

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

RSA.No. 545 of 2015 (F)

AGAINST THE JUDGMENT AND DECREE IN AS 1/2010 of DISTRICT COURT, TRIVANDRUM
DATED 28-07-2011.
AGAINST THE JUDGMENT IN OP(SUCCESSION) 12/2008 of MUNSIF COURT, ATTINGAL
DATED 12-11-2009.

APPELLANT/FIRST RESPONDENT/1ST COUNTER PETITIONER :

SOBHANAN, S/O.SADANANDAN, AGED 36 YEARS,
RESIDING AT MOTTALUVILA PUTHEN VEEDU,
PEELIYOTTUKONAM, VALAKKADU, MUDAKKAL VILLAGE.

BY ADVS.SRI.R.S.KALKURA.
SRI.M.S.KALESH.
SRI.HARISH GOPINATH.
SRI.V.VINAY MENON.

RESPONDENTS/APPELLANTS AND RESPONDENTS 2 TO 4/
PETITIONERS AND CR.PETITIONERS 2 TO 4 :

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1. SUBHADRA, D/O.MADHAVAN, AGED 61 YEARS,
RESIDING AT SADA NIVAS, VALAKKADU ELAMPA,
P.O.MUDAKKAL VILLAGE, CHIRAYINKIL TALUK-695 304.
 2. DINESAN, S/O.SADANANDAN, AGED 43,
RESIDING AT 'REVATHY', VALAKKADU, ELAMPA P.O.,
MUDAKKAL VILLAGE, CHIRAYINKIL TALUK-695 304.
 3. ANIL KUMAR, S/O.SADANANDAN, AGED 40 YEARS, RESIDING AT DO. DO.
 4. SUNIL KUMAR, S/O.SADANANDAN, AGED 37 YEARS OF DO. DO.
 5. THE SECRETARY,
CHIRAYINKIL SERVICE CO-OPERATIVE BANK LTD.NO.1155
CHIRAYINKIL-695 304.
 6. THE BRANCH MANAGER,
KERALA STATE FINANCIAL ENTERPRISES LTD.,
ATTINGAL BRANCH, ATTINGAL-695 101.
 7. THE BRANCH MANAGER,
KERALA STATE FINANCIAL ENTERPRISES LTD.,
VENJARAMOODU BRANCH, VENJARAMOODU-695 607.
- R1 TO R4 BY ADVS. SRI.M.R.ANANDAKUTTAN,
SMT.M.A.ZOHRA & SRI.MAHESH ANANDAKUTTAN
R6 & R7 BY ADV. SRI.LAL GEORGE, SC, KERALA STATE FINANCIAL ENTERPRISES LTD.
R5 BY ADV. SRI.LIJU. M.P

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A No.545 of 2015

Dated this the 23rd day of July, 2015.

J U D G M E N T

The questions to be decided in this appeal are two fold. Firstly, whether a second appeal is maintainable against an order passed by a court invoking jurisdiction under Section 372 of the Indian Succession Act, 1925 ? (in short 'the Act'). Secondly, what is the legal effect of a decision rendered by a court issuing a succession certificate on the substantive rights of the parties ?

2. Heard the learned counsel for the appellant and the contesting respondents.

3. Brief facts are as follows :

The respondents in the appeal approached the Court of Munsiff, Attingal with an original petition as O.P (Succession) No.12 of 2008 praying for issuance of a succession certificate for realizing the debt or security said to be outstanding in the name of deceased Sadanandan. First respondent is the wife of deceased Sadanandan and

respondents 2 to 4 are his children. According to the averments in the petition, marriage between deceased Sadanandan and first respondent was solemnised in accordance with customary rites prevailing in their community. It is also alleged in the petition that the appellant (first respondent in the lower court proceedings) was born to deceased Sadanandan in a love affair with one Omana. According to the respondents, the appellant has no legal right to make any claim in respect of the estate of deceased Sadanandan.

4. The appellant opposed the contention stating that he is the legitimate son of deceased Sadanandan. Deceased Sadanandan married his mother as per customary rites. They were living as man and wife for a long time. The court below allowed the parties to adduce evidence elaborately and disposed of the petition with following directions :

“1. It is hereby declared that the petitioners and

the first respondent are the legal heirs of Sadanandan who died on 25-05-2008.

