

ORIGINAL CIVIL.

*Before Mr. Justice Wallace and Mr. Justice
Anantakrishna Ayyar.*

IN THE MATTER OF THE DEBTS AND SECURITIES
OF THE LATE G. A. KUPPUSWAMI NAYAGAR,

1929,
November, 4.

DECEASED.

K. KESAVA NAYAGAR (PETITIONER).*

*Indian Succession Act (XXXIX of 1925) as amended by Act
XVIII of 1929—Grant of succession certificate—Jurisdiction
of High Court, Original Side.*

Under the Indian Succession Act (XXXIX of 1925) as amended by Act XVIII of 1929, the High Court on the Original Side has jurisdiction to grant a succession certificate under Part X of the Act.

ORIGINAL PETITION for the grant of a succession certificate under Part X of the Indian Succession Act by the High Court on the Original Side. The petition came on before KUMARASWAMI SASTRI, J., in the first instance. Considering that the application was a novel one on the Original Side and that the Government revenue might be affected, he directed notice to issue to the Government. His Lordship was of opinion that the High Court had jurisdiction to issue the certificate, but having regard to the importance and novelty of the question, he directed that the matter should be set down for hearing before a Bench. At the time of the reference, the Succession Act, curiously enough, contained no definition of "District Judge," and one had to fall back upon the definition in the General Clauses Act, and the arguments and judgment proceeded upon that footing. After the reference and before the case came on before a Bench, Act XVIII of 1929 was passed, which amended the Succession Act by the insertion of the definition of

* O.P. No. 231 of 1929.

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“District Judge” as “the Judge of a Principal Civil Court of Original Jurisdiction.” The referring order of the learned Judge was as follows:—

This is an application for the grant of a succession certificate in respect of certain shares standing in the name of the deceased, and the question is whether a succession certificate can be granted by the High Court under the provisions of the Indian Succession Act (XXIX of 1925).

The Succession Certificate Act (VII of 1889) has been repealed and its provisions have been incorporated in Part X of the Indian Succession Act. In the Succession Certificate Act, “District Court” was defined as meaning a Court presided over by a District Judge, and as the provisions of that Act referred to a District Court, no applications were made to the High Court for grant of succession certificates, as that Act in terms gave power only to District Courts to grant succession certificates.

There is no definition of “District Court” in the Indian Succession Act, and we have to fall back on the definition of “District Judge” in the General Clauses Act (X of 1897). Section 3, sub-clause 15, of the General Clauses Act defines “District Judge” as the Judge of a Principal Civil Court of Original Jurisdiction but shall not include a High Court in the exercise of its Ordinary or Extraordinary Original Civil Jurisdiction.

Part IX of the Indian Succession Act deals with the grant of Probate and Letters of Administration, and Chapter IV commencing with section 264 deals with the practice in granting and revoking Probates and Letters of Administration, and sections 264 to 302 in Chapter IV refer only to the District Judge as the Judge who is to grant probate or letters of administration, and there is no power given to the High Court as such in this chapter.

Section 264 refers to the District Judge as having jurisdiction in granting and revoking Probates and Letters of Administration and the other sections also refer to District Judge.

Section 300 gives concurrent jurisdiction to the High Court. But concurrent jurisdiction can only give the High Court power in such cases where the District Judge would have had the power. It does not confer any independent jurisdiction on the High Court. Section 300 says that

“ the High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge ”.

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In dealing therefore with the definition of District Judge, I think the same interpretation should be given to the word “ District Judge ” in Chapter IV, which refers to the grant of probates and letters of administration, as in Part X which gives the District Judge jurisdiction to grant succession certificates. It seems to me that if the definition of “ District Judge ” excludes the High Court altogether, the High Court cannot grant probate or letters of administration under the Indian Succession Act.

Clause 34 of the Letters Patent which gives the High Court jurisdiction in testamentary and intestate matters runs as follows :—[His Lordship quoted the clause.]

The definition of “ District Judge ” as given in the General Clauses Act means a Judge of a Principal Civil Court of Original Jurisdiction, and this would apply to the High Court but with a proviso, and the proviso is that it shall not include a High Court in the exercise of its Ordinary or Extraordinary Original Civil Jurisdiction.

Ordinary and Extraordinary Original Civil Jurisdiction of the High Court is dealt with in clauses 11 to 21 of the Letters Patent. The heading is “ Civil Jurisdiction of the High Court,” and clauses 11 to 21 deal with Ordinary Original Civil Jurisdiction, Extraordinary Original Civil Jurisdiction and Insolvency Jurisdiction. Clauses 22 to 30 deal with Criminal Jurisdiction. Clause 31 deals with the exercise of Jurisdiction outside the ordinary place where the High Court sits. Clauses 32 and 33 deal with Admiralty and Vice-Admiralty Jurisdiction. Section 34 deals with Testamentary and Intestate Jurisdiction.

