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*Before M.M. Kumar, J*

MS. MONICA BIBLI SOOD,—*Petitioner*

*versus*

MRS. KAMAL SETH & OTHERS,—*Respondents*

C.R. NO. 1414 OF 2004

18th March, 2004

*Code of Civil Procedure, 1908—Ss. 10 & 151—Indian Succession Act, 1925—S. 372—Dispute regarding share in the F.D.Rs & locker in Bank—Civil suit pending between parties—Initiation of succession proceedings—Parties to suit as well as to Succession case are the same—Identical issues framed in both cases—Whether succession proceedings bound to be stayed—Held, no—Proceedings contemplated by S. 372 of 1925 Act are summary proceedings—Proceedings in a regular suit & proceedings which are summary in nature entirely different—S. 10 of the Code not applicable to summary proceedings—Petition liable to be dismissed.*

*Held*, that the proceedings in a regular suit and the proceedings which are summary in nature contemplated by Section 372 of the Indian Succession Act, 1925 are entirely different and the latter proceedings would not be covered by Section 10 of the Code. The object of issuance of a certificate and its effect is entirely different which would not result into deciding the issue finally between the parties. Therefore, there is no scope for interference in the impugned order and the petition is liable to be dismissed.

(Para 7)

Ranjan Lohan, Advocate, *for the Petitioner.*

#### JUDGMENT

**M.M. KUMAR, J.**

(1) The short question involved in this case is whether Section 10 of the Code of Civil Procedure, 1908 (for brevity, the code) is applicable to the proceedings initiated under Section 372 of the Indian Succession Act, 1925 (for brevity the Act) for obtaining a succession certificate.

(2) Brief facts of the case are that the successor-in-interest of the petitioner Paramjit Kumar was impleaded as defendant in Civil Suit No. 313 of 1996 filed on 8th September, 1995 seeking declaration to the effect that he was entitled to his share in FDRs of Rs. 30,000, Rs. 50,000 and locker maintained at State Bank of Patiala, Sector 22, Chandigarh. Defendant-respondent No. 1 Mrs. Kamal Seth did not contest the suit and she was proceeded *ex parte*. She, however, filed a succession case bearing No. 17th/30th April, 1998 under Section 372 of the Act for issuance of a succession certificate in respect of the same FDRs and locker mentioned herein above. The successor-in-interest of the petitioner contested the suit as well as succession case. The issues in both proceedings are similar, parties are the same and relief claimed in both the cases is also the same i.e. respective shares of the parties in the FDRs and locker. On that basis petitioner filed an application under Section 10 read with Section 151 of the Code for staying the trial/proceedings of the succession case during the pendency of the civil suit. The Civil Judge has dismissed the application by recording the following order :—

“The object of the prohibition contained in section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue” and the plaintiff cannot be allowed to file a subsequent suit during pendency of the previously instituted suit by splitting two causes of action simply to hood wink the applicability of section 10 CPC.

But by filing the present application, the applicant wants to stay the proceedings of the application petition for grant of succession certificate by the applicant/petitioner. The reliance has been given by the learned counsel for respondent titled as “Sudershan Ram Bhasin *versus* Kamla Bhasin” reported as 2002 (1) RCR (Civil) 510 (Delhi High Court) wherein it has been held that the proceedings under the provisions of Indian Succession Act are summary proceedings before a Testamentary the said Court and while dealing with the said proceedings the said court does not function as a Civil Court as it does while deciding a civil suit. The scope of a civil suit and the proceedings under

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the Indian Succession Act is quite different and therefore, the similarity of the question in the proceedings and the suit does not appear to be a valid ground for staying the proceedings under the provisions of the Indian Succession Act. Finding of the testamentary Court while disposing of the proceedings under the Indian Succession Act on the disputed question about the marriage of the respondent with the deceased Bakshi Ram Bhasin will not bind the civil court and the court will be entitled to return its on the merits of the case in the suit for partition.”

