

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

A.S.No.495 of 2015

JUDGMENT:

The 2nd respondent in S.O.P.No.19 of 2005 on the file of Principal Junior Civil Judge, Khammam preferred Civil Miscellaneous Appeal initially challenging the order dated 20.02.2015 and later it is converted into an appeal by order dated 02.06.2015. At the stage of interlocutory, both the Advocates for the petitioner and respondents advanced their argument on various aspects.

The petitioners filed S.O.P.No.19 of 2005 for issuance of succession certificate to receive claim under LIC policy with the 1st respondent claiming that 1st petitioner is the first wife of the deceased late Latchayya and the 2nd petitioner is the son born to the 1st petitioner and Latchayya during their wedlock but whereas the 2nd respondent set up the claim that she is the legally wedded wife after divorce to the 1st petitioner, before the trial Court.

On contest, the trial Court allowed the petition and issued a succession certificate enabling the petitioners 1 and 2 before the trial Court to receive the claim under LIC policy.

Aggrieved by the decretal order passed by the Principal Junior Civil Judge, Khammam, the present appeal is preferred on various grounds.

During the course of argument, learned counsel for the appellant Sri Pavan Kumar raised a specific contention that the Principal Junior Civil Judge has no jurisdiction to try and dispose of the succession OPs for issue of succession certificates as no notification was issued under Section 19 of Civil Courts Act conferring jurisdiction on the Junior Civil Judges to entertain petitions for issuance of succession certificates but only Subordinate Judges, and now Senior Civil Judges are authorized to entertain the petitions for issuance of succession certificates. In fact no such plea was urged before the trial Court and no specific ground was raised in the grounds of appeal. At this stage it is appropriate to advert to Section 388 (1) of the Indian Succession Act, which deals with Investiture

of inferior Courts with jurisdiction of District Court for purposes of this Act, reads as under :-

“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.”

One of the judgments of this Court in D.TIRUMALAMMA Vs. M.SUBBAMMA^[1], this Court had an occasion to deal with Section 388(1) of the Indian Succession Act (for short ‘the Act’) and held that the State Government issued G.O.Ms.No.1414, Home (General-A), dated 31.10.1978 conferring powers on all the Courts of District Munsifs in the State with powers to exercise the functions of a District Judge under Part-X of the said Act, within the local limits of their respective jurisdiction, and similarly this Court referred the amendment to Section 16(2) of Andhra Pradesh Civil Courts Act as amended by Act 30/89 conferring jurisdiction to enquire the succession OPs upto the value of Rs.25,000/-. Therefore, the notification as required under 388(1) of the Act was issued and similarly a notification under Section 16(1) of the Andhra Pradesh Civil Courts Act was issued, authorizing to Junior Civil Judge to entertain applications for issuance of succession certificates upto the pecuniary limit of Rs.25,000/-, later, enhanced from time to time by amendment. The main contention of the learned counsel for the appellant is that a notification under Section 19 of the A.P. Civil Courts Act, is required to be issued, conferring jurisdiction on the Courts subordinate to the District Court; accordingly, a notification was issued in ROC No.40/SO/72.2 under Section 19(1) of Andhra Pradesh Civil Courts Act, 1972 authorizing the Subordinate Judges (including the Additional Judges in the City Civil Courts) to take cognizance of the proceedings under Indian Succession Act; it cannot be disposed of by the District delegates on the strength of this notification; it is referred in the earlier order passed by this Court on 10.03.2010 in Civil Miscellaneous Appeal No.46 of 2010.

In view of conferring jurisdiction on the Subordinate Judges (Senior Civil Judges) Courts including Additional Judges in City Civil Courts, the Junior Civil Judges are incompetent to take cognizance of the petitions

filed for issuance of succession certificates.

As on today, the order was passed by the Junior Civil Judge ordered issue of succession certificate enabling the petitioners before the trial Court to receive death claim under LIC policy. Against the decree and decretal order passed by the Junior Civil Judge, an appeal would lie to the District Judge's Court under proviso to Section 388(2) of the Act. As such the order under challenge is not appealable under Section 384 of the Act, before this Court, but appeal lies only to the District Judge's Court since the order under challenge was passed by the Junior Civil Judge, in view of proviso to Section 388(2) of the Act. Consequently, the appeal is not maintainable before this Court. More over, this Court being a Court having jurisdiction though competent to decide, I am not inclined to decide this matter for the reason that the party may loose a chance of further appeal.

Hence, I find that the appeal before this Court is not maintainable against the order passed by the Junior Civil Judge in view of the proviso to Section 388(2) of the Act. Consequently, the Registry is directed to return the appeal for presentation before the competent Court and the appellant respondent before the trial Court is given liberty to raise all pleas including competency of Junior Civil Judge to enquire and dispose of the petitions for issuance of succession certificate under the Indian Succession Act.

With the above direction, the Appeal is disposed of at interlocutory stage with consent of both Advocates. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date : 13.08.2015
ssp

[\[1\]](#) 1992 (1) ALT 510