It is argued by Mr. Tirunarayana Chariar that, under the Letters Patent, the High Court in the exercise of Ordinary Original Civil Jurisdiction only means the High Court exercising jurisdiction conferred by clauses 11 to 21 of the Letters Patent and cannot refer to any other Civil Jurisdiction (for example granting probate) and that except when the High Court is exercising Ordinary Original Jurisdiction conferred by clauses 11 to 21, when the word ‘ District Judge ’ is used, it must be taken to include the High Court when it exercises Original Civil Jurisdiction in matters such as granting probate, etc.

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I think there is a distinction between the Original Jurisdiction of the High Court and the Ordinary Original Civil Jurisdiction of the High Court. All applications to the High Court are either civil or criminal. They are Original Civil when matters come for the first time to the High Court, and they are Appellate Civil when they come in the form of appeals. The granting of probates or succession certificates will come within the Original Civil Jurisdiction, but it would not come under Ordinary Original Civil Jurisdiction, which, by the Letters Patent, seems to be confined to suits and matters under clauses 12 to 21, which refer to the exercise by the High Court of its Ordinary Original Civil Jurisdiction.

In *In the matter of Candas Narrondas Navivahu v. C. A. Turner* (1), the Privy Council considered the various jurisdictions conferred on the High Court by the Letters Patent and held that the Insolvency Jurisdiction was part of the Original Civil Jurisdiction having regard to the grouping of the clauses in the Letters Patent. Their Lordships at page 532 refer to clauses 11 to 18 as a group of clauses headed "Civil Jurisdiction of the High Court" and they deal with this as one group.

Their Lordships observed :

"Sections 11 to 18 are a group of clauses headed 'Civil Jurisdiction of the High Court.' Sections 11 and 12 describe the local limits of the Ordinary Original Civil Jurisdiction which is said to extend to all kinds of suits within those limits except Small Cause Suits. Section 13 gives to the High Court power to remove, and to try as a Court of Extraordinary Original Jurisdiction any suit falling within the jurisdiction of any Court subject to its superintendence, when it shall think proper, either on agreement of the parties, or for the purposes of justice. Sections 15 and 16 confer Appellate Jurisdiction. Section 17 confers authority over infants, idiots and lunatics. Section 18 ordains that the Court for relief of insolvent debtors shall be held before one of the Judges of the High Court, and that the High Court and any such Judge shall have such powers as are constituted by the laws relating to insolvent debtors in India."

I think this case supports the view that for the purpose of determining the meaning of the words Ordinary or Extraordinary Original Civil Jurisdiction in section 3, clause 15 of the General

Clauses Act, all that is excluded is the High Court acting under clauses 11 to 18 of the Letters Patent and that the High Court exercising any other Original Jurisdiction would fall within the definition of District Judge.

There is no reason why the High Court cannot grant succession certificate in cases where it could be granted outside Madras. Part X of the Indian Succession Act gives the limitation under which it could be granted. It cannot be granted where the law requires Probate or Letters of Administration to be produced, and there is no question of any evasion of stamp duty. There is no reason why there should be a facility for persons outside Madras in respect of collections of small debts and securities, such facility being denied to those in Madras.

The Indian Succession Act codifies the whole law on the subject, and repeals the Succession Certificate Act, and the omission in the Indian Succession Act of the definition of "District Court" given in the Succession Certificate Act is, I think, a matter which deserves notice in construing the definition of "District Judge." As I said before, the District Court is the Court which is referred to in the granting of Probates and Letters of Administration and it cannot be contended that the words "District Court" in those sections excludes the High Court.

I may state that in the Probate and Administration Act of 1881, "District Judge" is defined as meaning the Judge of a Principal Civil Court of Original Jurisdiction which obviously took in the High Court. But the Probate and Administration Act has been repealed by the Indian Succession Act of 1925 and the definition is omitted. So far as the succession certificate is concerned, it partakes the nature of a limited grant. Various forms of limited grants have fallen under the jurisdiction of Courts dealing with intestate matters in England (Tristram and Coote, p. 224), and I can see no difficulty in the High Court granting succession certificates under its general jurisdiction as regards matters falling within its Intestate Jurisdiction, unless wherever compelled by the definition of the words "District Judge" in the General Clauses Act to hold that the High Court has no jurisdiction.

For the reasons given by me, I am of opinion that, having regard to the Indian Succession Act of 1925, which has repealed both the Probate and Administration Act and the Succession Certificate Act, and incorporated the provisions of these Acts in

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the body of the Indian Succession Act and has omitted to define the words "District Judge" leaving us to fall back on the definition of "District Judge" in the General Clauses Act, the High Court is a "District Court" when it does not exercise its Ordinary or Extraordinary Civil Jurisdiction conferred by clauses 11 to 18 of the Letters Patent.

As the matter is one of considerable importance, and is opposed by the Collector, and as several applications are likely to be filed for the grant of succession certificates, I think it is desirable that the question should be settled by a Bench.

ON THE REFERENCE

M. A. Tirunarayana Chari with *S. T. Krishnamachari* and *M. A. Srinivasan* for petitioner.

Advocate-General (A. Krishnaswami Ayyar) for the Crown.

JUDGMENT.

Having regard to the amendment of the Act, we consider that this petition is now maintainable in this Court, and order the case to be posted before the learned Judge in Chambers.

Government Solicitor for the Crown.

B.C.S.
