

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL REFERENCE NO.1 OF 2017**

PP.Sharma

(Reference forwarded from 7th Civil Judge,  
Senior Division, Kolhapur)

Applicant

Mr.Amit B. Borkar, Amicus Curiae.

Mr.Rohit Deo, Advocate General, with Mr.Anuj Desai and Mr.Yash  
Momaya for State.

**CORAM : S.C.DHARMADHIKARI AND  
PRAKASH D. NAIK, JJ.**

Date of Reserving the Judgment : 18<sup>th</sup> April 2017

Date of Pronouncing the Judgment : 05<sup>th</sup> June 2017

**CAV JUDGMENT - (Per : Prakash D. Naik, J.) :-**

1. This reference under Section 113 of the Code of Civil Procedure, 1908 is submitted by learned Joint Civil Judge, Senior Division, Kolhapur. It is stated that the reference involves a question as to the validity of Section 28A(1) of Maharashtra Civil Courts Act, 1869, the determination of which is necessary for the disposal of the case.

2. The learned Joint Civil Judge, Senior Division, Kolhapur has noted following circumstances for referring the aforesaid issue to this Court :

(a) Miscellaneous Civil Application No.139 of 2014 is pending before the said Court. It involves a question as to the validity of Section 28A(1) of Maharashtra Civil Courts Act, 1869 ('the Act of 1869'). Learned Judge has indicated that he is of the opinion that Section 28A(1) of the Act of 1869 is invalid or inoperative in the light of Sections 265, 272, 286 and 295 of The Indian Succession Act, 1925 ('the Succession Act'). However, it has not been so declared by the Hon'ble High Court or by Hon'ble Supreme Court of India. Hence, the question is referred to this Court;

(b) Miscellaneous Civil Application No.139 of 2014 is filed by one Swapnil Mole against Shantabai Mole under Section 276 of the Succession Act, for grant of probate of last will executed by deceased Dadaso Mole. The Respondents in the aforesaid proceedings had appeared and resisted the claim on several grounds vide Exhibit-21. The execution of the will is specifically denied. The proceedings are posted for recording of evidence.

3. The Act of 1869 is a provincial Act to consolidate and amend the law relating to the District and other Subordinate Civil Courts in the presidency of Bombay. In order to seek opinion, the learned Judge has made reference to the relevant provisions of the Act of 1869, the Succession Act and paragraph 305 of Civil Manual, including in particular the aforesaid provision alleged to be inconsistent and repugnant to one another.

4. Section 28A(1) of the Act of 1869 reads thus :

***"Section 28A - Power to invest Civil Judges with jurisdiction under certain Acts.-***

*(1) The High Court may by general or special order invest any Civil Judge within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be, under the Indian Succession Act, 1865, the Probate and Administration Act, 1881, or paragraph 3 of Schedule III to the Code of Civil Procedure, 1908 ('CPC').*

*(2) ... ..*  
*(3) ... .."*

5. The Succession Act is a Central Act to consolidate the law applicable to intestate and testamentary succession. The Statement of Objects and Reasons of the Succession Act reads thus :

***"Statement of Objects and Reasons.-*** *The object of this Bill is to consolidate the Indian Law relating to succession. The separate existence on the Statute Book of a number of large and important enactments renders the present law difficult of ascertainment and there is, therefore, every justification for an attempt to consolidate it. The Bill has been preferred by the Statute Law Revision Committee as a purely consolidating measure. No intentional change of law has, therefore, been made."*

6. Sections 265, 272, 286 and 295 of the Succession Act and paragraph 305 of Civil Manual read thus :

***"S.265. Power to appoint delegate of District Judge to deal with non-contentious cases.- (1) The High***

*Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe :*

*Provided that, in the case of High Courts not established by Royal Charter, such appointments shall not be without the previous sanction of the State Government.*

*(2) Persons so appointed shall be called "District Delegates".*

**S.272. Probate and letters of administration may be granted by Delegate.-** *Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition, verified as hereinafter provided, that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.*

**S.286. District Delegate when not to grant probate or administration.-** *A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.*

**S.295. Procedure in contentious cases.-** *In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant."*

**Paragraph 305 of Civil Manual -**

(i) *Under Section 265 of Indian Succession Act, 1925, the High Court has appointed all Civil Judges to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases arising within the local limits of their respective jurisdiction.*

