

Civil Revision Petition No. 1728 of 2018

Muppidi Chandra Mohan Reddy v. Methuku Santosh

2018 SCC OnLine Hyd 305 : (2018) 5 ALT 537

In the High Court of Andhra Pradesh
(BEFORE P. NAVEEN RAO, J.)

Muppidi Chandra Mohan Reddy and another S/o Late M. Anna Reddy Aged about 58 years Occu Retired Employee R/o H No. 62511 Madhu

v.

Methuku Santosh S/o Narsimha Rao Aged about 32 years Occu Software Engineer R/o H No. 192 Girnigadda locality Jangaon Town Ja

Civil Revision Petition No. 1728 of 2018

Decided on September 7, 2018

Counsel for the petitioners: Sri. N. Vasudeva Reddy

Counsel for the Respondents: Sri. Venkat Reddy Donthi Reddy

The Order of the Court was delivered by

P. NAVEEN RAO, J.:— Parties are referred as they are arrayed in this revision.

2. Respondent is husband of Smt. Salini Reddy, died on 1.7.2017. Respondent filed Succession O.P. No. 56 of 2017 on the file of the Court of Senior Civil Judge, Jangaon, Warangal district praying to grant succession certificate in his favour to claim gratuity amount of Rs. 2,25,873/-; insurance amount of Rs. 60,43,327/-; SAP shares amount of Rs. 44,752/-; SMP shares amount of Rs. 1,09,349/-; and MOVE Sap shares amount of Rs. 5,61,202/- totaling to Rs. 69,84,503/- belonging to his wife Smt. Salini Reddy. The Court of Senior Civil Judge, Jangaon, by order dated 3.1.2018 granted the succession certificate sought for by the petitioner mentioning the total amount and the break up of the amounts under various headings. Having come to know that a succession certificate was granted to respondent, petitioners herein who are parents of deceased filed I A No. 13 of 2018 praying to set aside the ex-parte order/decreed dated 3.1.2018 in SOP No. 56 of 2017. They have also filed I A No. 20 of 2018 under Sections 383 & 389. The said I As are pending consideration of Court of Senior Civil Judge, Jangaon. While so, this revision is instituted under Article 227 of the Constitution of India.

3. Heard learned counsel for petitioners Sri. N Vasudeva Reddy and learned counsel for respondents Sri. Venkat Reddy Donthi Reddy.

4. According to learned counsel for petitioners, respondent husband and deceased were married in Hyderabad on 28.5.2011; initially deceased was working in Hyderabad and later as respondent and deceased secured employment in Bangalore, State of Karnataka, they shifted their residence and were living in Bangalore. Later, deceased was diagnosed with cancer. To take treatment, she had shifted to Hyderabad and was living in Hyderabad and died in Appollo Hospital, Hyderabad, on 1.7.2017. He would therefore submit that at the time of her death, as deceased was living in Hyderabad, the Court of Senior Civil Judge, Jangaon has no jurisdiction to entertain application to grant succession certificate. He would submit that after deceased was diagnosed with cancer, respondent did not take care of her and she was forced to move to Hyderabad to take treatment and stayed with her parents. Petitioners have taken good care of the

deceased till her death, they have spent huge money towards treatment for cancer and at the advanced stage of cancer they gave all the support to their daughter. Respondent never visited her during the period of treatment and totally neglected her. Having regard to attitude of her husband and since parents were taking care of her health and treatment, deceased executed registered will dated 17.5.2017 bequeathing all her properties, moveable and immovable, to the petitioners and petitioners alone are entitled to claim those benefits and no manner of right vests in respondents to claim those benefits and therefore succession certificate granted is not valid in law.

5. According to learned counsel, though section 15 of the Act recognizes husband as Class I heir, having regard to the fact that the properties owned by the deceased were self acquired properties and that she executed a registered will in favour of her parents/petitioners, the provision in Section 15(1)(a) of the Act is no more available to the respondent and respondent cannot claim those properties under the guise of securing a succession certificate.

