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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 21.04.2016

Judgment delivered on : 17.05.2016

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C.R.P. 192/2015

KRISHNA SOBTI

..... Petitioner

Through Mr. John Mathew, Advocate.

versus

STATE

..... Respondent

Through Mr. Ravi Gupta, Sr. Adv. (Amicus Curiae) with Mr. Sachin Jain and Ms. Bhoomija Verma, Advocates.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner is aggrieved by the order dated 04.09.2015 wherein the Appellate Court while dealing with the application of the petitioner under Section 372 of the Indian Succession Act, 1925 (hereinafter referred to as the 'said Act') for grant of a succession certificate qua the securities left by the deceased had been dismissed.

2 This finding of the Appellate Court was a re-endorsement of the finding returned by the first Court i.e. the Court of Civil Judge.

3 The proposition canvassed before this Court is that the provisions of

Section 372 of the said Act have not been interpreted in the correct manner. The embargo of Section 213 of the said Act would not be applicable as admittedly in the Union Territory of Delhi, a probate is not required; the law being settled that the Will of a deceased husband is not required to be probated, the question of applying for probate for delivery of a succession certificate could not have thus arisen. This provision has been misinterpreted in the impugned order.

4 It is argued that for the purposes of Section 370 of the said Act, the essential test is to examine whether the petitioner who has come to the Court seeking a succession certificate has any right which is required to be established under Section 213 of the said Act. Submission being that admittedly Section 212 of the said Act would not apply as in this case a will had been left by the deceased and section 213 (dealing with testamentary succession) would alone be applicable. Additional submission being that the properties left behind by the deceased fall within the local limits of Delhi and since admittedly in the Union Territory of Delhi, a person is not required to obtain a probate of a Will, his application seeking a grant of a succession certificate would also not require the Will to be probated.

5 Learned counsel for the petitioner in support of his proposition has

placed reliance upon AIR 2001 SCC 1151 Clarance Pais & Ors. Vs. Union of India, AIR 2002 Delhi 6 Mrs. Winifred Nora Theophilus Vs. Mrs. Lila Deane & Ors, 158 (2009) DLT 631 (DB) Capt (Retd.) O.P. Sharma & Anr Vs. Kamla Sharma and Ors. as also 154 (2008) DLT 516 Surjit Kaul Gill Vs. State and Others. Submission being reiterated that the proposition is settled that where a Will is made by a Hindu and the properties do not fall in the area under Sections 57 (a) & 57 (b) of the said Act, Section 213 (2) would be applicable and not sub-Section 1. A probate not being required of a Will, the application for grant of a succession certificate without applying for probate was well maintainable. It is additionally submitted that the judgment relied upon by the Trial Court of a Single Bench of this Court delivered in C.M. (M) No.191/2014 decided on 02.12.2014 titled Brij Kishore Sinha Vs. The State was a decision attracting the rule of per- incuriam; a decision or a judgment becomes per incuriam if a rule or a regulation or a ratio of a previously pronounced judgment of a larger Bench has not been considered and thus becomes demonstrably wrong. To support this proposition that the rule of per incuriam would become applicable in the factual scenario of the instant case, learned counsel for the petitioner has placed reliance upon AIR 2014 SC 1745 Sundeep Kumar Bafna Vs. State of Maharashtra & Anr.,

(2014) 7 SCC 340 Union of India & Others Vs. R.P. Singh and 2015 Lawsuit (Del) 913 Zahid Khan Vs. Arun Mandal & Ors.

6 In the course of arguments, the predecessor of this Court had appointed Mr. Ravi Gupta, learned Senior Advocate as an amicus-curiae to assist the Court. He has filed written submissions.

7 The factual matrix is undisputed. Admittedly the deceased was a Hindu. He had left behind a Will. The suit properties i.e. both immoveable and moveable fall within the Union Territory of Delhi. There is also no gainsaying to the settled legal proposition that for a Will executed by a Hindu for the properties which are not covered under Section 57 (a) and Section 57 (b), probate of a Will is not required. This position of law has been reiterated on several occasions.

8 The Apex Court in Clarence Pais (supra) had in this regard held as under:-

“A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Section 57(a) and (b), sub section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in

respect of a will made outside those territories or regarding the immovable properties situate outside those territories.”

9 The only question which has to be answered by this Court is whether for the grant of a succession certificate under Section 213 of the said Act, the impediment of Section 370 would be attracted or not.

10 At this stage, it would be relevant to quote the provisions of Section 370 of the said Act. They read as under: -

370. Restriction on grant of certificates under this Part.—

(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate: Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

(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.

Section 372 reads as under:-

372 Application for certificate. —

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—

(a) xxxxxxxxxxxx;

(b) xxxxxxxxxxxx;

(c) xxxxxxxxxxxx;

(d) xxxxxxxxxxxx;

(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(f) xxxxxxxxxxxx.

11 The absence or presence of the “impediment” under Section 370 of the

said Act has to be considered.

12 Section 213 of the said Act. It reads herein as under:-

“213. Right as executor or legatee when established.—

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 1[India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

2[(2) This section shall not apply in the case of Wills made by Muhammadans 3[or Indian Christians], or and shall only apply—

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the 4[ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits.]”

