

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

**% Date of decision: 18<sup>th</sup> July 2018**

**+ RSA 104/2018 & CM No.27739/2018 (for stay)**

**VEENA SOLANKI & ANR ..... Appellants**

Through: Mr. S.S. Jauhar & Mr. Jai  
Prakash, Advs.

**Versus**

**KARUNA SINGH & ORS ..... Respondents**

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment [dated 10<sup>th</sup> May, 2018 in RCA No.16/2015 (61166/16) of the Court of Additional District Judge-10 (Central), Tis Hazari Courts, New Delhi] of dismissal of appeal preferred by the appellants against the order [dated 23<sup>rd</sup> May, 2014 in Petition no.199/2003 (Unique ID No.02401C0195462003) of the Court of Administrative Civil Judge (Central), Delhi] though granting Succession Certificate to the two appellants but alongwith the respondents no.2&3, with each having 1/4<sup>th</sup> undivided share, in the debts and securities with respect to which the Succession Certificate was sought by the appellant.

2. It is the case of the appellants that the two appellants alone are entitled to Succession Certificate and not along with respondents no.2 and 3.

3. This appeal came up first before this Court yesterday, when it was enquired from the counsel for the appellants as to how a Regular Second Appeal under Section 100 of the CPC lies against an order in appeal against the order of grant of Succession Certificate.

4. The counsel for the appellants contended that against an order of First Appellate Court, a Second Appeal lies.

5. However, it was pointed out to the counsel for the appellants yesterday that the position urged by him is in respect of judgments and decrees in suit and not in respect of proceedings for grant of Succession Certificate codified in the Indian Succession Act, 1925. Attention of the counsel for the appellants was invited to Section 384 of the Indian Succession Act as under:

**384. Appeal. - (1)** Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908. (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, (5 of 1908.) as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

6. The counsel for the appellants yesterday stated, that he had preferred an appeal against the order of the Administrative Civil Judge to this Court but which appeal was held to be not maintainable. On request of the counsel for the appellants, the hearing was adjourned to today.

7. The counsel for the appellants has today, in Court handed over copy of the order dated 27<sup>th</sup> August, 2014 of this Court in FAO No.176/2014 titled ***Veena Solanki & Anr. Vs. State & Ors.*** and which is as under:

“1. Appellant filed a petition before the Administrative Civil Judge-cum-Additional Rent Controller (Central Delhi) which has been allowed and succession certificate has been granted in favour of the appellants as well as respondent nos. 1 and 2. Aggrieved by the order dated 23<sup>rd</sup> May, 2014 of the Administrative Civil Judge appellant has preferred this appeal.

2. Section 384 of the Indian Succession Act, 1925 (for short, hereinafter referred to as ‘the Act’) envisages that an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part. Section 384 does not provide an appeal to High Court from an order passed by the Administrative Civil Judge who is not a District Judge or Additional District Judge.

3. Sub-Section 1 of Section 388 of the Act provides that 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. Sub-Section 2 of Section 388 provides that such an inferior court shall 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. Proviso to such Section 2 of Section 388 further envisages 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.

4. It is, thus, apparent that appeal to the High Court would lie against the order of District Judge and not of Administrative Civil Judge. In case any inferior court is invested with powers under Section 388 (1) by the State Government within the area and the orders passed by such inferior court have to be challenged in appeal before the District Judge.

5. Chapter 6 Part B of Delhi High Court Rules (Original Side) Volume II deals with the issue of? succession certificates?. Rule 2 provides that 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. It further envisages that an application under Part X of the Act will usually be dealt with by subordinate Judges and appeals from their orders granting, refusing or revoking certificates will lie in 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 Section 384, sub-section (1) of the Act.

6. In view of the above legal position, application under Part X of the Act is to be dealt with by subordinate judges and appeals from their orders granting, refusing or revoking succession certificates will lie before the District Judge. Accordingly, present appeal is not maintainable in this Court and would lie before the District Judge. However, appellant is at liberty to file an appeal before the District Judge within 10 days and if any such appeal is filed the same shall be heard on merits in accordance with law without going into the question of limitation.

7. Appeal is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.”

8. Section 388 of the Indian Succession Act which was invoked in the aforesaid order is as under:

**388. Investiture of inferior Courts with jurisdiction of District Court for purposes of this 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 judgment 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."

9. The counsel for the appellants agrees, that as per the aforesaid provision also, no Second Appeal lies.

10. In aforesaid view of the matter, no Second Appeal to this Court lies against the order in First Appeal against an order in a petition seeking Succession Certificate.

11. The counsel for the appellants, withdraws this appeal with liberty to invoke the appropriate legal remedies.

12. Dismissed as withdrawn with liberty aforesaid.

No costs.

**RAJIV SAHAI ENDLAW, J**

**JULY 18, 2018**

‘gsr’..

