

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL MISCELLANEOUS APPEAL No.166 OF 2008

JUDGMENT:

This appeal by the unsuccessful plaintiff under Section 384 of the Indian Succession Act, 1925 ("the Act" for brevity) is directed against the orders dated 22.06.2006 of the learned I Additional District Judge, Nellore, passed in Succession O.P.No.78 of 2003 filed under Section 372 of the said Act filed for issuance of Succession Certificate to entitle the petitioner to receive a sum of Rs.1,02,500/- from the Executive Engineer (P.R.), Vigilance and Quality Control Division, Opp. P.W.D. Grounds, Bundar Road, Vijayawada.

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2. I have heard the submissions of the learned counsel for the petitioner-appellant ('the petitioner', for brevity). I have perused the material on record. Though notices were served on respondents 1 and 2, none appeared on their behalf. Though the third respondent is not served with notice, it is stated that the third respondent, having remained *ex parte* before the trial Court, is not a necessary party.

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3. The facts of the case of the petitioner, in brief, are as follows.

3.1 One Gundla China Rangaiah died in harness on 11.04.2002 while working as a Senior Assistant in the office of the Deputy Executive Engineer, Panchayat Raj, [Vigilance and Quality Control Sub-Division], Nellore. His wife-Nagamma had predeceased him. They had no issues. The petitioner is the adopted daughter of the said China Rangaiah having been adopted by him and his wife when the petitioner was of the age three years. In fact, the petitioner is the daughter of the elder brother of China Rangaiah. She was under the care and custody of China Rangaiah and Nagamma till their respective deaths. The first respondent herein is the younger brother's son of China Rangaiah. The second respondent herein is the elder brother's son of China Rangaiah. The third respondent herein is the

son of another younger brother of China Rangaiah. On 18.12.2001, the deceased had executed a Will, in a sound and disposing state of mind. Under, the said registered Will, he had bequeathed his properties in favour of the petitioner and the respondents herein. The petitioner is entitled to a half share out of the death benefits of the deceased China Rangaiah as per the said Will and the remaining half share has to be shared by the respondents 1 to 3 equally. Under the said Will, the landed property was bequeathed to the second respondent. The said Rangaiah insured his life under a policy issued by the Life Insurance Corporation and in that policy, the petitioner was shown as a nominee; and, after the death of the said Rangaiah, the amount due under the policy was paid to the petitioner by the Insurance Corporation. Being the adopted daughter, the petitioner was depending upon the deceased-Rangaiah during his lifetime and is also entitled to seek appointment to a suitable post in the Department in which Rangaiah worked, on compassionate grounds being his legal heir. In the circumstances, the petitioner had got issued a notice to the employer of the deceased claiming her share out of the death benefits payable pursuant to the death of the deceased and also appointment on compassionate grounds. On receiving the said notice, she was advised to obtain a Succession Certificate from a competent Court of law. Hence, the present petition is filed.

3.2 Respondent Nos.2 and 3 had remained *ex parte* before the Court below and the first respondent filed a counter resisting the claim of the petitioner *inter alia* contending as follows: - 'The adoption pleaded by the petitioner is absolutely false. The wife of Rangaiah died on 30.10.2001. The petitioner is the adopted daughter of Rangaiah and that she is a legal heir is false. This respondent is not aware of the Life Insurance Policy taken by the deceased and the withdrawal of the amount under the said policy by the petitioner as the nominee of the deceased. The petitioner is entitled to seek appointment to a post in the department of the deceased on

compassionate grounds is false. This respondent is the adopted son of the deceased and the said fact is also evident from the registered deed of adoption dated 23.11.2001 registered in the Office of the Sub-Registrar, Giddalur. This respondent is the only legal heir of the deceased Rangaiah and is alone entitled to claim the death benefits as well as rights to the properties of Rangaiah. The alleged Will is fabricated by the petitioner to make a wrongful gain. The petition is liable to be dismissed.'

3.3 During the course of enquiry, the petitioner and her supporting witness were examined as PWs1 and 2 and exhibits A1 to A7 were marked. The first respondent and his supporting witnesses were examined as RWs1 to 3 and exhibit B1 was marked.

