

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.86 of 2016

Smt. Sevati, W/o Late Samu, aged about 60 years, Caste Mahara, R/o Vill. Jharumargaon, Post Office Kachnaar, Tah. Jagdalpur, Distt. Bastar (C.G.), Civil & Revenue Distt. Bastar (C.G.)

---- Petitioner

Versus

1. Smt. Genda Bai, W/o Late Samu, aged about 65 years, Caste Mahara, R/o Rajendra Nagar Ward, Tah. Jagdalpur, Distt. Bastar (C.G.)
2. Divisional Personnel Officer, East Coast Railway, Waltair, Distt. Visakhapatnam (A.P.)
3. Manager, Indian Life Insurance Corporation, Brahmpur Division, Jaipur (Orissa)
4. Branch Manager, State Bank of India, Main Branch, Jagdalpur, Distt. Bastar (C.G.)

---- Respondents

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| For Petitioner:  | Mr. Vikas A. Shrivastava, Advocate. |
| For Respondents: | None present, though served.        |

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/09/2016

1. Samu, S/o Rainu, while working in East Coast Railway died in harness on 7-10-2007.
2. Smt. Genda Bai, respondent No.1 herein, filed an application under Section 372 of the Indian Succession Act, 1925 (for short 'the Act of 1925') for grant of succession certificate which was registered as Succession Case No.3/2010 in which

present petitioner Smt. Sevati was also noticed and ultimately by order dated 23-8-2011, the application was allowed and Smt. Genda Bai was granted succession certificate holding her to be eligible for receiving LIC amount of Rs.25,000/- and pension amount Rs.2,844/-. Thereafter, Smt. Genda Bai filed an application for grant of pension. On receiving notice from East Coast Railway, the petitioner herein filed an application under Section 372 read with Section 383 of the Act of 1925, for revocation of succession certificate dated 23-8-2011 in favour of Smt. Genda Bai by the Succession Court. The Succession Court framed an issue on 28-8-2015 and the said Court by order dated 4-11-2015 rejected the said application and decided the preliminary issue holding that the said application is barred by res judicata as the order dated 23-8-2011 passed in the succession case has become final against which the present petitioner preferred an appeal before the appellate Court and the appellate Court by its order dated 10-3-2016 affirmed the order of the succession court which dismissed the application for revocation of succession certificate as barred by res judicata. Feeling aggrieved against the order of the two Courts below, the petitioner herein has filed this revision questioning the order passed by the two Courts below rejecting her application for revocation of succession certificate as barred by res judicata.

3. Notices were issued to respondent No.1 Genda Bai but she

has chosen not to appear despite service.

4. Mr. Vikas A. Shrivastava, learned counsel for the petitioner, would submit that both the Courts below have committed grave legal error in rejecting the application filed by the petitioner for revocation of succession certificate under Section 383 of the Act of 1925. He would further submit that the finding recorded while granting succession certificate would not operate as *res judicata* in the subsequent proceeding initiated under Section 383 of the Act of 1925 and therefore, the order of the Succession Court as affirmed by the first appellate Court deserves to be set aside.
5. I have heard learned counsel for the petitioner, perused the orders impugned and also gone through the record thoroughly.
6. In order to decide the dispute raised herein, it would be advantageous to notice the provisions contained in the Indian Succession Act, 1925. Part X of the Act of 1925 provides for Succession Certificates. Section 372 of the Act of 1925 provides, Application for certificate. Section 373 provides, Procedure on application. Ultimately, under Section 373(2) of the said Act, succession certificate has to be granted by the Court. Contents of certificate are prescribed under Section 374 of the Act of 1925. Effect of certificate is prescribed in Section 381 of the Act of 1925. Section 383 of the Act of 1925 prescribes for revocation of certificate stating that a certificate

granted under this Part may be revoked on the grounds mentioned in clauses (a) to (e) of Section 383. Section 387 provides for effect of decisions under the Act, and liability of holder of certificate thereunder. It provides that no decision under Part X 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.

