

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.NO.4673, 4674 & 4491 OF 2015

COMMON ORDER:

Since common issue is involved in all these revision petitions, they are being disposed of together, by way of a common order.

The present revision petitions are filed by the petitioners against the order, dt.03.08.2015 passed in E.A.No.12 of 2004 in L.A.O.P.No.465 of 1997, E.A.No.11 of 2014 in L.A.O.P.No.464 of 1997 & E.A.No.13 of 2014 in L.A.O.P.No.475 of 1997 respectively, on the file of the Principal District Judge, Kurnool, wherein the applications filed by the petitioners under Section 146 of C.P.C., seeking to implead them as legal heirs of the original claimants was dismissed, for lack of succession certificate.

The case of the petitioners is that the first petitioner, who is the original claimant died without receiving the compensation deposited by the respondent-Special Deputy Collector, Kurnool District and as such, the petitioners are liable to come on record as legal heirs of the original claimants, to receive the compensation amount.

The respondent filed counter stating that the first petitioners in all the above said E.As., have to prove that they are legal representatives of the deceased original claimants and since the petitioners filed E.Ps., for realization of money, it is mandatory for them to produce succession certificate and without succession certificates, E.Ps., are not maintainable.

The Court below dismissed the applications holding that unless the petitioners obtain succession certificates, E.Ps., are not maintainable. Aggrieved by the same, the present revisions are filed.

The learned counsel for the petitioners placed reliance on a decision of this Court reported in KHADER BEE AND OTHERS VS. MOHAMMAD VAZIR AND OTHERS^[1] and submits that succession certificate is not required, since it is not a debt within the meaning of sub-section (2) of Section 214 of the Indian Succession Act.

On the other hand, the learned Assistant Government Pleader relied on a decision of Rajasthan High Court in S.B. Civil Miscellaneous Appeal No.3396 of 2011 and also a decision of the Supreme Court reported in RUKHSANA (SMT.) & OTHERS VS. NAZRUNNISA (SMT.) & ANOTHER^[2] and

submits that in order to determine the shares payable to each of the petitioners, production of succession certificate is necessary. It is also submitted that the appeals filed by the respondent-Government are dismissed in the year 2001 and at the relevant time, it was not brought to the notice of this court that the original claimant died. As such, petitioners can implead themselves in the appeals filed by the Government.

Now, it has to be seen that the said appeals are decreed on 03.07.2010 and the respondent-Government filed A.S.132 of 2001 and as per the contention of the learned Assistant Government Pleader, the original claimant died in the year 2001 during the pendency of the appeal filed by the respondent, succession certificate is required for executing the decree passed in favour of the original claimants.

The petitioners state that they are legal heirs of the deceased. This Court in **Khader Bee's** (Supra-1) case held as follows:

“In another case in S.Rajayalakshmi vs. Smt.S.Sitamahalakshmi (1976 ALT 300=AIR 1976 A.P., 361) this Court considered the applicability of Section 214 of the Act. This Court held that the Succession Certificate is necessary, if a debt is sought to be recovered, for the purpose of other items of the decree, Succession Certificate is not necessary. In the present case, execution

proceedings have been filed in pursuance of the decree obtained in the suit for partition of immovable properties. Hence, succession certificate is not required as contemplated under Section 214; since it is not a debt within the meaning of sub-section (2) of Section 214 of the Indian Succession Act”.

This Court in **Khader Bee’s** case (Supra-1) clearly held that succession certificate is not required as contemplated under Section 214; since it is not a debt within the meaning of sub-section (2) of Section 214 of the Indian Succession Act.

In the decision relied on by the learned Assistant Government Pleader for Arbitration, Rajasthan High Court in S.B.Civil Miscellaneous Appeal No.3396 of 2011 held as follows:

“Decree Holder Nos.1 to 3 are the petitioners in the Execution Petition. The dispute is only with regard to payment of the amount to the L.Rs. of decree holder No.4 as he has died after the award in the LAC case. There is no impediment for the release of compensation of decree holder Nos.1 to 3 in so far as their shares are concerned. Therefore, the order in I.A.No.5 is set aside. The trial Court is directed to release the compensation in favour of petitioner Nos.1 to 3 (decree holder Nos.1 to 3) in so far as their shares are concerned. The trial Court is directed to release the compensation of decree holder No.4 only on production of the succession certificate by his L.Rs.

Writ petitions are disposed of accordingly. No costs”.

In view of ratio laid down in **Khadeer Bee's** case with great respect

I am unable to agree with the view taken by Rajasthan High Court as such

I am of the opinion that no such succession certificate is required for executing the decree. Accordingly, orders dt.03.08.2015 passed by the Principal District Judge, Kurnool in E.A.No.12 of 2014 in L.A.O.P.No.465 of 1997, E.A.No.11 of 2014 in L.A.O.P.No.464 of 1997 & E.A.No.13 of 2014 in L.A.O.P.No.475 of 1997, which are challenged in the present revision petition Nos.4673, 4674 and 4491 of 2015 respectively, are set aside. The court below is directed to pass orders in the above said applications, in accordance with law, as early as possible.

The revision petitions are accordingly allowed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY, J

Dt.17.12.2015

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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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[\[1\]](#)) 2001 (2) ALT 513

[\[2\]](#)) (2000) 9 SCC 240