(3) Mr. Ranjan Lohan, learned counsel for the petitioner has argued that the dispute involved in the Civil Suit No. 313 of 1996 is with regard to the same FDRs and lockers which are lying/maintained at the State Bank of Patiala, Sector 22, Chandigarh. He has further submitted that the parties to the suit as well as to the succession case are same and even the issues framed in the civil suit as well as succession case are identical. On the basis of aforementioned submission, the learned counsel has contended that Section 10 of the Code would be applicable and the proceedings initiated by filing succession case No. 17 of 1998 being later in point of time are bound to be stayed.

(4) After hearing the learned counsel and perusing the order passed by the learned Civil Judge, I am of the considered view that the proceedings contemplated by Section 10 of the Code are in the nature of regular trial and would not include the proceedings which are summary in nature. The aforementioned question has been considered by the Supreme Court in the case of **Indian Bank versus Maharashtra State Co-operative Marketing Federation Ltd.** (1). In that case a suit under Order 37 of the Code was filed and the Supreme Court held that till the grant of leave to defend the proceedings would remain summary and would not be covered by Section 10 of the Code. However, after leave to defend is granted, the proceedings may be in nature of trial contemplated by Section 10. The observation of their Lordships in this regard read as under:—

“8. Therefore, the word “trial” in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to proceed

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(1) AIR 1998 S.C. 1952

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with the trial of any suit in which the matter in issue is also directly or substantially in issue in a previously instituted suit. The object of the prohibition contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the Court to entertain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the Court as not a bar of the passing of interlocutory orders such as an order for consolidation of the later suit with the earlier suit, or appointment of a Receiver or an injunction or attachment before judgement. The course of action which the Court has to follow according to Section 10 is not to proceed with the trial of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word "trial" in Section 10 is not used in its widest sense.

9. The provision contained in Section 10 is a general provision applicable to all categories of cases. The provision contained in Order 37 apply to certain classes of suits. One provides a bar against proceeding with the trial of a suit, the other provides for granting of quick relief. Both these provisions have to be interpreted harmoniously so that the objects of both are not frustrated. This being the correct approach and as the question that has arisen for consideration in this appeal is whether the bar to proceed with the trial of subsequently instituted suit contained in Section 10 of the Code is applicable to a summary suit filed under Order 37 of the Code, the words trial of any suit will have to be construed in the context of the provisions of Order 37 of the Code.

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Rule 2 of Order 37 enables the plaintiff to institute a summary suit in certain cases. On such a suit being filed the defendant is required to be served with a copy of the plaint and summons in the prescribed form. Within 10 days of service the defendant has to enter an appearance. Within the prescribed time the defendant has to apply for leave to defend the suit and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just. If the defendant has not applied for leave to defend, or if such an application has been made and refused, the plaintiff becomes entitled to judgement forthwith. If the conditions on which leave was granted are not complied with by the defendant then also the plaintiff becomes entitled to judgement forthwith. Sub-rule (7) of Order 37 provides that save as provided by that order the procedure in summary suits shall be the same as the procedure in suits instituted in the ordinary manner. Thus in classes of suits where adopting summary procedure for deciding them is permissible the defendant has to file an appearance within 10 days of the service of summons and apply for leave to defend the suit. If the defendant does not enter his appearance as required or fails to obtain leave the allegations in the plaint are deemed to be admitted and straightway a decree can be passed in favour of the plaintiff. The stage of determination of the matter in issue will arise in the summary suit only after the defendant obtains leave. The trial would really begin only after leave is granted to the defendant. This clearly appears to be the scheme of summary procedure as provided by Order 37 of the Code.

10. Considering the objects of both the provisions, i.e., Section 10 and Order 37 wider interpretation of the word "trial" is not called for. We are of the opinion that the word "trial" in Section 10 in the context of a summary suit, cannot be interpreted to mean the entire proceedings starting with institution of the suit by lodging a plaint. In a summary

suit the “trial” really begins after the Court or the Judge grants leave to the defendant to contest the suit. Therefore, the Court or the Judge dealing with the summary suit can proceed up to the stage of hearing the summons for judgment and passing the judgment in favour of the plaintiff if (a) the defendant has not applied for leave to defend or if such application has been made and refused (b) or if the defendant who is permitted to defend fails to comply with the conditions on which leave to defend is granted.”

