A. Venkata Subbaiah* 1987 (2) APLJ 39 a learned single Judge of this Court, while considering the very same provision, held that in a suit to recover the debt due to a Hindu Joint Family under Mitakshara Law, and if the plaintiff were to succeed to the property of the deceased under a Will, succession certificate is necessary for recovery of debt due to the deceased. However, the plaintiff in that case being an adopted son of the deceased, he is entitled to the properties of the deceased by survivorship and therefore, no succession certificate is necessary to recover the debt due to a Hindu Joint Family under Mitakshara Law. In *Komiresetti Peddamma v. Desu Gurunadharao* 1973 (2) An.W.R. 112 Sri Justice Knodaiah as he then was considering a case of a joint family where a promissory note was obtained by father and after his death, it was held that his sons cannot file suit on such note, without obtaining succession certificate. However, if promissory note shows that the amount will not belong to a joint family then alone the sons can file suit without succession certificate. The said decision is a reiteration of the same principle with a distinction between a succession and survivorship. In *S. Rajyalakshmi Vs. S. Sitamahalakshmi*, a learned single Judge of this Court held that if the representative is not a person on whom the interest has devolved by survivorship, it will be necessary for him to obtain a succession certificate to recover a debt in execution proceedings u/s 214(1) (b) of the Act, if the execution petition itself is filed by him. Therefore, in a case where an execution application is filed by the legal representative of the deceased decree-holder,

succession certificate would be necessary when a "debt" is sought to be recovered. But when the execution is only for recovery of costs, no succession certificate is essential. In *The Indian Leaf Tobacco Development Ltd. Vs. K. Kotayya and Others*, a learned single Judge of this Court, while considering the case of Hindu Widow having a right to money due to her husband, held that succession certificate is not necessary, more so where she has a right u/s 3(2) of Hindu Women's Rights to Property Act, 1937. In *Akula Rangappa's case* (2 supra) Justice Sri K. Ramaswamy as he then was considering the said provision in a case where decree-holder died during pendency of the execution before recording full satisfaction, held that the legal representatives are entitled to come on record without obtaining succession certificate as required thereunder. However, where legal representatives seeking execution on the basis of a decree obtained by the deceased, it was held that it is mandatory to obtain succession certificate.

5. From the above aforesaid decisions as cited across the Bar, each case went on its own facts and circumstances and in fact, there is no consideration on the principles as laid down in the decision of the Division Bench in *L.I.C. of India's case* (1 supra) where a distinction was drawn between a succession and survivorship. Therefore, the principles as laid down by the Division Bench in the said decision, still holds good. We are in entire agreement with the said principles and we further reiterate that it is only in case of succession, such certificate would be necessary but not in a case of survivorship in a Joint Hindu Family under Mitakshara Law. Therefore, it necessitates to consider whether the claim of the legal representatives is either through succession or survivorship and it has to be seen whether the said provision u/s 214 (1) (b) of the Act can be pressed into service or not.

6. The reference is answered accordingly.