

Before M.M.S. Bedi, J.

SARVINDER SINGH—Petitioner

versus

TARLOCHAN SINGH AND ANOTHER—Respondents

CR No. 161 of 2011

February 14, 2012

Constitution of India, 1950 - Art.227 - Indian Succession Act, 1925 - S.2(bb), 372, 373(3), 384(1), 387, 388(2) - Petitioner, husband of the deceased had filed an application under S.372 of the Indian Succession Act - Petition contested by the brother of the deceased - Petition for grant of Succession Certificate allowed - Brother of the deceased challenged the order granting Succession Certificate under S.372 of the Act before the District Judge on the ground that a civil suit regarding the execution of Will by the deceased was pending in the civil court - District Judge set aside the succession certificate and held that the proper course was to keep the petition pending till the civil suit regarding the Will was decided - In revision petition before the High Court, it was held that having regard to the summary nature of the proceedings under S.372 read with S.373 (3), grant of Succession Certificate was just and fair - Petitioner, being the husband and natural heir of the deceased was entitled to the Succession Certificate - S.387 of the Act makes it clear that any decision under the Act will not bar the civil court from deciding the rights between the parties - Order granting Succession Certificate restored - Revision petition allowed.

Held, that the short question which is required to be determined in the present case is, whether the judgment given by District Judge as defined under Section 2 (bb) of the Act exercising the powers under Section 372 read with Section 388 (1) and (2) of the Act, is not competent to issue succession certificate during the pendency of a civil suit regarding the succession. The said question is no more *res integra* in view of various judgments rendered by different High Courts and Supreme Court. In this context, reference can be made to *Monica Bibli Sood v. Mrs. Kamal*

Seth and others, 2004 (3)CCC 212 in which it has been laid down that proceedings for obtaining succession certificate under Section 372 of the Act cannot be stayed during the pendency of the suit as object of issuance of a succession certificate is clearly different as the said proceedings are summary in nature and the certificate does not result in deciding the issue finally between the parties. Even the proceedings in civil suit have not been held to be attracting the principle of *res judicata* by a decision in summary proceedings under Section 372 of the Act in the abovesaid judgment. In *Roma alias Raman Vs. Girdhari Lal Bijliwala and another, 1996 (1) PLR 294*, it was held in context to provisions of Section 373 (2) and (3) of the Indian Succession Act that if the trial Court comes to a positive finding that a person applying under Section 372 of the Act is entitled to the amount claimed, it is necessary to grant a succession certificate in his favour.

(Para 5)

Vikram Bajaj, Advocate, *for the petitioner.*

R.D. Bawa, Advocate, *for the respondents.*

M.M.S. BEDI, J.

(1) The petitioner is husband of Joginder Kaur, deceased. Claiming to be the sole natural heir of Joginder Kaur, the petitioner had filed an application under Section 372 of the Indian Succession Act, 1925 (for short 'the Act') for grant of a succession certificate to him qua the debts in the form of Bank deposits in the name of said Joginder Kaur. The said petition was contested by respondent No. 1- Tarlochan Singh, son of the brother of Joginder Kaur. Civil Judge (Senior Division), Ferozepur, vide order dated January 14, 2009 had allowed the application and granted succession certificate under Section 372 of the Act regarding the estate/ amount of Joginder Kaur, as detailed in Schedule A alongwith interest in favour of the petitioner authorizing him to collect the amount in the bank according to law. He was further directed to furnish indemnity bonds of Rs. 10 lacs with one surety of like amount with an undertaking that he will remain bound to indemnify the claim of any other rightful claimant, if found and put forth his claim, according to law. It is pertinent to observe here that unregistered Will propounded by respondent Tarlochan Singh dated December 27, 2002 was held to be surrounded by suspicious circumstances. Exercising powers of the District Judge vested in him, the learned Civil Judge (Senior Division), under Section 373 (3) of the Act held the petitioner to be the person having

prima facie the best title of the estate/ amount left by his wife. The judgment dated January 14, 2009 was challenged by respondent No.2 by filing an appeal under Section 384 (1) read with Section 388 (2) of the Act before the District Judge. The learned Appellate Court had set aside the succession certificate and dismissed the application filed by the petitioner under Section 372 of the Act holding that the proper course for the succession Court was to keep the petition pending until the civil suit regarding the Will was decided by the Civil Court in Civil Suit filed by Tarlochan Singh in the Court of Civil Judge (Senior Division), Jalalabad - Tarlochan Singh Vs. Sarvinder Singh in which original Will dated December 27, 2002 was lying attached and the validity of the Will was to be decided. The decision given by the Succession Court in summary proceeding was thus held to be perverse and the appeal was allowed vide judgment dated September 8, 2010.

(2) Aggrieved by the judgment of reversal, the present revision petition has been preferred under Section 388 (3) of the Act for setting aside the judgment dated September 8, 2010.