7. In this connection, reference may be made to the decision of the Supreme Court rendered in the matter of **Madhvi Amma Bhawani Amma and others v. Kunjikutty Pillai Meenakshi Pillai and others**<sup>1</sup> in which Their Lordships have considered the effect of decisions rendered under this Act by virtue of the provision contained in Section 387 of the Act of 1925 and has clearly held that decision regarding grant of succession certificate made in proceedings under Section 373 of the Succession Act would not bar any party to the said proceedings to raise the same issue in a subsequent suit, as the said decision is not final between the parties, and observed as under in paragraphs 16 and 19: -

“16. This leaves no room for doubt. Thus any adjudication made under Part X of this Act which includes [Section 373](#) does not bar the same question being raised between the same parties in any subsequent suit or proceeding. This provision takes the decisions under Part X of the Act outside the purview of Explanation VIII to [Section 11](#). This gives protective umbrella to ward off from the rays of res judicata to the same issue being raised in a

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<sup>1</sup> (2000) 6 SCC 301

subsequent suit or proceedings.

19. So we have no doubt to hold that any decision made in proceedings under [Section 372](#), for the grant of succession certificate under the [Indian Succession Act](#), would not bar any party to the said proceedings to raise the same issue in a subsequent suit. Hence, the High Court fell into error in applying the principle of res judicata to the second appeal of the appellant arising out of the aforesaid suit. Thus even if no appeal is preferred by the appellant against the decision of the trial court arising out of proceedings for the grant of succession certificate, the principle of res judicata would still not apply.”

8. Subsequently, the principle of law laid down in **Madhvi Amma Bhawani Amma** (supra) was followed and reiterated by the Supreme Court in the matter of **Joginder Pal v. Indian Red Cross Society and others**<sup>2</sup> holding that findings given on application for grant of succession certificate are not final and do not operate as res judicata notwithstanding the fact that issues are raised and evidence was led. It was held as under:-

“15. Part X of the Indian Succession Act deals with Succession Certificates. [Sections 373](#), [383\(e\)](#) and [387](#) are relevant. They read as follows:

"373. Procedure on application.—(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—

(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any

rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

2. When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

3. If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

4. When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

(emphasis supplied)

383. Revocation of certificate.- A certificate granted under this Part may be revoked for any of the following causes, namely:—

xxx xxx xxx

xxx xxx xxx

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

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."

These Sections 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. [Section 387](#) puts the matter beyond any doubt. It categorically provides that no decision under Part X upon any question of right between the parties shall be held to bar the trial of the same question in any suit or any other proceeding between the same parties. Thus [Section 387](#) permits the filing of a suit or other proceeding even though a succession certificate might have been granted.

16. This question was also considered by this Court in the case of [Madhvi Amma Bhawani Amma v. Kunjikutty Pillai Meenakshi Pillai](#) reported in 2000 5 JT (SC) 336 : (2000 AIR SCW 2432 : AIR 2000 SC 2301). In this case after having considered the provisions of [Sections 370 to 390](#) of the Indian Succession Act as well as Section 11 of the Code of Civil Procedure, it has been held that any adjudication under Part X does not bar the same question being raised between the same parties in a subsequent suit or proceeding. It has been held that [Section 387](#) of the Indian Succession Act takes a decision given under Para X of the Indian Succession Act outside the purview of Explanation VIII to Section 11 of the Code of Civil Procedure. It has been held that [Section 387](#) gives a protective umbrella to ward off from the rays of res judicata to the same issue being raised in a subsequent suit or proceeding. We are in full agreement with the view expressed in this case.

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 finding 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.”

9. However, there is one additional reason for not upholding the order of the two Courts below, as the application for revocation of succession certificate has to be considered in light of clauses (a) to (e) mentioned in Section 383 of the Act of 1925. If on a summary trial the Succession Courts come to the conclusion that the applicant seeking revocation has been able to make out a case that any of the contingencies provided in Section 383 (a) to (e) is made out, the succession certificate has to be revoked. The earlier adjudication on the entitlement of the applicant therein would not come into the way of the Succession Court dealing with the application for revocation of certificate.
10. Therefore, the impugned order passed by the appellate Court affirming the order of the Succession Court rejecting the application for revocation of the certificate is hereby set aside. The succession case is restored to its original number to the file of the said Court for hearing and disposal in accordance with law.
11. The revision is allowed. No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge