(2004) 03 AP CK 0120

In the Andhra Pradesh High Court

Case No : CMA No. 1836 of 1995

V. Sreekantha Reddy and Others — APPELLANT

Vs

Varanasi Rajeena Venugopal Reddy — RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:
Succession Act, 1925 — Section 372, 374

Citation : (2004) 5 ALD 200

Hon'ble Judges : J. Chelameswar, J;Gopala Krishna Tamada, J

Bench : Division Bench

Advocate : M.N. Narasimha Reddy, for the Appellant; Ramesh Babu, for the Respondent

Final Decision : Allowed

Judgement

J. Chelameswar, J.—Aggrieved by an order in O.P. No. 798 of 1992 on the file of the learned District Judge, Nellore, dated 5th April, 1995, the respondents therein preferred this appeal u/s 384 of the Indian Succession Act.

2. The respondent herein filed the above-mentioned O.P. for grant of succession certificate so as to enable her to receive the gold ornaments pledged to the Bank for securing a loan.

3. The case of the respondent is that she is the widow of one late Varanasi Venugopal Reddy, resident of Nellore. The appellants herein are the brother''s children of said Venugopal Reddy. The respondent married the said Venugopal Reddy on 23.3.1972. While so, the said Venugopal Reddy pledged certain gold ornaments with Punjab National Bank, Nellore and State Bank of India for obtaining certain loans, the details of which are not necessary for the purpose of this order. The said Venugopal Reddy died on 11.5.1991 issueless. It is also averred in the petition that the respondent herein paid an amount of Rs. 9,115-30 on 7.8.1991 to the Punjab National Bank, Nellore and an amount of Rs. 20,697/- to the State Bank of India, Nellore and cleared off both the loans. When

she was about to take delivery of the gold ornaments pledged, the appellants herein, it appears, objected the delivery of ornaments to the respondent, claiming that they are also entitled to the said ornaments. It is averred in the petition that on the face of the objection raised by the appellants, the Bank authorities called upon the respondent to furnish the succession certificate empowering her to receive the gold articles. Hence, the above-mentioned O.P.

4. The appellants herein contested the matter. The appellants disputed the claim that the respondent is the widow of Venugopal Reddy. They also propounded a registered Will, dated 23.11.1989 said to have been executed by the said Venugopal Reddy, by which all the moveable and Immovable properties of the said Venugopal Reddy are bequeathed in favour of the appellants herein.

5. The Trial Court allowed the O.P. and hence, the present appeal.

6. The learned Counsel for the appellants, Mr. Narasimha Reddy argued that the succession certificate could be granted only with reference to the debts and securities due to the deceased. The gold ornaments in question, which are pledged to the Bank, are neither a debt nor a security, due to the deceased. On the other hand, it was a security provided by the deceased to the Banks by way of pledge at the time of securing the loans from the abovementioned two Banks. Therefore, under the scheme of Indian Succession Act, 1925, a succession certificate should not have been granted in favour of the respondent herein.

7. Heard the learned Counsel for the respondent.

8. The Indian Succession Act deals with the rules of succession either in testate or testamentary. Various provisions of the Act declare that certain parts of the Act, are applicable to certain categories of subjects, which are governed by the Succession Act and the other categories are excluded. For example. Part II, which deals with the rules of domicile, is not applicable in case of the deceased who happened to be a Hindu, Mohammadan, Sikh, Buddist or Jain. Similarly, Part IV which deals with consanguinity, has no application to any Hindu, Mohammadan, Budhist, Sikh, Jaina or Parsi are concerned. Part V deals with the intestate succession and Section 29 declares that Part V has no application for the succession of property of the deceased Hindu, Mohammadan, Buddhist, Sikh or Jain, who died intestate. Part VI deals with the testamentary succession. Section 57 declares that the provisions of Part VI are applicable to Hindu, Buddhist, Sikh or Jain, subject to restrictions and modifications specified in Schedule III of the Act. Part VII of the Act deals with the protection of the property of the deceased and this part does not recognize or place any restriction on the applicability of the part on the basis of the religion of the deceased person. In other words, the provisions of Part VII have a general application to all the persons who are subject to Law of the Country.

9. Part VIII deals with the representative title to property of deceased on succession.

10. Part IX deals with the probate, letters of administration and administration of assets of deceased. This part also does not make any distinction for its applicability on the basis of the religion of the deceased person.

11. Part X deals with the succession certificates. Once again, Part X does not make any exception regarding its applicability on the basis of the religion of the deceased person. Section 372 of the Act provides that an application for succession certificate shall be made to the District Judge and it also provides for the procedure thereof. Section 372(d) of the Act, requires the petitioner to disclose the right under which he/she claims the succession certificate.

Section 374 deals with the contents of certificate and it reads as follows:

"When the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted--

(a) to receive interest or dividends on, or

(b) to negotiate or transfer, or

(c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them."

12. Section 370 of the Act imposes a restriction on the grant of succession certificate with respect to any debt or security to which a right is required by Section 212 or 213 of the Act to be established by a letter of administration or probate.

