

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.425 of 2009

Date:22.07.2016

Between:

Smt. Suvarna and others.

... Appellants.

AND

Smt. Sunkari Premeela and others.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.425 of 2009

JUDGMENT:

This appeal is preferred against order dated 23-12-2008 in O.P.No.6/2002 on the file of I Additional District Judge, Medak at Sangareddy.

2. Appellants herein are respondents 3 to 5 and respondents 2 & 3 herein are respondents 1 & 2 and first respondent herein is petitioner in O.P.No.06/2002, which was filed under Section 372 of Indian Succession Act. Parties are hereinafter referred to as petitioner and respondents as arrayed in O.P.No.06/2002 for better understanding and convenience.

3. According to petitioner, she is a resident of Zaheerabad and that respondents 4 & 5 are her brother and sister born to

Y. Baswanappa through his first wife late Shivamma and third respondent is second wife of Baswanappa. The claim was made in respect of term deposit amount lying in the second respondent bank and petitioner sought for succession certificate for her 1/4th share in the said amount. Respondent No.3 filed counter and the same was adopted by respondents 4 & 5 and they resisted the claim mainly on the ground that third respondent was a nominee for the term deposit amount in the bank and further petitioner is no longer a member of joint family having married in the year 1986. Trial Court conducted enquiry and on the basis of oral and documentary evidence produced on behalf of both parties held that petitioner is entitled for succession certificate and accordingly allowed the petition. Aggrieved by the said order, respondents 3 to 5 preferred the present appeal.

4. Head both sides

5. Advocate for appellants submitted that order of the Court below is erroneous in the eye of law and it erred in entertaining application under Section 372 of Indian Succession Act for withdrawing amount in respect of term deposit lying in the bank and the depositor had already nominated third respondent (second wife) as nominee to withdraw the FDR amount.

He submitted that the Court below erred in granting succession certificate when there was serious dispute as to the claim and counter claim and the enquiry under Indian Succession Act was summary in nature. He submitted that application under Section 372 is maintainable in the absence of nomination and when there is nomination under Section 45ZA of the Banking Regulation Act, the Court cannot adjudicate the issue.

He submitted that remedy of the petitioner is to go to Civil Court and get her right established.

6. On the other hand, Advocate for petitioner submitted that nominee can be only as a trustee and the petitioner's claim is as daughter of the deceased i.e., one of the legal representative and as per proviso to Section 45ZA (4), the bank is bound to obey the claim and the Court below rightly granted succession certificate and that there are no grounds to interfere.

7. Now the point that would arise for my consideration in this appeal is whether order of the Court below is legal, proper and correct?

8. **Point:-** There is no dispute that petitioner, R4 and R5 are the children of late Y. Baswanappa and late Shivamma. It is also not in dispute that late Shivamma was the first wife of Baswanappa, who died in the year 1986 and Baswanappa died on 12-12-2001. It is also not in dispute that Baswanappa was employee in Education Department and retired from service and his retirement benefits were kept in term deposit in the second respondent bank in his name and third respondent was shown as nominee. The main contention of the Advocate for appellants is that as per Section 45ZA (1) of the Banking Regulation Act 1949, where a deposit is held by a banking company to the credit of one or more persons and on the death of depositor money is payable to the nominee, therefore, the petitioner has no right to claim the amount lying in the shape of fixed deposit in the second respondent bank. On the other hand, it is the contention of the Advocate for petitioner (1st respondent herein), proviso to Section 45ZA (4) clarifies that this provision shall not effect the right or claim of any person who may have against the person to whom any payment is made under the said Section.

It may be useful to read Section 45ZA clauses (1) to (4):-

"45ZA. Nomination for payment of depositors' money.—(1) Where a deposit is held by a banking company to

the credit of one or more persons, the depositor or, as the case may be, all the depositors together, may nominate, in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of the section shall constitute a full discharge to the banking company of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section."

9. From a reading of the above provision, even under Section 45ZA (2) notwithstanding anything contained in any other law for the time being in force, the bank is expected to pay the amount to the nominee on the death of the depositor. Here the claim of the petitioner is as daughter of the deceased and as per the personal law i.e., Hindu Law, daughter has also got share along with sons. Admittedly, the petitioner also instituted a suit for partition and suit was decreed as against which, appeal is preferred and the same is pending. As rightly pointed out by Advocate for petitioner, the proviso to this Section indicates that right of petitioner is not effected merely on account of payment. Here admittedly the payment has not been made and as per the partition decree, even the petitioner has a right

in the estate of the deceased. The amount in the shape of FDR in a bank would also fall under the estate of the deceased. The trial Court has elaborately considered all the objections of the appellants herein and rightly granted succession certificate in favour of the petitioner. Section 45ZA is not a bar to the right of petitioner in the estate of the deceased further when a decree is already passed in her favour for partition of the properties of the deceased, the objection of the appellants is not tenable.

If ultimately, the appeal preferred by the appellants herein is allowed and the share granted to the petitioner is set aside, then they can as well take steps for recovery of the amount i.e., now being paid to petitioner in pursuance of the succession certificate.

10. For these reasons, I am of the view that the appeal is devoid of merits and liable to be dismissed with above observation.

11. Appeal is accordingly dismissed and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:22.07.2016

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