

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 12th September, 2017**
+ **CM(M) No.985/2017**

SUSHILA DEVI

..... Petitioner

Through: Mr. Idris Khan, Adv. for Mr. Shakeel
Ahmed Saifi, Adv.

Versus

STATE AND ORS

..... Respondents

Through: Ms. Jyoti Taneja, Adv. for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CMs No.32990/2017 & 32991/2017 (both for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the order (dated 29th July, 2016 of Administrative Civil Judge, Patiala House Courts, New Delhi) of dismissal of the Execution Petition being Ex. No.07/2015 filed by the petitioner for execution of an order dated 14th November, 2014 in Succession Case No.68/2013 directing issuance of Succession Certificate to the petitioner with respect to the debts and securities of her deceased son Satish Kumar Yadav.
4. The main counsel for the petitioner has not appeared and the proxy counsel has not argued anything.
5. The matter, if passed over is unlikely to reach again and considering the fallacy and ignorance of law in filing this petition, need to adjourn the matter to another day, considering the Board of this Court, is not felt.
6. The counsel for the petitioner appears to be under a misconception of law that an order of issuance of Succession Certificate or a Succession

Certificate is executable decree against the persons holding the debts and securities of the deceased.

7. A Succession Certificate only entitles the grantee thereof to claim and receive the debts and securities of the deceased, giving a full discharge to the persons who may be holding the said debts and securities, so as to relieve them from claim by multiple persons claiming to be the heirs of the deceased. Before granting such Succession Certificate, in a proceeding for grant of Succession Certificate which in any case is summary in nature, the persons holding debts and securities are not required to be impleaded and a perusal of the order dated 14th November, 2014 ordering issuance of Succession Certificate in favour of the petitioner also does not show Axis Bank, Khan Market, New Delhi and New India Insurance Co. Ltd. claimed to be holding the said debts and securities of the deceased to be parties thereto. Merely because an applicant for Succession Certificate has averred in the petition that the debts and securities mentioned in the application are due to the deceased, is no proof of the said debts and securities being due to the deceased and a proceeding for grant of Succession Certificate is not meant for adjudication of the said issues. If the persons who are claimed to be holding the debts and securities of the deceased dispute the claim, the entitlement in law of the grantee of the Succession Certificate is only to make a legal claim against them and not to execute the Succession Certificate or an order granting Succession Certificate.

8. I have recently in judgment dated 7th September, 2017 in CM(M) No.934/2017 titled ***Atul Maithel Vs. State Bank of India*** dealt with the said aspect.

9. I find the Supreme Court in ***Banarsi Dass Vs. Teeku Dutta*** (2005) 4 SCC 449 to have held (i) that the main object of a Succession Certificate is to facilitate collection of debts on succession and afford protection to parties paying debts to representatives of the deceased person; (ii) all that the Succession Certificate purports to do is to facilitate the collection of debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased persons; (iii) such a Certificate does not give any general power of administration on the estate of the deceased; (iv) the grant of a certificate does not establish title of the grantee as the heir of the deceased; (v) a Succession Certificate is intended to protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a certificate or is compelled by a decree of the Court to pay it to the person, he is lawfully discharged; and, (vi) the grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk.

10. Earlier, in ***Madhvi Amma Bhawani Amma Vs. Kunjikutty Pillai Meenakshi Pillai*** (2000) 6 SCC 301 the Supreme Court was concerned with the question, whether an order granting Succession Certificate under Section 373 of the Indian Succession Act would operate as *res judicata* to the suit for partition filed in a Civil Court between the same parties. It was held (i) that adjudication to grant or not to grant Succession Certificate is in summary proceedings and on a *prima facie* view of the matter; (ii) in other words, the grant of certificate is only a determination of *prima facie* title and is not a final decision between the parties; (iii) so it cannot be construed that mere