(3) Learned counsel for the petitioner has contended that the first Appellate Court has misread the evidence on the record while setting aside the succession certificate. It was vehemently urged that the judgment of the lower Appellate Court was contrary to the decision of High Court in C.R. No. 359 of 2008, decided on July 31, 2008. Respondent Tarlochan Singh had filed a suit in the Court at Jalalabad regarding some immoveable properties left by Smt. Joginder Kaur on the basis of Will dated December 27, 2002 and had prayed that the proceedings under Section 372 of the Act should be stayed till the decision of the civil suit. Said application was contested by the petitioner. The application under Section 10 CPC was dismissed by Civil Judge (Senior Division), Ferozpur vide order dated January 11, 2008. Said order was challenged by Civil Revision No. 359 of 2008 in the High Court but it was dismissed as per order dated July 31, 2008 passed by Surya Kant, J. The request of respondent to stay or adjourn the proceedings sine die till decision of civil suit at Jalalabad was rejected and the said decision attained finality, as such the impugned order dated 8.9.2010 superseding the order passed by the High Court is invalid. Learned counsel for the petitioner has further argued that provisions of Section 373 (3) of the Act provide that if the Court cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding,

it may nevertheless grant a certificate to the applicant, if he appears to be the person having prima facie the "best title" thereto. It was urged that the provisions of Section 373 (3) of the Act had been ignored by the lower Appellate Court. The provisions of Section 373 (3) enjoins a duty upon the Court to grant the succession certificate in a summary manner to the applicant who has filed the application for the grant of certificate being the natural heir of the deceased. As per provisions of Section 387 of the Act, no decision under the Indian Succession Act, 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 parties and nothing in the act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend of any security, to account therefore to the person, lawfully entitled thereto.

(4) I have heard learned counsel for the petitioner as well as counsel for the respondent and gone through the judgment passed by the lower Appellate Court. Vide certificate under Section 372 of the Act, the petitioner had been held entitled to withdraw the amount lying in FDR in the State Bank of India, Ferozepur Cantt. and Bharat Overseas Bank, Ferozepur. It is an admitted fact that the respondent has filed a suit to claim the immoveable and moveable properties of deceased Joginder Kaur on the basis of unregistered Will dated December 27, 2002. Copy of the Will is part of the record as Ex.P1/A. The rights of respondent Tarlochan Singh regarding the shop situated in Jalalabad and share in a plot situated at Jalalabad and the immovable property i.e. the bank accounts is the subject matter of the Will. The short question which is required to be determined in the present case is, whether the judgment given by District Judge as defined under Section 2 (bb) of the Act exercising the powers under Section 372 read with Section 388 (1) and (2) of the Act, is not competent to issue succession certificate during the pendency of a civil suit regarding the succession. The said question is no more res integra in view of various judgments rendered by different High Courts and Supreme Court. In this context, reference can be made to *Monica Bibli Sood versus Mrs. Kamal Seth and others (1)*, in which it has been laid down that proceedings for obtaining succession certificate under Section 372 of the Act cannot be stayed during the pendency of the suit as object of issuance of a succession certificate is clearly different as the said proceedings are summary in nature and the certificate does not result in deciding the issue finally between the

parties. Even the proceedings in civil suit have not been held to be attracting the principle of *res judicata* by a decision in summary proceedings under Section 372 of the Act in the abovesaid judgment. In *Roma alias Raman versus Girdhari Lal Bijliwala and another (2)*, it was held in context to provisions of Section 373 (2) and (3) of the Indian Succession Act that if the trial Court comes to a positive finding that a person applying under Section 372 of the Act is entitled to the amount claimed, it is necessary to grant a succession certificate in his favour. However, if the Court cannot decide the right to the certificate without determining intricate questions of law or fact, it may either refuse to grant the certificate leaving the parties to get their rights determined in a civil suit or in its discretion grant a certificate to the applicant if he appears to be a person having *prima facie* best title thereto. The provisions of Section 373 of the Act, while deciding application for a certificate, reads as follows:-

“373. Procedure on application.—(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit, and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.”

(5) A similar question came up before the Apex Court in *Madhvi Amma Bhawani Amma* versus *Kunjikutty Pillai Meenakshi Pillai* (3), wherein it was held that the summary proceedings for the grant of succession certificate will not be res judicata for any subsequent proceedings for determining the rights of the contesting parties.

(6) Considering the facts and circumstances of the present case in context to the provisions of Section 373 (3) of the Act, this Court is of the opinion that the petitioner is husband of deceased Joginder Kaur. He is around 100 years of age. He is the natural heir, as per the Hindu Succession Act. So far as defendant- respondent is concerned, he is the nephew (brother's son of the deceased). The rights of any rival claimants are yet to be determined regarding the other immoveable properties. The lower Appellate Court has acted illegally in setting aside the judgment of the trial Court granting successions certificate. The order dated September 8, 2010 passed by lower Appellate Court is hereby set aside and that of Civil Judge (Senior Division) dated January 14, 2009 is hereby restored. The petitioner is held entitled to collect the amounts detailed in Schedule A alongwith interest till date, subject to furnishing indemnity bonds of Rs.10 lacs with one surety of the like amount with an undertaking that he will remain bound to indemnify the claim of any other rightful claimant, if found subsequently, according to law. Succession certificate will be issued to the petitioner after having furnished the indemnity bonds according to the rules and amount will be disbursed by the Managers of Bharat Overseas Bank, Ferozepur and State Bank of India, Ferozepur Cantt., without any delay.

(7) Allowed in the aforesaid terms.

P.S. Bajwa

(3) 2000 (3) RCR (Civil) 187