3.4 On merits, the trial Court had dismissed the petition. Therefore, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the trial Court erred in holding that the petitioner filed the Succession Original Petition only to seek employment in the Department of the deceased, in future, on compassionate grounds and that the Court below had also erred in holding that no positive evidence was adduced to show that the petitioner was adopted by the deceased when she was of three years of age and that the trial Court erred in holding that the appellant has been declared as a nominee and had received the amount due under the Policy obtained by the deceased from Life Insurance Corporation will not confer a right on her to claim that she is an adopted daughter of the deceased and that the trial Court ought to have seen that exhibit A2 is a registered Will and that under the said Will certain bequests were made to the petitioner bequeathing a half share from out of the death benefits of the deceased payable by the Department and that certain other bequests were also made to the other relatives of the deceased and that in the facts and circumstances,

the evidence brought on record was by all means sufficient to accept the case of the petitioner that she is an adopted daughter of the deceased and that she was brought up by the deceased and was depending upon him during his life time and that by virtue of her adoption and also the recitals in the Will, she is entitled to a Succession Certificate as prayed for. He would further contend that the Court below ought to have disbelieved the evidence of the first respondent based on a registered Adoption Deed under exhibit B1 and that the Court below had erred in not accepting the case of the petitioner and was in error in holding that the petitioner is not entitled to seek a Succession Certificate on the basis of the Will.

5. I have bestowed my attention to the facts of the case. I have noted the submissions of the learned counsel for the petitioner.

6. The petitioner is claiming to be an adopted daughter of the deceased. The first respondent is also claiming to be an adopted son of the deceased while denying the claim of the petitioner that she is an adopted daughter of the deceased. Under the Will said to have been executed by the deceased and being relied upon by the petitioner and which was denied by the first respondent, certain bequests not only in respect of movable properties but also in respect of immovable property were made. This OP filed by the petitioner is confined to a request for grant of a Succession Certificate in respect of a half share out of the death benefits of the deceased payable by his Department as he had admittedly died in harness. The basis for her claim is adoption and also the Will under exhibit A2. In-fact the trial Court framed three issues viz., one issue in regard to the entitlement of the petitioner to a succession certificate to receive Rs.1,02,500/- from the Department of the deceased and two other issues as to whether or not the petitioner is the adopted daughter of the deceased and whether or not the first respondent is the adopted son of the deceased.

7. Now the question that arises for consideration is as to whether

the Court below while exercising the limited jurisdiction in an application dealing with the entitlement or otherwise of the petitioner for grant of a succession certificate can adjudicate the complex issues of fact and law concerning the truth or otherwise of the adoptions respectively pleaded by the petitioner and the first respondent and also the truth and validity of the exhibit A2-Will.

8. In an application for grant of a Succession Certificate under Section 372 of the Act, the scope of enquiry would be limited to the entitlement or otherwise of the applicant for grant of such a certificate in respect of any debt or debts and securities and what are securities is also provided under Section 370 of Part X of Chapter XIII of the Act. Therefore, when the jurisdiction in a proceeding of this nature is circumscribed by the provisions of the Act, there cannot be any adjudication on other issues like truth and validity of any adoption and truth and validity of a Will which comprises of bequests concerning immovable property also. Though the present claim is confined to part of death benefits, the basis of the claim is adoption as well as a Will said to have been executed by the deceased. The trial Court dealing with an application for grant of a certificate and exercising a jurisdiction which is circumscribed by the law governing the grant of such certificate cannot exceed its jurisdiction and determine issues which only a civil Court is competent to resolve. Even if any adjudication is made in this proceeding by the Court, the same cannot be termed as final and binding on the parties as the issues have to be ultimately resolved in a civil proceeding instituted before a competent civil Court. Therefore, there cannot be two adjudications in respect of the issues concerning adoptions and Will i.e., one in this proceeding and again the other in a regular civil proceeding. Therefore, as any adjudication in this proceeding in an application under Section 372 of the Act is not going to be final and binding on the parties, this Court finds that the petitioner cannot invoke the jurisdiction of the Court under the said

provision of law without approaching a civil Court and seeking an appropriate and comprehensive remedy, which the law permits. The view of this Court finds support from a Division Bench decision of this Court in **C.Ramya Bala v. Ch.Jayaram and others.**^[1]

9. For the reasons assigned, this Court finds that the Court below is justified in dismissing the petition of the petitioner for grant of a Succession Certificate and that there are no grounds calling for interference.

10. In the result, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. It is needless to mention that since this Court has not gone into the merits of the matter, it is open to the parties to work out their remedies in an appropriate proceeding before an appropriate Forum in accordance with the procedure established by law. If any fresh proceedings came to be initiated by any party, the same shall be disposed of on merits without being influenced by the observations, if any, made in the orders of the trial Court.

Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SEETHARAMA MURTI, J)

16th July 2015
RRB

^[1] AIR 2013 A.P. 123