6. He would further submit that there is clear suppression of true and correct facts. Knowing fully well that the deceased was not living in Bangalore but was living with her parents in Hyderabad while undergoing treatment and died in Hyderabad; that no property is located within the territorial jurisdiction of Court of Senior Civil Judge, Jangaon; and knowing fully well that parents are entitled to claim the properties belonging to their daughter; without impleading them as parties, S.O.P. was filed in the Court of Senior Civil Judge, Jangaon, only to obtain succession certificate behind their back and to surreptitiously claim monitory benefits from the employer and other benefits. He would therefore submit that there is clear suppression of true and correct facts and by misleading the Court of Senior Civil Judge, Jangaon, succession certificate was obtained. He would submit that in view of provision contained in Section 383, the succession certificate ought to have been revoked by the Court of the Senior Civil Judge, Jangaon and even though an application is filed, Senior Civil Judge, Jangaon is not considering the application and on the contrary there is threat of respondent claiming the benefits by relying on succession certificate granted to him and in such an event grave and irreparable prejudice would be caused to the parents and would go against the will of the deceased who desired that only parents should avail all the properties standing on her name.

7. Learned counsel for petitioner further submitted that respondent has filed OS No. 212 of 2018 in the Court of XIII Additional District Judge Court, Ranga Reddy challenging the registered will dated 17.5.2017. He would therefore submit that as respondent is in the knowledge of registered will granted to the petitioners and already instituted suit challenging the said will, unless the respondent succeeds in obtaining the decree from the competent Court holding the registered will granted to the petitioners as not valid and that the properties belong to his wife should only be succeeded by him, he cannot seek to enforce the succession certificate to claim the benefits.

8. In support of his contentions, learned counsel for petitioner placed reliance on the decision of the Supreme Court in *Achutananda Baidya v. Prafullaya Kumar Gayen*.

9. Per contra, learned counsel for respondent would submit that Senior Civil Judge, Jangaon has jurisdiction to entertain the application to grant succession certificate and therefore there is no jurisdictional error in entertaining the application. According to learned counsel, respondent was permanent resident of Jangaon. Therefore, S.O.P., was filed in that Court. He would submit that against the order granting succession certificate, appeal shall lie to the District Court under Section 384 of the Act and petitioners ought to have availed the said remedy and revision is not maintainable when remedy of appeal is provided by the Act. He would further submit that husband being her Class I heir, there is no need to implead parents and they are not entitled to

claim property when the deceased was survived by husband. Therefore, merely because parents were not impleaded in the Succession O.P., the order granting succession certificate does not become illegal, warranting interference by this Court in exercise of revisional jurisdiction. He would further submit that petitioners are not entitled to avail simultaneously two remedies, having moved application to revoke the certificate issued under Section 383 of the Act, during the pendency of the said application, present revision is not maintainable. He would therefore submit that the present revision is not maintainable in law and liable to be dismissed.

10. In support of his contentions, learned counsel placed reliance on following decisions. *Pasumarthi Srinivas v. NIL*, *Somwati Tiwari v. People in General*, and *Surendra Bhatia v. Poonam Bhatia*.

11. In reply, Sri. Vasudev Reddy, learned counsel for petitioners submit that as the Senior Civil Judge, Jangaon lacks inherent jurisdiction with reference to territorial jurisdiction, merely because petitioners also filed an application to revoke the certificate, the present revision cannot be rejected. As proceedings before the Court of Senior Civil Judge, Jangaon are vitiated on the grounds urged above, the revision is maintainable. He would submit that under Article 227 of the Constitution of India, this Court has got ample powers to entertain the revision and to hold that the Court of Senior Civil Judge, Jangaon has no jurisdiction to entertain the Succession O.P., and to set aside the order granting Succession certificate. He also pointed out that in Succession OP, the person claiming to issue succession certificate alone should prosecute the matter but cannot appoint a Power of Attorney to prosecute legal proceedings. He would further submit that at any rate, Power of Attorney cannot give evidence which touches upon the personal relationship of husband and wife, whereas in the case on hand, the evidence was given by the Power of Attorney on behalf of the respondent herein and on that ground also proceedings before the Court of Senior Civil Judge, Jangaon are vitiated.

12. From the respective submissions, the following issues arise for consideration:

- 1) Whether the Court of Senior Civil Judge, Jangaon lacked territorial jurisdiction to entertain Succession O.P. filed by respondent to grant succession certificate to claim terminal and other financial benefits of his wife?
- 2) Assuming that the Court of Senior Civil Judge, Jangaon does not have territorial jurisdiction to entertain S.O.P, whether revision under Article 227 of the Constitution of India is maintainable without availing the remedy of appeal provided under Section 384 of the Indian Succession Act?

