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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ TR.P.(C.) 48/2018

ANENDER BHATIA

..... Petitioner

Through: Mr. Vineet Sharma, Advocate

versus

THE STATE & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **24.05.2018**

The petitioner has approached this court in exercise of jurisdiction vested in it under Section 24 of the Code of Civil Procedure, 1908 (CPC) because the District & Sessions Judge (East) has declined to exercise the power under Section 24 CPC to transfer the case of the petitioner (succession case no.56/2016) titled *Anender Bhatia Vs. State and Ors.* from the court of Administrative Civil Judge (East) to any other court of coordinate jurisdiction within the same district observing, *inter alia*, that “it seems” it is the court of Administrative Civil Judge only which can deal with such cases.

By order dated 23.03.2018, report was called for from the registry. The report of the registry on office note approved by the Registrar General on 19.05.2018 has been placed before this court. The court finds the views expressed in the above report to be correct position of law and on the subject of distribution of judicial business relating to petitions seeking grant of succession certificate(s).

The matter pertaining to Succession Certificates is governed by Part X of the Indian Succession Act 1925. Section 371 of the Act states that the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, etc. may grant a Succession Certificate. Section 372 states that an application for such a certificate shall be made to the District Judge. However, Section 388 of the Act empowers the State Government to invest in any court inferior in grade to a District Judge, the power to exercise the functions of a District Judge in Part X i.e, power to issue Succession Certificates. Section 388 of the Act reads as under:-

“388. Investiture of inferior courts with jurisdiction of District Court for purpose of the Act.-

(1) The State Government may by notification in the Official Gazette, invest any Court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge: Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(3) *An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgement of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, be final.*

(4) *The District Judge may withdraw any proceedings under this Part from an inferior Court, and may either himself dispose of them or transfer them to another such Court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.*

(5) *A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.*

(6) *Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a Court inferior in grade to a District Judge.”*

(emphasis supplied)

Perusal of Section 388 reveals that the State Government can by notification in the official Gazette delegate the functions of a District Judge in the matter of issuance of Succession Certificate to any court inferior in grade to a District Judge. Further, Section 388(4) specifically empowers the District Judge to withdraw any proceedings pertaining to a Succession Certificate from the delegatee inferior court either before himself or to transfer the same to another such inferior court within the local limits of the jurisdiction of the District Judge.

Rule 2 of Part B, Chapter 6, Part D of Delhi High Court Rules reveals that all civil judges have been invested with the function of a District Court

for the purposes of grant succession certificates. It is provided that applications under Part X of the Indian Succession Act 1925 will usually be dealt by Civil Judges and appeals from orders granting or refusing or revoking certificates will lie to the District Judge. When a District Judge finds it necessary to deal with any application under the Act as an original court, the appeal will lie to the High Court under 384(1) of Act. Rule 2 reads as under:-

“2. Sub-Judges empowered to grant certificate-all Subordinate Judges of the first and second class have been invested with the functions of a District Court for the purposes of granting succession certificates by Punjab Government Notification No. 781, dated 15th July 1914, which continues to be in force- (vide General Clauses Act, 1897, Section 24.) Application under Part X of the India Succession Act, 1925, will usually by dealt with by subordinate Judges and appeals from their order granting, refusing or revoking certificates will lie to the District Judges. When a District Judge finds it necessary to deal with any application under the Act as an original Court the appeal will lie to the High Court under Section 384, subsection (1) of the Act.”

(emphasis supplied)

Thus, as per the High Court Rules, the power to issue Succession Certificate has already been delegated under Section 388(1) of the Act to all civil judges including senior civil judges and additional senior civil judges.

The proper course would be to remit the matter to the District & Sessions Judge, East District so that he can pass the necessary order in its light in exercise of the jurisdiction vested in him under Section 24 CPC.

Ordered accordingly.

Consequently, the proceedings in the transfer petition (M.No.39/2018) disposed of by the District & Sessions Judge, East District by the impugned order dated 06.02.2018 stand revived on the file. It shall be taken up by the said court on 9th July, 2018 for appropriate further directions in accordance with law.

The parties to appear accordingly.

A copy of this order be circulated for information and guidance for future to all the District & Sessions Judges.

Dasti under the signature of Court Master.

R.K.GAUBA, J.

MAY 24, 2018
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