- 2. The petitioners and the first respondent are entitled to get equal share over the deposited amounts item Nos.1 to 4 in the petition schedule.*
- 3. The first respondent alone is entitled to get item No.5 of the deposited amount.*
- 4. Issue a succession certificate enabling the petitioners and the first respondent to receive the respective shares from respondents 2 to 4.*
- 5. Purchase stamp paper for engrossing the succession certificate.*
- 6. Parties will bear their respective costs.”*

5. Aggrieved by the findings, the respondents 1 to 4 approached the learned District Judge, Thiruvananthapuram with an appeal as A.S No.1 of 2010. Learned District Judge after marshalling the entire evidence by the impugned judgment found that the appellant is not the legal heir of deceased

Sadanandan. On the basis of this finding, the decision of the first court was modified by the learned District Judge.

6. The judgment passed by the District court is under challenge in this second appeal.

7. The first question to be addressed is whether a second appeal is maintainable against the judgment of the lower appellate court ? The answer can be seen in Section 388 of the Act. The relevant provision of Section reads as follows :

“ 388. Investiture of inferior courts with jurisdiction of District Court for purposes of this Act.-

- (1) The State Government may by notification in the Official Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.*
- (2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have*

concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge.

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

- (3) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision*

by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, be final.
x x x x x x x x x ”

8. Proviso to sub-section 2 of the above Section makes it clear that if an inferior court clothed with power of a District Judge by virtue of any notification by the State Government conducts the trial, then an appeal from such an order shall lie to the District Judge. That clause has been correctly utilized by the respondents. But no second appeal thereon is maintainable. Hence the Registry of this Court should not have entertained or numbered this second appeal. Learned counsel for the respondents relying on *Mt.Shakuran Bi and Others v. Mt.Aishabi (A.I.R (37) 1950 Nagpur 244)* and *Mst.Bhanwar Bai and Others v. Balmukund and Another (A.I.R 1960 Rajasthan 9)* contended that the second appeal is incompetent.

The statute itself make the position very clear.

9. Regarding the second issue, it has to be seen that the proceedings for issuance of succession certificate is summary in nature. Section 387 of the Act, which reads as follows :

“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 proceeding 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 debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.”

10. A reading of the above Section makes it clear that no decision made by any court under the provisions relating to

succession certificate will be a bar for the trial of the same question in any suit or other proceedings between the same parties. In other words, the principle of resjudicata is not applicable to the findings arrived at by a court while considering a claim for grant of succession certificate. To buttress these contentions, learned counsel for the appellants relied on ***Joginder Pal v. Indian Red Cross Society (A.I.R 2000 S.C 3279)***. The relevant portion reads as follows :

“17. In view of the specific provisions of law it is not possible to accept Mr.Sohal s submissions. Section 387 specifically permits the 2nd Respondent to file a subsequent suit. Merely because issues were raised and/or evidence was led, does not mean that the findings given thereunder are final and operate as res-judicata. Even in summary proceedings issue can be raised and/or evidence can be led. The proceedings

remain summary even though the Court may, in its discretion, permit leading of evidence and raising of issues. So in a subsequent suit the crucial issues must be decided afresh untrammelled or uninfluenced by any finding made in the proceedings for grant of succession certificate.”

11. It has been held that Sections 373, 383 and 387 of the Act make it clear that the proceedings for grant of succession certificate are summary in nature and that no rights are finally decided in such proceedings. Learned counsel for the appellants relying on *Ammini Ammal v. Lekshmi (1957 KHC 57)* contended that all enquiry under the Act as intended by the legislature shall be summary in nature and all that a court has to do under the Act is to ascertain the right of a person to a certificate.

12. Therefore, I find that the second appeal is legally not

maintainable. It is made clear that adjudication of rights made by the trial court as well as by the lower appellate court will not stand in the way of the appellant approaching a court of competent jurisdiction for adjudicating his rights. It is also made clear that the trial court shall grant a succession certificate by invoking provision under Section 373 (3) of the Act in favour of the petitioners/respondents 1 to 4. The legal rights of the parties are left open to be decided in an appropriate proceedings.

The Registry shall follow the principles in this judgment in future.

With the above observation, the appeal is dismissed.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**

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P.A to Judge