(ii) *In exercise of the powers conferred by Section 28A(1) of the Maharashtra Civil Courts Act (XIV of 1869), the High Court has invested all Civil Judges (Senior Division), with all the powers of a District Judge to take cognizance of any contested proceeding under Indian Succession Act, 1925, arising within the local limits of their respective jurisdiction that may be transferred to them by their respective District Judges.*

(iii) *In exercise of the powers conferred by Section 28A(1) of the Maharashtra Civil Courts Act (XIV of 1869), the High Court has invested all Civil Judges (Junior Division) with all the powers of a District Judge in the matter of issuing Succession Certificate limited to debts and securities to the extent of their pecuniary jurisdiction".*

7. According to the learned Judge, in the backdrop of the aforesaid legal provisions, point of doubt needs to be answered. According to him, Section 265 of the Succession Act provides that the High Court may appoint judicial officer within any district as it thinks fit to act for the District Judge as "Delegate" to grant probate and letters of administration in non-contentious cases. The Court to which the power is granted, is called "District Delegates". The entire chapter is silent about power of District Delegates to deal with the contentious cases. On the contrary, Section 295 of the Succession Act sets out procedure to be adopted in contentious cases. The word "District Delegate" is not used in the said section. Accordingly, the

High Court can appoint a District Delegate only in the case of non-contentious cases. Section 28A of the Act of 1869 provides that the High Court may by general or special order invest any Civil Judge within such local limits and subject to such pecuniary limits as may be prescribed, with all or any of the powers of a District Judge or a District Court, as the case may be, under the Indian Succession Act, 1925. The Succession Act of 1925 being a latter enactment, ought to prevail over the Act of 1869, which is an earlier enactment in case of an inconsistency between the two. Secondly, the Succession Act is a special law and the Act of 1869 is a general law upon the same subject. Therefore, special law will prevail over the general law. Normally there is a presumption against repeal by implication and the reason of this rule is based on the theory that Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and, therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of later Act are so inconsistent with or repugnant to the provisions of earlier Act that the two cannot stand together.

8. The learned Judge then made a reference to the case of **Maya Mathew Vs. State of Kerala and others**<sup>1</sup>. Applying the law laid down in the said decision, it is stated by learned Judge that the Act of 1869 is a general act enacted by Provincial Legislature prior in point of time, whereas, Succession Act is a particular act enacted by Central Legislature latter in point of time. Insofar as grant and

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<sup>1</sup> (2010)4-SCC-498

revocation of probates and letter of administration is concerned, the Succession Act, apart from being special Act, constitutes a complete code in respect of such subject matter providing for both the right as well as the remedies. Provisions of Sub-section 1 of Section 28A of the Act of 1869 and the provisions of Sections 265, 272, 286 and 295 of the Succession Act complete to occupy the same field. In terms of Sub-section 1 of Section 28A of the Succession Act, the High Court may appoint a Civil Judge to deal with all the powers of District Judge or District Court, as the case may be, under the Succession Act. Section 265 of the Succession Act provides that the High Court may appoint such judicial officer within any district as it thinks fit to act for District Judges as delegate to grant probate and letters of administration in non-contentious cases. Section 286 speaks that District Delegate shall not grant probate or letters of administration in any case in which there is contention. In short, except the District Judges or District Court no other Court is empowered to deal with the contentious cases of granting probate and letters of administration. After referring to the aforesaid provisions, the learned Judge has stated that totality of the aforesaid facts make it luminously clear that the question posed for consideration needs to be answered in affirmative. In his opinion, Section 28A(1) of Maharashtra Civil Courts Act, 1869 is void on the ground of it being inconsistent and repugnance to Sections 265, 272, 286 and 295 of Indian Succession Act, 1925. Thus, the Court prayed that Section 28A(1) of Succession Act may be declared void.

9. Section 113 of CPC contemplates that any Court may state a case and refer the same for the opinion of the High Court, and the

High Court may make such order thereon as it thinks fit, provided that where, the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion, the reasons therefor, and refer the same for the opinion of the High Court. Section 113 of CPC reads thus :

***"113. Reference to High Court.- Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit :***

*Provided that where, the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion the reasons therefor, and refer the same for the opinion of the High Court.*

*Explanation.- In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State."*

On reading the aforesaid provision, it is implicit that subject to conditions and limitations as may be prescribed, any Court may set a case and refer the same for the opinion of High Court, and the High Court may make such order thereon as it thinks fit. The conclusion drawn by the referring Judge is that the question has to be answered in affirmative. Apparently the learned Judge is not seeking an opinion but assumes that the view expressed by him is correct and the same needs to be affirmed. This assumption is contrary to the language of Section 113 of CPC.

