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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.753 OF 2006 IN
TESTAMENTARY PETITION NO.595 OF 2005

Yallapragada Manjulata Rao ...Appellant
vs.
State of Maharashtra ...Respondent

Mr.Anilkumar Menon for the appellant
None for the respondent

CORAM : A.S.OKA, &
A.A.SAYED,JJ.
DATE : JULY 13, 2016

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Heard the learned counsel for the appellant. By this Appeal, the appellant has taken an exception to the order passed by the learned Single Judge dated 25th August 2006 by which the issue of maintainability of the application made by the appellant for grant of succession certificate under section 372 of the Indian Succession Act,1925 has been decided.

2 With a view to appreciate submissions, a reference of few facts will be necessary. The appellant is the widow of deceased Yallapragada Shankar Rao who died on 29th May 1999. It is stated in the application that the deceased was Hindu and he died intestate. The succession certificate is sought in respect of the amounts lying to the credit

of the deceased in two bank accounts as well as in the public provident fund account. The succession certificate is also sought in respect of the shares of the Trishul SSSP Unit 14 Co-operative Housing Society Limited which is a co-operative housing society duly registered under the Maharashtra Co-operative Societies Act,1960 (for short `the said Act of 1960'). By the impugned order, the learned Single Judge held that the application for grant of succession certificate was not maintainable in respect to the shares of a co-operative housing society registered under the said Act of 1960. The learned Single Judge held that the share certificate issued by the co-operative housing society is linked with the right to occupy a flat in the building of the society and therefore, the application for succession certificate will not be maintainable.

3 The learned counsel for the appellant invited our attention to sections 370 and 372 of the said Act of 1925 and in particular clause(c) of sub-section 2 of section 370 which defines security to mean a share in a company or other incorporated institution. His submission is that the consequence of holding a share in a tenant cooperative society is not relevant for deciding the issue of applicability of section 372 of the said Act of 1925 as a co-operative society is also an incorporated institution. He would, therefore, submit that the impugned order is erroneous especially when in view of sub-section 2 of section 212, the appellant was

not required to apply for a grant of letters of administration. He stated that as regards other debts and securities mentioned in the application filed by the appellant, the succession certificate has been issued.

4 We have carefully considered the submissions. Part X of the said Act of 1925 contains the provisions regarding grant of succession certificate. The succession certificate can be granted only in respect of debts and securities. The law as regards effect of grant of succession certificate is well settled. The certificate granted under Part X with respect to the debts and securities specified therein is conclusive as against the persons owing such debts or liable on such securities. Therefore, grant of succession certificate in favour of the applicant does not confer any title on the applicant to the exclusion of the legal representative who are otherwise entitled to inherit the estate of the deceased.

5 For the purpose of part X of the said Act of 1925, securities have been defined under sub-section 2 of section 370 which reads thus:

> “(2) For the purposes of this Part, "security" means--
>
> (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
> (b) any bond, debenture, or annuity charged by Act of Parliament 1*[of the United Kingdom] on the revenues of India;
> (c) any stock or debenture of, or share in, a company or other incorporated institution;

> (d) any debenture or other security for money issued by, or on behalf of, a local authority;
> (e) any other security which the 2*[State Government] may, by notification in the Official Gazette, declare to be a security for the purposes of this Part."

6 Security for the purpose of part X is inclusive of a share in a company or any incorporated institution. A co-operative society duly registered under the said Act of 1960 is also an incorporated institution. On plain reading of the definition of the security, the shares issued by a registered co-operative society will fall in the definition of the security.

7 Now we may advert to the impugned order. The learned Single Judge has considered the decision of the Apex Court in the case of Ramesh Shah vs. Harsukh Jadhavli Joshi[1]. Relying upon the said decision, the learned Single Judge observed that by virtue of holding shares in a tenant co-partnership housing society, a member of the society gets right to occupy a premises of the society. The question before the learned Single Judge for consideration was whether the shares in respect of which the succession certificate was prayed were the securities within the meaning of sub-section (2) of section 370 which defines "security" for the purpose of Part X. By virtue of holding such shares, several benefits may accrue to the holder of such shares. While dealing with the application for grant of succession certificate, the Court is concerned only with the limited issue whether the

1 AIR 1975 SC 1470

shares subject matter of the application will fall in the definition of security. The Court is not concerned with the rights which the holder of the security acquires by virtue of holding or transfer of security in his or her name. The learned Single Judge was impressed by the fact that by virtue of holding shares in such a society, the shareholder gets a right to occupy a premises of the society. According to us, this legal consequence will not affect inclusion of share of such society in the definition of sub-section (2) of section 370. The learned Single Judge has not held that the shares in the question will not fall in the definition of security. The learned Judge has dealt with the rights which one acquires by holding such shares. Therefore, in our view, the finding recorded by the learned Single Judge about the maintainability of the application for grant of succession certificate in respect of the said shares is erroneous and accordingly, the Appeal must succeed.

8 Hence, we pass the following order:

(I) The impugned order in relation to the finding on issue of maintainability of the application filed by the appellant is hereby set aside;

(II) The testamentary petition No.595 of 2005 is held as maintainable in respect of the shares in respect of which the relief is claimed as the shares are covered by the definition of security under sub-section 2 of section 370 of the said Act;

(III) Accordingly, the Testamentary Petition No.595 of 2005 shall be decided in accordance with law;

(IV) We make it clear that we have not made any adjudication on the question whether the appellant is entitled to succession certificate in respect of the shares in question. This issue will have to be decided in accordance with law;

(V) The appeal is allowed on above terms.

(A.A.SAYED,J.) (A.S.OKA,J.)