

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

C.M.A. No.1263 OF 2008

Between:

V. Sridevi .. Appellant

and

Velaga Aruna Kumari .. Respondent

DATE OF JUDGMENT PRONOUNCEMENT : 13th OCTOBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. Whether copies of the judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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J U D G M E N T

The appellant is the daughter-in-law of the respondent. Her husband, Velaga Rajesh, the son of the respondent, was a driver in the Army. He died on 26.08.2004. He was a subscriber to the Army Group Insurance Fund, the regulations of which posited that if a subscriber died while in service, his heirs would be paid death benefits to the tune of Rs.5,00,000/-. The respondent/mother filed S.O.P.No.55 of 2005 before the learned I Additional Sessions Judge, Guntur, under Section 372 of the Indian Succession Act, 1925 (for brevity, 'the Act of 1925'), laying claim to a sum of Rs.2,50,000/-, being her half share in the Army Group Insurance Fund proceeds. By order dated 30.06.2008, the Court below allowed the petition and granted a succession certificate to her and the daughter-in-law, the respondent in the S.O.P,

for Rs.2,50,000./- each, representing their respective shares in the Army Group Insurance Fund. Aggrieved thereby, the appellant/daughter-in-law is before this Court.

By order dated 23.10.2008, this Court granted interim stay of the operation of the order under appeal for a period of two weeks. Though there was no extension thereafter, it is stated by the learned counsel appearing for the parties that the order under appeal has not been acted upon till date.

Sri M.R.K.Chowdary, learned senior counsel appearing for the appellant, asserted that Section 372 of the Act of 1925 would have no application and that the Court below had no jurisdiction to decide the issue of entitlement to the Army Group Insurance Fund proceeds. Learned senior counsel would contend that the Army Regulations would govern this issue, but fairly conceded that he was not in a position to demonstrate the same as he could not lay his hands on the relevant Army Regulations.

Sri V. Mallik, learned counsel for the respondent, contested this assertion by stating that participation of the deceased, Velaga Rajesh, in the Army Group Insurance Fund had nothing to do with the Army Regulations, as such an insurance scheme would be governed by insurance law and not by the Army Regulations.

This Court finds merit in his submission.

Sri V. Mallik, learned counsel, further stated that in terms of laying a claim to her rightful share in such insurance fund, the mother of the deceased was fully entitled to approach the Court below under Section 372 of the Act of 1925 for grant of a succession certificate.

Section 372 falls in Part X of the Act of 1925 dealing with succession certificates. Section 370(1) states that a succession certificate shall not be granted with respect to any debt or security to which a right is required, by Section 212 or Section 213 of the Act, to be established by letters of administration or probate. Section 212, falling in Part VIII of the Act of 1925 relating to representative title to property of the deceased on succession, is titled 'Right to intestate's property' and states to the effect that no right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction. Sub-section (2) of

Section 212 however states that this section shall not apply in the case of intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jain, Indian Christian or Parsi. It is an admitted fact that the deceased, Velaga Rajesh, was a Hindu. Section 213 of the Act of 1925 deals with testamentary succession and has no application in the present case, as Velaga Rajesh admittedly died intestate. Section 371 of the Act of 1925 vests the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under Part X. Section 372 deals with an application for issuance of a succession certificate and reads as under:

‘372. Application for certificate

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely,—

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family of other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.’

Sri M.R.K. Chowdary, learned senior counsel, would contend that a succession certificate under Section 372 of the Act of 1925 could only be given in the context of the estate of the deceased as on the date of his death and as the Army Group Insurance Fund did not form part of such estate, the Court below had no jurisdiction to grant a succession certificate in relation thereto. According to the learned senior counsel, only the properties held by the deceased at the time of his death could be the subject matter of such a certificate and as the proceeds of the Army Group Insurance Fund accrued only after the death of the deceased, Velaga Rajesh, they do not form part of his estate. This argument is noted only to be rejected. The estate of the deceased would invariably take within its ambit all his properties, including the proceeds of his insurance policies.

Sri M.R.K. Chowdary, learned senior counsel, also contended that the appellant was the only heir nominated by the deceased in the context of the Army Group Insurance Fund. However, as rightly pointed out by the Court below, such nomination is only indicative of the person who is authorized to receive the amount on behalf of all the heirs entitled thereto. The mere fact that one person is nominated in this regard does not mean that the other heirs stood excluded. This is the settled legal position and does not need further elaboration (***SMT. SARBATI DEVI V/s. SMT. USHA DEVI*** and ***G.L.BHATIA V/s. UNION OF INDIA***).

Sri M.R.K. Chowdary, learned senior counsel, further contended that the Court below had no territorial jurisdiction, as the deceased, Velaga Rajesh, an employee of the Army, died at Ahmednagar and was not ordinarily resident within its jurisdiction.

However, it is noticed that the respondent, in her petition filed under Section 372 of the Act of 1925, specifically stated that her deceased son was a permanent resident of Mulupuru falling within the jurisdiction of the Court below and that the Court therefore had territorial jurisdiction to deal with the matter. Significantly, the respondent never contended before the Court below that it had no territorial jurisdiction.

In terms of Section 371 of the Act of 1925, if the deceased ordinarily resided within the jurisdiction of the District Court which is petitioned, it would have jurisdiction. As the deceased was an employee of the Army and had no fixed abode,

his permanent residence could be taken into consideration for deciding territorial jurisdiction under Section 371 as he had no other property. His permanent residence at Mulupuru was therefore sufficient to confer territorial jurisdiction upon the Court below.

Reliance placed by Sri M.R.K. Chowdary, learned senior counsel, on ***STATE OF GUJARAT THROUGH CHIEF SECRETARY V/s. SAVITRI DEVI*** and ***UNION OF INDIA V/s. BRIG. P.K. DUTTA (RETD.)*** is misplaced as the said cases dealt with pension payable under specific rules and did not pertain to intestate succession to the estate of a deceased Hindu. Similarly, reliance placed by the learned senior counsel on ***JODH SINGH V/s. UNION OF INDIA*** is also of no avail. That was a case relating to grant of a special family pension to the widow of an officer. As such pension was payable to the widow upon the happening of the specific event, viz., her becoming a widow, the Court held that such pension did not form part of the estate of the deceased husband. Significantly, the pension was payable to the widow upon her attaining widowhood and it therefore could not form part of the estate of the deceased.

In the light of the aforestated settled legal position and on the facts obtaining, this Court finds no error in the order passed by the Court below holding that the respondent/mother was entitled to a half-share as a Class 1 heir under the Schedule to the Hindu Succession Act, 1956, and granting her a succession certificate under Section 372 of the Act of 1925.

The CMA is devoid of merit and is accordingly dismissed. Interim stay dated 23.10.2008 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

13th OCTOBER, 2015

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