10. The Act of 1869 is a provincial act to consolidate and amend the law relating to the District and other Subordinate Civil Courts in the presidency of Bombay. Section 5 of this Act provides that there shall be in each district a District Court presiding over by a Judge to be called a District Judge. Section 7 of this Act provides that the District Court shall be the Principal Court of original civil jurisdiction in the district, within the meaning assigned to this phrase under CPC. Section 8 of this Act provides that except as provided in Sections 16, 17 and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force. Section 21 of this Act provides that there shall be in each district so many Civil Courts subordinate to the District Court as the State Government shall from time to time direct. Section 24 of this Act provides that the Civil Judges shall be of two classes, i.e. Civil Judge, Senior Division whose jurisdiction shall extend to all the original suits and proceedings of a civil nature; and Civil Judge, Junior Division whose jurisdiction presently extends to all original suits and proceedings of

a civil nature wherein the subject matter does not exceed its amount or value of five lakh rupees. Section 25 of this Act provides for special jurisdiction to be exercised by Civil Judge, Senior Division in respect of such suits and proceedings of a civil nature as may arise within local jurisdiction of the Courts in the district presided over by the Civil Judge, Junior Division and wherein the subject matter exceeds pecuniary jurisdiction of Civil Judge, Junior Division, as defined by Section 24. Section 27 of this Act concerns appellate jurisdiction of Civil Judge, Senior Division or a Judge of the Court of Small Causes. Section 28 of this Act empowers the High Court to invest Civil Judges with small causes powers. Section 28A of this Act deals with power of the High Court to invest Civil Judges with jurisdiction under certain Acts namely Indian Succession Act, 1865, The Probate and Administration Act, 1881 or paragraph 3 of Schedule III to the Code of Civil Procedure, 1908. As of today, Indian Succession Act, 1865 and the Probate and Administration Act, 1881 stand repealed.

11. Learned Advocate General submitted that under Section 28A(1) of the Act of 1869, the High Court has invested the Civil Judges with the power of District Judges under the Succession Act in terms of paragraph 305 of Civil Manual. There is difference between investment of power and delegation of power. In case of investment, a District Judge exercises his power as a Judge of original jurisdiction and not as a Delegate of District Judge.

12. Learned Advocate General submitted that the learned Judge has committed an error in referring the aforesaid issue before this

Court. He submitted that the question which is referred to this Court, is no more *res integra* as the same has been dealt with by decisions of this Court. He referred to the decision of this Court in the case of **Smt.Nola Janathan Ranbhise Vs. Union of India**<sup>2</sup>. In the said decision, by filing Writ Petition No.2777 of 2013, the Petitioner therein had sought a declaration that Section 28A of the Bombay Civil Courts Act, 1869 is void on grounds of inconsistency with and repugnancy to Section 299 of the Indian Succession Act, 1925. The Petitioner therein had contended that there is apparent conflict between the provisions of Section 28A of the Act of 1869, which is a prior provincial general legislation and Section 299 of the Succession Act, which is a latter Central and special legislation. In case of such conflict, the Petitioner therein had urged that latter central and special legislation ought to prevail. It was argued that Section 28A(1) of the Act of 1869 makes a specific reference to Indian Succession Act, 1865 and the Probate and Administration Act, 1881. Accordingly, the said section cannot apply for the purposes of investing the Civil Judges with powers of District Judges under Indian Succession At, 1925, which is a different and distinct legislation. It was argued that the very investiture in the Civil Judges with powers of District Judge under the Succession Act of 1925 was, therefore, ultra vires Section 28A(1) of the Act of 1869. Further since Indian Succession Act, 1865 and the Probate and Administration Act, 1881 stand repealed by the Indian Succession Act, 1925, the entire provisions contained in Section 28A of the Act of 1869 become inoperable, otiose, redundant and void.

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<sup>2</sup> (2014)3-Bom.C.R.-641.

