(1990) 03 AP CK 0023

In the Andhra Pradesh High Court

Venugopal Loya and Others — APPELLANT

Vs

Vijayalakshmi Bung and Another — RESPONDENT

Date of Decision : 16-03-1990

Acts Referred:
Succession Act, 1925 — Section 370

Citation : (1991) 71 CompCas 393

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : Muralinarayana Bung, for the Appellant; None, for the Respondent

Judgement

Radhakrishna Rao, J.—The Third Assistant Judge, City Civil Court, Hyderabad, directed the plaintiff to comply with the objections raised by he office by valuing the suit and paying the court-fee u/s 24(d) of the Andhra Pradesh Court-fees and Suits Valuation Act, 1956. Against that order, this revision petition has been filed.

2. The main allegations in the plaint are that one Suguna Bai, the mother of the plaintiff and the first defendant, being the eldest member of the family, has opened a locker in the Bank of Rajasthan Ltd., Siddiamber Bazar Branch, Hyderabad, which is impleaded as the second defendant in the suit, the locker No. being 208. The said Suguna Bai side leaving behind the plaintiff and the first defendant and they are the sole heirs of Sugana Bai. When the plaintiff and the first defendant approached the bank to operate the locker, the bank asked them to get a succession certificate from the competent court and, therefore, that filed the present suit for a declaration that they are entitled to operate the locker.

3. The main point that falls for consideration in this revision petition is whether the court below was justified in directing the plaintiff to value the suit u/s 24(d) of the Andhra Pradesh Court fees and Suits Valuation Act, 1956.

4. The plaintiff filed the suit for a declaration that plaintiff No. 1 is entitled to operate the bank''s locker that stood in the name of his mother, Suguna Bai. u/s 370 of the Indian Succession Act, 1925, a succession certificate can be granted

only in respect of debts and securities and not for any other kind of property. A succession certificate cannot be granted in respect of ornaments pledged by a deceased with a bank by way of security for the debt which the bank had advanced. It is not a debt due from the bank. Also, it cannot be granted in respect of ornaments kept in a deposit locker in a bank.

5. It is well-settled that, in order to determine the proper court-fee payable on a plaint in a particular case, the true principle is that the plaint as a whole should be looked at and that it is the substance of the plaint and not its ostensible form which really matters. Further, nothing should be imported into the plaint which it really does not contain either actually or by necessary implication. Thus, in construcing the plaint, the court must take the plaint as it is and not as it ought to have been (vide Kalu Ram Vs. Babu Lal and Others, .

6. In this case, the plaintiffs have filed the suit for a declaration to allow the first plaintiff to operate the locker which stood in the name of their mother. By virtue of the declaration, the plaintiff wan to operate the locker and also want to take possession and control of the articles that were kept in the locker. Though the relief prayed for appears only for a declaration but it is not a case of a declaration simpliciter to allow plaintiff No. 1 to operate the locker.

7. The averments in the plaint show that late Suguna Bai, as head of the family, took the locker and the properties belonging to the point family. When the property belongs to the joint family and, in the absence of any will executed by Smt. Sugana Bai to the extent of the contends of the locker, the only remedy that is available for the plaintiff is to file a suit for partition. This is not a case filed for partition, but it is filed for a declaration. Therefore, the lower court has rightly pointed out that court-fee was payable as per section 24(d) of the Andhra Pradesh Court-fees and Suits Valuation Act.

8. In State Bank of India Vs. Netai Ch. Porel, , it is observed as follows (at page 94) :

"The bank was merely a custodian of the same. In ordinary parlance, `debt'' means a sum certain due from one person called the debtor to another called the creditor. In Stroud''s Judicial Dictionary a debt is defined as a sum payable in respect of a liquidated money demand recoverable by action. One of the essentials of a debt is an ascertained amount or readily calculable amount."

9. Therefore, in this case, the second defendant-bank could not be said to stand in the position of a debtor nor could Smt. Suguna Bai be called a creditor in respect of the ornaments kept in the locker. That apart, the more important distinguishing point is that, unlike in cases of debt, the bank had no right of disposition of any kind in respect of those ornaments. The second defendant-bank stood in the position of a bailee or a trustee to whom, though possession was entursted, there was no intention of transferring the ownership of the ornaments. It is well-settled that a debt is not a trust and any and every liability irrespective can be granted only in respect of debts and securities and not for

any other kind of property, I am clearly of the opinion that a succession certificate as required could not be granted. The parties could not approach the court for obtaining a succession certificate as the court cannot grant such a succession certificate.

10. The Orissa High Court, in State Bank of India v. Satyaban Pathal [1988] 2 Curr CC 764 ; [1991] 71 Comp Cas 251, held (at page 253) :

"The purposes of a succession certificate is, thus, to grant indemnity to the person who owes the debts or is liable on the securities to pay the debt to the person who gets the certificate or deals with the person with regard to the security."

11. It is further held (at page 255) :

"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."

12. In this case, it is not a debt due to Smt. Suguna Bai by the bank, nor were the ornaments pledged with the bank. The plaintiffs sought for a declaration to operate the bank locker and thus to have possession of the ornaments kept in the bank locker. Therefore, the objections raised by the lower court have to be complied with by the plaintiffs.

13. Generally, banks are insisting on obtaining a succession certificate by the legal heirs in the case of lockers on the death of the holder of the locker. But succession certificate cannot be granted as the locker held by the deceased cannot be treated as a debt. The bank also is not expected to put the legal heirs in a difficult situation to spend more money in obtaining the succession certificate or some other certificate to safeguard their liability. Therefore, it is always desirable that the bank should adopt a procedure in obtaining a nomination at the time of opening of a locker by any person. In case of death of the person holding the locker, the bank may allow the nominee to operate the locker provided an inventory of the articles kept in the bank''s safe custody and also obtain a guarantee from the said nominee to produce the articles in the event of any claim by any other person. If this simple procedure is implemented, it will save the parties from spending huge amounts by approaching the courts as courts have consistently held that no sucession certificate can be granted u/s 370 of the Indian Succession Act, 1925, to operate a locker as the locker cannot be treated as a debt.

14. The revision petition is, accordingly, dismissed. No costs.