13. Before dealing with the claim of jurisdiction of this Court under Article 227 of the Constitution of India, it is necessary to clear the objection raised by learned counsel for petitioners on maintainability of S.O.P before Court of Senior Civil Judge, Jangaon.

14. The facts which are not in dispute are, Smt. Salini Reddy died intestate. She was not blessed with children and at the time of her death, she was survived by her husband and parents. Husband claims that he is entitled to succeed to the properties belonging to his wife. However, it appears deceased executed registered will dated 17.5.2017 bequeathing all her properties in favour of her parents. The validity of will is pending adjudication in OS No. 212 of 2018 on the file of XIII ADJ, Ranga Reddy and this Court is not expressing any opinion on that aspect. At the time of her death, she was living in Hyderabad. In the S.O.P., respondent has not declared location of properties within the territorial jurisdiction of Court of Senior Civil Judge at Jangaon.

15. In the above factual backdrop, to appreciate the respective contentions, it is necessary to consider the provisions of the Indian Succession Act, 1925, particularly provisions in Sections 371 and 372. As per Section 372 of the Act, an application can be filed to issue succession certificate. Such application should be made to the Senior

Civil Judge. As per Section 371, such application has to be moved before the Court within the jurisdiction of which deceased ordinarily resided at the time of her death or if that person has no fixed place of residence, the Court within whose jurisdiction any part of the property of the deceased is found.

16. At this stage it is appropriate to consider the decisions relied by learned counsel for respondent.

17. In *Somwati Tiwari* issue was on territorial jurisdiction of Senior Civil Judge Court. The S.O.P. was dismissed by the Court of Senior Civil Judge affirmed by appellate Court holding that Court has no jurisdiction to grant succession certificate. Late Motilal Tiwari was permanent resident of village Marhi, District Satna and as Section Commander, he was posted at various places and died in a hospital in Jabalpur. Madhya Pradesh High Court held:

4. In the present case there was documentary evidence to the effect that Motilal Tiwari was permanent resident of Village Marhi, District Satna. He was in Government service and he was being transferred from one place to the other. It is the permanent place where he resided that could also be considered to be the place of his ordinary residence. The word "resides" is a flexible one and has many shades of meaning. It must take its colour and content from the context in which it appears. If a person is a permanent resident of a particular place, there can be no doubt that he is ordinarily resident of that place. Similarly, if he is posted at a different place in connection with his service that place can also be termed as ordinary place of his residence for the purposes of Section 371 of the Act. The Courts at both the places would have concurrent jurisdiction to entertain the application under Section 372 of the Act. In this view of the matter the Court at Satna had the territorial jurisdiction to entertain the application under Section 372 of the Act for grant of succession certificate when there was no opposition by anyone.

18. With respect, by plain reading of language employed in Section 371, territorial jurisdiction to grant succession certificate is available to that Court of Senior Civil Judge within whose jurisdictional limits the deceased ordinarily resided at the time of death or any part of the property of deceased is found and not otherwise. Permanent residence has no relevance to apply the jurisdictional aspect. Be that as it may, it is not stated by respondent that deceased was permanent resident of Jangaon and no material was placed on record to prove the said fact. He was only pleading that he is permanent resident of Jangaon, where as, that is not relevant as per Section 371. Thus, said decision do not come to the aid of respondent.

19. In *Surendra Bhatia* there was no dispute on ordinary residence of deceased. The objection to grant succession certificate by the District Judge, Jaipur City was on the ground that deceased was a citizen of Canada and therefore Indian Courts have no jurisdiction to issue succession certificate. Said objection was over ruled and High Court held that to grant succession certificate what is relevant is ordinary residence of deceased and not his citizenship. Thus, said judgment is also of no help to respondent.

20. In the facts of this case, the decisions cited by learned counsel for respondent do not come to his aid.

21. As per Section 371 only that Court has jurisdiction where the deceased ordinarily resided at the time of death or the entire property or part of the property is located within the territorial jurisdiction of that Court. Averments made in paragraph 3 would disclose that deceased lived in Bangalore and later taken to various places in the country to administer treatment and died in Hyderabad. The death certificate issued by GHMC was also relied upon. From the averments in the paragraph 5, it would show that the respondent applied succession certificate to claim terminal and other benefits from the employer of deceased whose office is located in Bangalore.