13. In the aforesaid decision of Smt.Nola Janathan Ranbhise (*supra*), it is observed by this Court that applying the principle of statutory interpretation with regard to the construction of references to repealed enactments as aforesaid, it is clear that reference to 'Indian Succession Act, 1895' and 'Probate and Administration Act, 1881' shall have to be construed as reference to 'Indian Succession Act, 1925'. There is absolutely nothing either under the Act of 1869 or the Succession Act to suggest any 'different intention'. Accordingly, the principles of statutory interpretation as contained in Section 8 of the General Clauses Act, 1897 and Section 9 of the Bombay General Clauses Act, 1904 clearly warrant reference to the repealed enactments to be construed as reference to the provisions so re-enacted, which in the present case would be the provisions of the Indian Succession Act, 1925.

14. The Division Bench in the aforesaid case also considered the issue as to whether the Succession Act being a latter enactment, ought to prevail over the Act of 1869 Act, which is an earlier enactment and in case of any inconsistency between two, and on the presumption that the Succession Act is a special law and the Act of 1869 is a general law upon the same subject. The Court has observed that normally there is a presumption against repeal by implication and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter and therefore, when it does not provide a repealing provision, it gives out an intention not to repeal the existing legislation. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the

provisions of latter Act are so inconsistent with or repugnant to the provisions of earlier Act "that the two cannot stand together". The Court made a reference to the decision of Supreme Court of India in the case of **Municipal Council, Palia Vs. T.J. Joseph**<sup>3</sup>, and observed that in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the latter set of provisions is by itself a complete Code with respect to the same matter. In such a case the actual detailed comparison between the two sets of provisions may not be necessary. It was further observed that the position of law is, therefore, clear in that latter laws repeal earlier laws, inconsistent therewith. Such implied repeal can be more readily inferred where a prior general law is affected by a latter particular law. Applying the principles of law, the Division Bench came to the conclusion that the provisions contained in Sub-sections 2 and 3 of Section 28A of the Act of 1869 are inconsistent with a repugnant to the provisions contained in Section 299 of the Succession Act. The reasons for arriving at such a conclusions are reflected in paragraphs 32 and 33, which read thus :

*"32. Applying the aforesaid principles to the facts and circumstances of the present case, the Bombay Civil Courts Act, 1869 is a general Act enacted by the provincial Legislature, prior in point of time. Whereas the Indian Succession Act, 1925 is a particular Act enacted by the Central Legislature, later in point of time. Insofar as grant and revocation of probates and letters of administration is concerned, the Indian Succession Act, 1925, apart from being a special Act, constitute an exhaustive code in respect of such subject matter providing for both the right as well as the remedies. The*

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3 AIR-1963-SC-1561

provisions of sub-sections (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869 and the provisions of Section 299 of the Indian Succession Act, 1925 compete to occupy the same field. In terms of sub-section (2) of Section 28A of the Indian Succession Act, 1925, any order made by a special Judge invested with powers of a District Judge under the Indian Succession Act, 1925 is made subject to appeal to the District Court in case where amount or value of the subject matter does not exceed ten lakh rupees. Every order of the District Judge passed in Appeal under sub-section (2) of section 28a of the Bombay civil courts act, 1869 is subject to an appeal to the high court under the rules, contained in the code of civil procedure, applicable to the appeals from appellate decrees. In contrast, section 299 of the indian Succession act, 1925 provides that every order made by the district judge by virtue of powers conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of Code of Civil Procedure, 1908, applicable to the appeals. The inconsistency between the two provisions is, therefore, apparent. If one has to comply with the provisions of sub-section (2) of Section 28A of the Bombay Civil Courts Act, 1869, then in a case where the amount or value of the subject matter is less than ten lakh rupees, an appeal shall have to be filed before the District Court. Further in terms of sub-section (3) of Section 28A of the Bombay Civil Courts Act, 1869, there shall be a further appeal to the High Court which would be governed by the rules contained in Section 100 of the C.P.C; applicable to the appeals from appellate decrees. However, if one is to apply the provisions of Indian Succession Act, 1925, then as against any order passed by the Civil Judge who is invested with the powers of the District Judge under sub-section (1) of Section 28A of the Bombay Civil Courts Act, 1869, an appeal would lie before the High Court in terms of Section 299 of Indian Succession Act, 1925. Further Indian Succession Act, 1925 makes no provision for any further appeal. In such a situation both the provisions cannot stand together. One of the provisions has to yield to the other.