13. Neither Part X nor any other provision of the Indian Succession Act specifies as to who are the persons who are entitled to apply for a succession certificate or what are the classes of property, with reference to which such a certificate could be granted.

14. In the absence of any exclusion of any particular religious denomination from the operation of provisions of Part X of the Act, the logical conclusion is that there is a right to seek a succession certificate, available irrespective of the religious denomination of the deceased person with reference to whose property, the succession is claimed.

15. Part X is also singularly silent about the nature of the succession with reference to which a certificate could be given i.e., whether the succession is testamentary or intestate. So, it follows that either in the case of testamentary succession or intestate succession, a succession certificate could be applied for subject to the other restrictions or limitations imposed in various parts of the Act.

16. Eventually, the subject-matter of succession is only property of a deceased person and it is a succession to the property of the deceased that is the subject-matter of the Act. Property known to law is of various kinds moveable, immovable, etc,

17. The question is whether the succession certificate could be granted with reference to any one of the above-mentioned categories of property or are there any limitations in this regard under the Act on the basis of nature of the property.

18. The provisions of Part X are not very categoric regarding the various categories of property, with reference to which a succession certificate could be granted.

19. On a combined reading of Sections 374 and 372(f) of the Act, it follows logically that a succession certificate could be obtained only with reference to the debts and securities due to the deceased person.

20. This inference becomes inevitable in view of the embargo contained u/s 214 of the Act. Section 214 reads as follows:

"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 a 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 Certificate Act, 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."

21. In substance, Section 214 prohibits the Court from passing a decree against the debtor of deceased person for payment of the debt to a person claiming on succession to be entitled to the effects of the deceased person and that the section also creates an embargo even for the execution of a decree obtained by the deceased person if a decree is sought to be executed by a person claiming to be entitled on succession except when such claimant produces a probate or letter

of administration or succession certificate granted under Part IX of the Act, as the case may be. Therefore, they need to obtain either a probate or letter of administration or succession certificate.

22. However, in the present case, the certificate is not sought for with reference to a debt or security due to the deceased person, but the moveable property i.e., gold pledged with the various Banks mentioned earlier, by the deceased Venugopal Reddy. Those gold ornaments are neither debts nor security due to the deceased as defined u/s 372 of the Act. Therefore, the question of grant of succession certificate in favour of the respondent herein, does not arise. We fortified our view by the judgment reported in Branch Manager, State Bank of India, Puri Branch Vs. Satyaban Pathal and Others, , wherein the Orissa High Court held that:

"The next question is whether gold ornaments pledged are debts for which succession certificate can be granted." Section 381 of the Act deals with payment of debts and meaning of the word "debt" is to be determine in that context. "Debt" has not been defined in this Chapter relating to succession certificate although the same has been defined in Section 214(2) as follows:

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

Meaning of the word "debt" as aforesaid is wide excluding a limited few as provided by Statute. Since the meaning is confined to Sub-section (1) only, it may not be of much help for the purpose of a succession certificate. Dictionary, meaning also would be of no assistance since it is stated to be that which is due from one person to another, whether money, goods or services, that which one person is bound to pay to another or to perform for his benefit, things owed, obligation; liability. In Strouds Judicial Dictionary the meaning of the word "debt" is given as a sum of money payable in respect of liquidated money demand recoverable by action. Meaning of the word "debt" came for consideration of the Supreme Court in the decision reported in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Wealth Tax, (Central) Calcutta, . In Para 22 at Page 1377 it has been summarized thus:

"We have briefly noticed the judgments cited at the Bar. There is no conflict on the definition of the word "debt". All the decisions agree that the meaning of the expression "debt" may take colour from the provisions of the concerned Act: it may have different shades of meaning. But the following definition is unanimously accepted; "a debt is a sum of money which is now payable or will become payable in future by reason of a present obligation; debitum in praesenti, solvendum in futuro". The said decisions also accept the legal position that a liability depending upon a contingency is not a debt in praesenti or in futuro till the contingency happened. But if there is a debt the fact that the amount is to be ascertained does not make it any the less a debt if the liability is certain and what remains is only the quantification of the amount ...."

9. Applying the said meaning to the word used in Sections 370 - 381 as regards succession certificate it can safely be concluded that pledged articles are not debts and therefore, there is no scope for obtaining a succession certificate in respect of the same,

which was followed by a learned Single Judge of this Court in a case reported in Branch Manager, State Bank of Hyderabad Vs. Gadiraju Rama Bhaskara Viswanadha Raju, .

23. We are, therefore, of the view that the petition filed by the respondent herein for grant of succession certificate, is only misconceived, perhaps prompted by a legally baseless demand on the part of the Banks to obtain a succession certificate to enable the respondent to receive the gold ornaments pledged with them by the deceased Venugopal Reddy.

24. Accordingly, this CMA is allowed. No order as to costs. However, it is made clear that in view of the fact that the respondent herein cleared off the loans, for which the gold ornaments were pledged as a security, it is open for the respondent to take such appropriate steps, that are available under law, for recovery of the gold ornaments if she is otherwise entitled to the same.