There is no averment on location of property belonging to deceased within the territorial jurisdiction of Court of Senior Civil Judge, Jangaon. There is no averment in the plaint to disclose how the Court of Senior Civil Judge, Jangaon has territorial jurisdiction except claiming that the respondent is permanent resident of Jangaon. However, under Section 371 what is relevant is residence of deceased or location of property of deceased and not that of claimant.

22. Further, Section 372 mandates the party applying for succession certificate to furnish the particulars mentioned therein. Specifically, it requires furnishing of residence of the deceased at the time of death and if such residence is not within the jurisdiction of the Judge to whom the application was made, then details of the property of the deceased within those limits. There is no averment in the plaint to show that the ordinarily the residence of the deceased was within the local limits of Court of Senior Civil Judge, Jangaon. Similarly, there is no description of any property of the deceased within those limits.

23. Section 372 also requires specifying family and other relatives of the deceased and their respective residences. This was not complied. Respondent did not disclose details of her parents, petitioners herein. The deceased claimed to have executed registered will in favour of her parents/petitioners herein, bequeathing all assets standing on her name, including terminal benefits accrued to her in her employment. Thus, petitioners herein are entitled to be heard before granting succession certificate to respondent. There is no declaration also on other aspects required by this Section. Thus, the S.O.P did not comply mandatory requirements thereby keeping the Court below in dark on rival claims and other aspects.

24. Thus, the Court of Senior Civil Judge, Jangaon does not have territorial jurisdiction to entertain S.O.P and to grant succession certificate.

25. This leaves the issue as to whether revision under Article 227 of the Constitution of India is maintainable.

26. Supervisory jurisdiction under Article 227 of the Constitution of India is exercised to keep the Subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed jurisdiction which it does not have and has failed to exercise a jurisdiction which it does have and the jurisdiction though available is being exercised by a Court in a manner not permitted by law and grave injustice had occasioned thereby, the High Court can exercise its supervisory jurisdiction and remedy the injustice caused to a party.

27. The principles on scope of power of High Court under Article 227 are summarized by Supreme Court in the following decisions.

28. In *State v. Navjot Sandhu*, on review of law on the subject, Supreme Court held as under:

28. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require

very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.

29. In *Achutananda Baidya*, on the scope of jurisdiction of High Court under Article 227 of the Constitution of India, Supreme Court observed as under:

10. The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse.

11. If the evidence on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior court or Tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact.

30. In *Radhey Shyam v. Chhabi Nath*, Supreme Court reviewed scope of power of High Court under Articles 226 and 227 against judicial decisions. Supreme Court held as under:

18. While the above judgments dealt with the question whether judicial order could violate a fundamental right, it was clearly laid down that challenge to judicial orders could lie by way of appeal or revision or under Article 227 and not by way of a writ under Articles 226 and 32.

22. We may now come to the judgment in *Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675]*. Therein, the appellant was aggrieved by the denial of interim injunction in a pending suit and preferred a writ petition in the High Court stating that after the CPC amendment by Act 46 of 1999 w.e.f. 1-7-2002, remedy of revision under Section 115 was no longer available. The High Court dismissed the petition following its Full Bench judgment in *Ganga Saran*, [1991 SCC OnLine All 63 : AIR 1991 All 114] to the effect that a writ was not maintainable as no mandamus could issue to a private person. The Bench considered the question of the impact of the CPC amendment on power and jurisdiction of the High Court to entertain a writ of certiorari under Article 226 or a petition under Article 227 to involve power of superintendence. The Bench noted the legal position that after CPC amendment revisional jurisdiction of the High Court against interlocutory order was curtailed.

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [*Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616*] of the referring Bench that a

writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.

31. Succession certificate is conclusive proof of succession and vests right in such person to claim the properties belonging to deceased. By virtue of succession certificate issued by court of Senior Civil Judge, right of petitioners to claim those amounts as per will of deceased is affected. No doubt, validity of will is now subject matter of O.S. No. 212 of 2018 on the file of Court of XIII Additional District Judge, Ranga Reddy District but would prima facie point out a rival claim and thus they ought to have been heard.