(5) The question raised before me appears to be answered by the judgment of Delhi High Court in the case of **Sudershan Ram Bhasin versus Kamla Bhasin**, (2) holding that the scope of a civil suit and the proceedings initiated under the Indian Succession Act is quite different. The observation of his Lordship in this regard reads as under :—

“The scope of a civil suit and the proceedings under the Indian Succession Act is quite different and, therefore, the similarity of the question in the proceedings and the suit does not appear to be a valid ground for staying the proceedings under the provisions of the Indian Succession Act. Finding of the testamentary Court while disposing of the proceedings under the Indian Succession Act on the disputed question about the marriage of the respondent with the deceased Bakshi Ram Bhasin will not bind the Civil Court and the Civil Court will be entitled to return its own finding based on the merits of the case in the suit for partition.”

(6) Another judgment of the Supreme Court where the question with regard to proceedings for issuance of succession certificate was raised to argue that it would result into attracting the principle of *res-judicata* under Section 11 of the Code would also be relevant. In the case of **Madhvi Amma Bhawani Amma & Ors. versus Kunjikutty Pillai Meenakshi Pillar & Ors**, (3) the aforementioned question was raised and same has been answered by holding that the principle

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(2) 2002 (1) RCR (Civil) 510

(3) JT 2000 (5) S.C. 336

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of *res-judicata* would not be attracted by referring to Part X of the Act, their Lordships have observed as under :—

14. So, this certificate merely affords full indemnity to the debtor for the payment he makes to the person holding such certificate. Thus when the debtor pays the debts or the securities as specified in the certificate, to the holder of such certificate, then on such payment, he is absolved from his obligation to pay to any one else as it conclusively concludes his part of his obligation and such payment is construed to be in good faith. This safeguards such debtor or person liable to pay that he may not be later dragged into any litigation which may arise subsequently *inter se* between the claimants. The use of words “good faith” in Section 381 reinforces that decision in these proceedings are not final. When statute recognises such payment to be in good faith gives clear under current message that there may be in future better claimant but that would not effect the indemnification of the debtor. Thus we find accumulatively because of the grant of Succession Certificate being for a limited purpose, limited in its sphere, the declaration of title being *prima facie*, payment tendered is declared to have been made in good faith, leads to only one conclusion that any decision made therein cannot be treated to be final adjudication of the rights of the parties, except such declaration being final for the purpose of these proceedings. If that be so, the amount received by the holder of such certificate can yet be questioned, and in subsequent proceeding it may hold it to belong to other claimant, including the contesting party.
15. This can be examined from another angle. The grant of Succession Certificate falls under Part X of the aforesaid Act. Its range is between Sections 370 to 390. It is significant to refer here Section 387. This declares the effect of decisions made under this Act and the liability of holder of such certificate. It lays down that any decision made under this Part (Part X) upon any question of right between the parties shall not bar the trial of the same question in any suit or other proceedings between the same parties. It further records that nothing in this part shall be construed

to affect the liability of any person who may receive the whole or any part of any debts or security to account therefor to the person lawfully entitled thereto. Section 387 is quoted hereunder:—

“Section 387 :

**Effect of decisions under this Act, and liability of holder of certificate thereunder :** No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceedings between the same parties, and nothing in this part shall be construed to affect the liability of any person who may receive the whole or any part of any debts or security or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.”

(Emphasis supplied)

16. This leaves no room for doubt. Thus any adjudication made under Part X of this Act which includes Section 373 does not bar the same question being raised between the same parties in any subsequent suit or proceeding. This provision takes the decisions under Part X of the Act outside the purview of Explanation VIII to Section 11. This gives protective umbrella to ward off from the rays of *resjudicata* to the same issue being raised in a subsequent suit or proceedings.”

(7) On the basis of the precedent as well as the principle, it has become evident that the proceedings in a regular suit and the proceedings which are summary in nature contemplated by Section 372 of the Act are entirely different and the latter proceedings would not be covered by Section 10 of the Act. The object of issuance of a certificate and its effect is entirely different which would not result into deciding the issue finally between the parties. Therefore, there is no scope for interference in the impugned order and the petition is liable to be dismissed.

(8) For the reasons recorded above, this petition fails and the same is dismissed.