33. Accordingly, we are of the opinion that provisions contained in sub-sections 2 and 3 of Section 28A of the Bombay Civil Courts Act, 1869 are inconsistent with and repugnant to the provisions contained in Section 299 of the Indian Succession Act, 1925. Further, as observed earlier, the Indian Succession Act, 1925 is a later enactment as compared to the Bombay Civil Courts Act, 1869. Therefore, applying the maxim *leges posteriores priores contrarias abrogant* : Later laws repeal earlier laws inconsistent therewith, we are of the opinion that the provisions of sub-sections (2) and (3) of Section 28A of the Bombay Civil Courts Act, 1869 stand impliedly repealed. Further, the Indian Succession Act, 1925 being a special enactment dealing with the subject of grant and revocation of probates and letters of administration, applying the principle expressed in the maxims *Generalia Specialibus non derogant*, and *Generalibus specialia derogant*, the provisions contained therein will prevail over the provisions contained in sub-sections (2) and (3) of the Section 28A of the Bombay Civil Courts Act, 1869, which is a general enactment upon the subject."

15. However, the issue which is raised in this reference that Section 28A(1) is inconsistent with the provisions of Succession Act is dealt with in paragraph 34 of the said decision, which reads thus :

"34. The submissions of Mr.Dalal based upon difference between 'investment of power' and 'delegation of power' may at the highest have some relevance in the context of validity or otherwise of the provisions contained in Section 28A(1) of the Bombay Civil Courts Act, 1869. We have already held that by adopting principle of statutory construction as contained in Section 8 of the General Clauses Act, 1897 and Section 9 of the Bombay General Clauses Act, 1904, reference to earlier repealed enactment in Section 28A(1) of the Bombay Civil Courts Act, 1869, shall have to be construed as reference to the Indian Succession Act, 1925. Upon adoption of such construction, it is clear that there is no infirmity in the 'investment of power' in a Civil Judge as provided under Section 28A(1) of the Bombay Civil Courts Act, 1869."

Thus, in the aforesaid decision, the Division Bench of this Court has held that upon adoption of the construction enumerated therein, it is clear that there is no infirmity in the "investment of power" in a Civil Judge, as provided under Section 28A(1) of the Bombay Civil Courts Act, 1869. Under Section 28A(1) of the Bombay Civil Courts Act, 1869, the High Court has invested the Civil Judge with the power of District Judge under Indian Succession Act, 1925 in terms of paragraph 305 of Civil Manual. We are in agreement with the submission made by learned Advocate General that there is a difference between 'investment of power' and 'delegation of power'. In case of investment, the District Judge exercises his power as a Judge of original jurisdiction and not as a delegate of District Judge. In view of this fact position, we find that there is no inconsistency between the provisions of Section 28A(1) of the Maharashtra Civil Courts Act, 1869 and the provisions of the Indian Succession Act, 1925.

16. For the reasons stated hereinabove and taking into consideration the fact that the question which is under reference, was earlier dealt with by a decision of the Division Bench of this Court in the case of Smt.Nola Janathan Ranbhise (supra), there was no question of referring the said decision again for reference by the learned Joint Civil Judge, Senior Division before this Court. Apart from that, we are also of the opinion that there is no inconsistency between the provisions of Section 28A(1) of the Maharashtra Civil Courts Act, 1869 and Sections 265, 272, 286 and 295 of the Indian Succession Act, 1925.

17. Learned Advocate General also placed reliance upon the decision in the case of **Mrs.Vera D. Thackersey Vs. Bai Manekbai Annasaheb Thackersey**<sup>4</sup>. The issues raised in the said case were that (i) the High Court had no power whatsoever to invest to any Judge subordinate to the District Judge to try a contentious matter pertaining to letters of administration or probate; (ii) Section 264 of the Indian Succession Act, 1925 was in direct conflict with Section 28A of the Bombay Civil Courts Act, 1869; (iii) The High Court's power of delegation were circumscribed statutorily by Section 265(1) of the Succession Act, which factor was brought to the forefront by the provisions of Section 272 which dealt with delegation only in the case of non-contentious matters; and (iv) the District Judge was persona designata, with the result that the delegation under Section 28A(1) of the Bombay Civil Courts Act was bad in law. The aforesaid contentions were rejected by High Court in the aforesaid decision. The reasons are reflected in paragraphs 15 and 16 of the said decision, which are quoted herebelow :