32. It is not in dispute that petitioners place heavy reliance on a registered will stated to have been executed by late Salini Reddy. The validity of will is challenged in O.S. No. 212 of 2018 in the Court of XIII Additional District Judge Court, Ranga Reddy District. Thus, it cannot be said that petitioners are total strangers to claim for succession and have no manner of right to oppose succession claim of respondent. Admittedly, they were not parties to S.O.P and succession granted to respondent would affect their right to claim terminal benefits of late Salini Reddy.

33. The Court below did not even look into several aspects noticed herein before accepting the plea of the respondent.

34. Section 383 of the Act, vests power in the Court to revoke the certificate granted, if any of the conditions mentioned in the said section are satisfied. Under Section 389 certificate has to be surrendered, if it was superseded or is invalid. A bare reading of these two provisions would make it clear that this power is vested in the Court which granted succession certificate. However, exercise of such power pre-supposes competency of the Court to entertain the petition and valid certificate was granted by that Court. In the case on hand, as noticed above, the Court of Senior Civil Judge, Jangaon lacks jurisdiction to entertain the application filed by the respondent and therefore the certificate granted by the said Court is not valid in law.

35. Though petitioners have filed application to set aside order dated 03-01-2018 and another application under Section 383 to revoke the succession certificate power under Section 383 is discretionary and it pre-supposes grant of certificate by a Court of competent jurisdiction. Thus, merely because such applications are filed, cannot be an impediment to this Court to exercise jurisdiction under Article 227 of the Constitution of India, when there is clear transgression of jurisdiction by the Court below and the order in S.O.P. is unsustainable in law.

36. Section 384 of the Act vests right in the aggrieved party to prefer appeal against the succession certificate granted. Availing the remedy of appeal pre-supposes that Court of competent jurisdiction has granted succession certificate after affording due opportunity to the party aggrieved by that certificate. In the case on hand, apart from the fact that the Court of Senior Civil Judge, Jangaon does not have territorial jurisdiction petitioners herein were not parties to S.O.P. Thus, they can not file appeal unless leave is granted by the Appellate Court. Thus, it cannot be said, that the petitioners herein have the remedy of appeal. Therefore, the present revision petition cannot be rejected, on the ground that Section 384 provides remedy of appeal.

37. In Pasumarthi Srinivas against decision of Senior Civil Judge rejecting S.O.P, C.M.A was filed in the High Court. Office raised objection on maintainability of C.M.A. as remedy of appeal is available. It was contended that as Senior Civil Judge was acting as delegate of District Judge under the Indian Succession Act, no appeal would lie to him. This contention was rejected and office objection was upheld. In the facts of this case, said decision do not come to the aid of respondent.

38. From the long line of precedent decisions, it is crystal clear that remedy under Article 227 of the Constitution of India is extraordinary remedy. This remedy is not a substitute for an appeal. In a petition under Article 227 the Court cannot go into

merits of the issue adjudicated by the lower Courts. It is intended to correct procedural deviations by lower Courts. In the case on hand, the aspects noticed above are glaring, vitiating the order of Senior Civil Judge, Jangaon. It had erroneously assumed jurisdiction and there is an error apparent on the fact of record in granting succession certificate and same is not sustainable. There was clear transgression of jurisdiction. Such errors can be corrected in a petition under Article 227 even if an aggrieved party has remedy of appeal. It is a fit case to exercise jurisdiction under Article 227 of the Constitution of India.

39. Having regard to glaring infirmities noticed in the proceedings before the Court of Senior Civil Judge at Jangaon, the order granting succession certificate in favour of respondent in S.O.P No. 56 of 2017 is set aside and revision is allowed. No costs.

40. It is made clear that this Court has not entered into merits on whether respondent has right to obtain succession certificate to claim properties belonging to his wife and whether petitioners have right to claim assets standing in the name of late Mrs. Salini Reddy based on a registered will claimed to have been executed in their favour. Court has only considered the issue of failure to observe procedural safeguards and territorial jurisdiction by Court of Senior Civil Judge at Jangaon. Miscellaneous petitions, if any pending, are closed.

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