grant of such certificate or a decision in such proceedings would constitute to be a decision on an issue finally decided between the parties; (iv) per Section 381 of the Indian Succession Act also, the Succession Certificate merely affords full indemnity to the debtor for the payments he makes to the person holding such certificate; thus when the debtor pays the debts or the securities as specified in the certificate to the holder of such certificate, then on such payment, he is absolved from his obligation to pay to anyone else as it conclusively concludes his part of his obligation and such payment is construed to be in good faith; this safeguards such debtor or person liable to pay, that he may not be later dragged into a litigation which may arise subsequently *inter se* between the claimants; (v) the use of words "good faith" in Section 381 reinforces that the decision in these proceedings is not final; (vi) when statute recognises such payment to be in 'good faith', it gives clear undercurrent message that there may in future be a better claimant but that would not affect the indemnification of the debtor; (vii) that thus any decision made in the proceedings for grant of Succession Certificate cannot be treated to be final adjudication of the rights of the parties, except such declaration being final for the purposes of those proceedings; (viii) thus the amount received by the holder of such certificate can yet be questioned and in subsequent proceedings it may be held to belong to other claimant, including the contesting party; (ix) the grant of Succession Certificate falls under Part X of the Indian Succession Act, range whereof is between Sections 370 to 390; Section 387 declares the effect of the decisions made under the Act and the liability of holder of such certificate; it lays down that any decision made under Part X upon any question of right between the parties shall not bar the trial of the same question in any suit or

other proceedings between the same parties; and, (x) thus any adjudication made under Part X which includes Section 373, does not bar the same question being raised between the same parties in any subsequent suit or proceeding.

11. Reference in this regard may also be made to the same effect to ***Joginder Pal Vs. Indian Red Cross Society*** (2000) 8 SCC 143 wherein it was further held that merely because issues were raised and / or evidence was led in respect of an application for Succession Certificate, it does not mean that the findings given thereunder are final and operate as *res judicata* because even in summary proceedings, issues can be raised and / or evidence can be led but the proceedings remain summary; 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.

12. I also find the High Court of Karnataka in ***Employment Officer Vs. Sevarinathan*** ILR 1985 Karnataka 317 to have held that the grant of Succession Certificate does not amount to an order within the meaning of Section 2(14) of the Code of Civil Procedure, 1908 (CPC). It was reasoned that though Section 374 empowers the grantee of the certificate to recover interest or dividends, it does not amount to passing an order entitling the grantee to recover the amounts. It was further held that Section 374 makes it clear that the grant of Succession Certificate does not amount to a decree or order within the meaning of the CPC and that Section 375 makes it clear that the grantee of a succession certificate only gets the power to sue on an action for the recovery of the money. It was reasoned that Succession Certificate does not conclusively determine the rights of the parties in the matter of disputes between the parties and therefore grant of Succession Certificate

will not amount to a 'decree' within the meaning of Section 2(2) of the CPC. The High Court of Bombay also in ***Pramila Vs. Life Insurance Corporation of India*** 2004 (3) Mh.L.J 349 held that where Succession Certificate has been successfully obtained by a party but the concerned person refuses to make the payment, the execution proceedings cannot be filed for execution of the succession certificate granted by the Court under Part X of the Indian Succession Act and the holder of the Succession Certificate has to file a suit on the basis of the said succession certificate. The same is the view of the Division Bench of the High Court of Calcutta in ***Sandhya Banerjee Vs. Shyama Banerjee*** 2010 SCC OnLine Cal 1355, where reliance was also placed on ***State of Chhatisgarh Vs. Dhirajo Kumar Sengar*** (2009) 13 SCC 600 laying down that Succession Certificate can be granted in favour of any person; it may be granted to an heir or a nominee; by reason of grant of such certificate, a person in whose favour Succession Certificate is granted becomes a trustee, to distribute the amount payable by the deceased to his heirs and legal representatives – he does not derive any right thereunder; the Succession Certificate merely enables him to collect the dues of the deceased and no status is conferred on the grantee thereby; grant of Succession Certificate does not prove any relationship between the deceased and the applicant.

13. The learned Administrative Civil Judge, in the impugned order, has given cogent reasons to the same effect and it is unfortunate that the counsel, without considering the law, has filed this petition.

14. I have perused the memorandum of this petition and do not find the counsel for the petitioner to have even contended the law to be to the contrary. However, what is pleaded is that the Assistant Manager of Axis

Bank, Khan Market was examined as a witness during the course of the proceedings for grant of Succession Certificate. However, the same will not change the position in law and will not make an order of grant of Succession Certificate or Succession Certificate executable, as was sought to be done.

15. There is no merit in the petition.

16. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 12, 2017

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(Corrected and released on 6th October, 2017).



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