*"15. We do not agree with any of these contentious urged by Mr.Paranjape. We fail to see why the High Court would have no power to invest any Judge subordinate to the District Judge to try contentious cases pertaining to letters of administration or probate. We do not subscribe to the contention that Section 264 of the Indian Succession Act is in conflict with Section 28A of the Bombay Civil Courts Act. Section 264 gives jurisdiction to the District Judge to grant or revoke probates or letters of administration in all cases within his district, whereas Section 28A empowers the High Court to invest Civil Judges with all or any power of a District Judge or a District Court. We see no conflict or even incongruity between the one and the other.*

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4 AIR-1977-BOMBAY-419

*Mr.Paranjape inadvertently did not take into account the provisions of Section 8(1) of the General Clauses Act, 1897, which provides that :*

*'Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.'*

16. *There is also no merit in Mr.Paranjape's contention that the High Court's power of delegation was circumscribed statutorily by Section 265(1) of the Indian Succession Act or that this was brought to the forefront by Section 272 of that Act. As already stated earlier, Section 265(1) empowers the High Court to appoint judicial officers to act for the District Judge as delegates for the grant of probate or letters of administration in non-contentious cases. We see no force in the contention urged before us, that hence the High Court could not by virtue of Section 28A of the Bombay Civil Courts Act invest a Civil Judge with all or any of the powers of a District Judge, including the jurisdiction to decide a contentious matter. Section 272 which provides for grant of probate and letters of administration by a Delegate in non-contentious cases, carries the matter no further. It is nobody's case that a Delegate could do otherwise."*

Thus, in the aforesaid decision, the Division Bench was concerned with the conflict, if any, between the provisions of Section 28A of the Act of 1869 and Section 264 of the Succession Act. The challenge was based upon the premise that expression "District Judge" as used in Section 264 of the Succession Act refers to persona designata. This premise was found to be fallacious as this Court upon due

consideration of various provisions of the Succession Act, came to the conclusion that the expression 'District Judge' as used in Section 264 of the Succession Act means Principal Civil Court of original jurisdiction, as defined in Section 2(bb) of the Succession Act. This decision also pronounces that High Court has power to invest Civil Judges with jurisdiction under certain Acts and Section 28A(1) is not inconsistent with the provisions of the Indian Succession Act, 1925.

18. Learned Advocate General also placed reliance upon a full Bench decision of Madras High Court in case of **P.Rama Subbarayalu Reddiar Vs. Ramakrishnan**<sup>5</sup>. In the said decision of the Full Bench, the issue was whether there is any inconsistency between the provisions of Section 264(2) of the Indian Succession Act, 1925 and Section 29(1) of Madras Civil Courts Act, 1872. By virtue of the notification of the High Court made under Section 29(1) of the Madras Civil Courts Act, 1873, all subordinate Judges in the Madras Province were authorised to take cognizance of any proceedings under the Succession Act, which cannot be disposed of by the District Delegates. In support of the notification it was argued that there is a machinery under the Succession Act itself qua empowering delegation of the functions of a District Judge, it will be necessary to have a different agency like the High Court for the same purpose and Section 29 of the Madras Civil Courts Act should be so construed as not to cover the same field. The Full Bench held that it cannot be said that there is any such repugnance in the case. On the other hand, Section 29 of the Madras Civil Courts Act was designed for the specific purpose of giving reliefs to the District Judge in regard to

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<sup>5</sup> (1)-58-Mad.893 = 42 L.W.375 (F.B.)

their work under the Succession Act. There is no reason why limited interpretation should be given. It was further observed that power vested in the Government under Section 388 of the Succession Act can certainly co-exist with that conferred on the High Court under Section 29 of the Madras Civil Courts Act. There is, therefore, no reason to limit the scope of the power of the High Court under Section 29 of the Madras Civil Courts Act.

19. Thus, the issue under reference is decided by the decisions of this Court in the case of Smt.Nola Jonathan Ranbhise (supra) and Mrs.Vira D. Thackersey (supra), and, hence, the Joint Civil Judge, Senior Division, Kolhapur ought not to have invoked Section 113 of CPC to refer the present issue. The opinion arrived at by him is erroneous, since in the light of the aforesaid decisions, there is no inconsistency and repugnance between Section 28A(1) of the Maharashtra Civil Courts Act, 1869 and Sections 265, 272, 286 and 295 of the Indian Succession Act, 1925.

20. Before parting with this decision we find it appropriate to appreciate the valuable contribution of learned Advocate General and assistance rendered by Mr.Borkar, appointed as Amicus Curiae, while deciding this reference.

21. The Civil Reference No.1 of 2017 stands disposed of.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)