13 Section 57 which is contained in part VI of the said Act deals with Testamentary Succession. It is also relevant. It reads as

1[57.] Application of certain provisions of Part to a class of Wills made by Hindus, etc.—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; 2[and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):] Provided that marriage shall not revoke any such Will or codicil.”

14 The Apex Court in the case of Clarence Pias while dealing with the scope of Sections 213 (1) as also Section (2) of the said Act had noted herein as under:-

“The scope of Section 213(1) of the Act is that it prohibits recognition of rights as an executor or legatee under a will without production of a probate and sets down a rule of evidence and forms really a part of procedural requirement of the law of forum. Section 213(2) of the Act indicates that its applicability is limited to cases of persons mentioned therein. Certain

aspects will have to be borne in mind to understand the exact scope of this section. The bar that is imposed by this section is only in respect of the establishment of the right as an executor or legatee and not in respect of the establishment of the right in any other capacity. The section does not prohibit the will being looked into for purposes other than those mentioned in the section. The bar to the establishment of the right is only for its establishment in a court of justice and not its being referred to in other proceedings before administrative or other Tribunal. The section is a bar to everyone claiming under a will, whether as plaintiff or defendant, if no probate or Letters of Administration is granted. The effect of Section 213(2) of the Act is that the requirement of probate or other representation mentioned in sub-section (1) for the purpose of establishing the right as an executor or legatee in a court is made inapplicable in case of a will made by Muhammadans and in the case of wills coming under Section 57(c) of the Act. Section 57(c) of the Act applies to all wills and codicils made by any Hindu, Buddhist, Sikh or Jain, on or after the first day of January, 1927 which does not relate to immovable property situate within the territory formerly subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary civil jurisdiction of the High Courts of Judicature at Madras and Bombay, or in respect of property within those territories. No probate is necessary in the case of wills by Muhammadans. Now by the Indian Succession [Amendment] Act, 1962, the section has been made applicable to wills made by Parsi dying after the commencement of the 1962 Act. A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Section 57(a) and (b), sub section (2) of

Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories. The result is that the contention put forth on behalf of the Petitioners that Section 213(1) of the Act is applicable only to Christians and not to any other religion is not correct.”

15 A harmonious construction of all the aforementioned provisions persuades this Court to hold that where a succession certificate is applied for qua a debt / security of a deceased, no matter even if it is based on a Will (but since a Will is not required to be probated in Delhi) an application for grant of a succession certificate can well lie even without the applicant having necessarily to go through the rigmarole of seeking a probate.

16 Thus since, in the instant case, the Will is not required to be probated the applicant is permitted to get his right established under Section 213 (2) of the said Act.

17 The judgment of the Single Bench of this Court relied upon by the Trial Court in *Brij Kishore Sinha* attracts the rule of per incuriam. The law laid down by the Apex Court had not been brought to the notice of the Learned Single Judge. Section 370 of the said Act alone had been considered. The impact of Section 372 as also Section 213 (2) and the

provisions of Sections 57 (a) & 57 (b) of the said Act had not been brought to the notice of the Court.

18 The Apex Court in *Union of India (Supra)* in this context had debated upon the rule of *per incuriam* and relying upon a passage of (1988) 2 SCC 602 *A.R. Antulay Vs. R.S. Nayak* had quoted the observations of Justice Sabyasachi Mukherji as under:-

“...‘Per incuriam’ are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

At a subsequent stage of the said decision it has been observed as follows:

...It is a settled rule that if a decision has been given per incuriam the court can ignore it.

21. In *Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.* [MANU/SC/1021/2010](#) : AIR 2011 SC 312 : (2011) 1 SCC 694, while dealing with the issue of ‘*per incuriam*’, a two-Judge Bench, after referring to the dictum in *Bristol Aeroplane Company Ltd. (supra)* and certain passages from *Halsbury's Laws of England* and *Raghubir Singh (supra)*, has ruled thus:

The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of Judges of co-equal strength. In the instant case, judgments mentioned in paragraphs 135 and 136 are by two or three judges of this Court. These judgments have clearly ignored a Constitution Bench judgment of this Court in Sibbia's case (supra) which has comprehensively dealt with all the facets of anticipatory bail enumerated Under Section 438 of Code of Criminal Procedure Consequently, judgments mentioned in paragraphs 135 and 136 of this judgment are per incuriam.”

19 At this stage, it would also be relevant to note the settled legal proposition that the grant of a succession certificate does not confer any title on the holder. This has been held by the Apex Court in (2008) 15 SCC 577 C.K. Prahalada & Others Vs. State of Karnataka & Others:-

“A succession certificate is granted for a limited purpose. A Court granting a succession certificate does not decide the question of title. A nominee or holder of succession certificate has a duty to hand over the property to the person who has a legal title thereto.”

20 It has also been brought to the notice of this Court that the publication had been effected for the grant of succession certificate in leading newspapers. No objection has been raised. In fact the Will appears to be wholly not contested.

21 In this background, this Court is of the view that the impugned order is liable to be set aside. It is accordingly set aside. The succession certificate is granted in favour of the petitioner qua the securities and shares left behind by her deceased husband (Shivanath) in terms of the Will dated 14.07.2010.

22 Petition disposed of.

INDERMEET KAUR, J

MAY 17th, 2016

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