

(2003) 11 KAR CK 0018

In the Karnataka High Court

Case No : Regular First Appeal No. 651 of 1999 and CROB No. 6 of 2001

Sri. B.J. Prabhakar

APPELLANT

Vs

Smt. S.A. Venagadamma (deceased) by L.Rs. and Another

RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Administrator Generals Act, 1913 — Section 31, 32
Succession Act, 1925 — Section 204 (3), 214, 57

Citation : (2004) 1 KCCR 682

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Rachana Law Associates in RFA No. 651 of 1999 and N. Shankaranarayana Bhat, for Cross Objectors in CROB No. 6 of 2001, for the Appellant; Shankaranarayana Bhat, for Respondents 1c, f and 2 in RFA No. 651 of 1999, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—This appeal is by the Plaintiff. He challenges the Judgment and Decree dated 5.4.1999 passed in O.S. No. 1634 of 1988.

2. The Appellant-Plaintiff is the second son of late B. Janardhan Gupta, who died on 5.4.1986. The Appellant's father Sri. Gupta executed a Will dated 15.3.1985 bequeathing all the assets to the Appellant-Plaintiff. The Will was deposited with the District Registrar. After the death of Sri Gupta, the Will was opened by the District Registrar. In terms of the Will, the Appellant is entitled to all the residuary assets of the deceased Gupta. On 10.5.1980, Smt. S.A. Vengadamma (deceased) the first Respondent and her son Sri S.A. Sriram, the second defendant in the suit have jointly borrowed a sum of Rs. 12,500/- from the father of the Appellant/Plaintiff, B. Janardhana Gupta. They executed an On Demand Promissory Note with consideration Receipt for Rs. 12,500/- agreeing to repay the same together with interest at 18% p.a. The second Respondent was the scribe of the said promissory note. The Respondents paid Rs. 4,025/- by cash

and also by way of cheque on different dates. Cheque was acknowledged. The Appellant's father was demanding repayment of the balance. After the death of the Appellant's father, the Appellant-Plaintiff demanded the balance and in the absence of settlement, a notice came to be issued. Thereafter a suit was filed in the light of the Will. Suit was contested. After contest, the Trial Judge has dismissed the suit. This order is challenged. A cross appeal has been filed by the contesting Respondent in the connected matter. Both the appeals were taken together.

3. Heard the Counsel for the parties. Perused the material placed on record.

4. The Trial Judge, after referring to the pleadings, has framed six issues in para 6. PW-1 was examined and 15 documents were marked in support of the plaint. The defendant examined themselves and one document was filed. The Trial Judge has answered the issues in para 7. The Trial Judge, while considering issue No. 1, after noticing the facts and the evidence has come to a conclusion that the suit transactions are proved in the case on hand. While considering issues 2 and 4, the Trial Judge has ruled that there is an acknowledgment of debt by the defendant. While considering issue No. 3 with regard to the maintenance of the suit, the Trial Judge, after noticing the Indian Succession Act has held against the Plaintiff. Let me see as to whether this finding on issue No. 3 is sustainable or not. Parties have also argued on this issue.

5. Learned Counsel invites my attention to the material facts to contend that the findings of the learned Judge require my interference.

6. Per contra, the same is opposed by Sri Shankaranaraya Bhat, learned Counsel. When issue No. 3 is held in favour of the Plaintiff-Appellant, then there is a need to consider with regard to other issues. Admitted facts reveal of a suit by the present Plaintiff who is none other than the son of Sri B. Janardhana Gupta. He bases a suit claim on the basis of the Will left by his father. In fact, in evidence, he says that his father executed a Will. It was registered. The Will is in the Registered Office. In terms of the Will, according to the plaint averments and according to the evidence, the Plaintiff is empowered to recover the assets including the suit claim of his deceased father. In the light of a contest with regard to the entitlement at the hands of the Plaintiff, the Trial Judge has framed an issue with regard to the maintainability of the suit. It is necessary to notice Section 214 of the Indian Succession Act:

214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons:

(1) No Court shall-

(a) Pass a decree against the 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 31 or Section 32 of the Administrator General's Act, 1913 (3 of 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 Act, 1989 (sic 1889) (7 of 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:

2) The word "debt" in Sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

7. Admittedly the Plaintiff is claiming the suit claim from the debtors of deceased persons. Pro-note was executed by the defendant in favour of the deceased. A procedure is prescribed u/s 214 with regard to proof of representative title which is a condition precedent to recover through the Courts of debts from the debtors of deceased persons. It provides for a Succession Certificate without which his proof of representative, is not proved. In fact, the section is positive in saying that no Court shall pass a decree against the debtor of a deceased person for payment of his debt, except on the production, by the person so claiming of a probate, a certificate u/s 32 or a second certificate in terms of Section 204(3) of the Act. Since, the same has not been produced, the learned Judge cannot said to have committed any legal error in rejecting the suit. There is a clear bar for maintaining a suit in such circumstances. Therefore, the Respondents are right in saying that the suit is not maintainable. The Appellant is unable to show either from the provision or from any case laws that notwithstanding "a succession certificate" a suit can be maintained in such circumstances. In these circumstances, the appeal filed by the Plaintiff has to be dismissed.

8. Learned Counsel for the Appellant however relies on a Judgment of this Court in ILR 2001 Kar 2681. That was case in which the Court was considering a suit for possession and partition with regard to the suit property. It was in those circumstances, the Court notices Sections 213 and Section 57 of the Act. Section 213 stands on a different footing than Section 214. Both act under two different circumstances. The said Judgment does not come to the aid of the Appellant. In these circumstances, I accept the findings of the Trial Judge on issue No. 3. Once the suit is held to be not maintainable, the suit has to go. In the light of this finding with regard to the maintainability of the suit, I do not want to go into the findings on other issues in the connected cross appeal. Appeal No. 651 of 1999 is dismissed. No costs. No orders are necessary in cross appeal on the facts of this case.