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BINDHYA-CHAL CHAND v. RAM GHARIB CHAND

in the plots in suit and will not affect any other rights which they may have as co-sharers in the mahal.

BY THE COURT:—Our answer to the question referred to us is that the suit would be governed by article 142 and not article 144 of the Limitation Act.

TESTAMENTARY JURISDICTION

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji

1934 *May*, 3

IN THE GOODS OF RAJENDRA CHANDRA SEN GUPTA*

Succession Act (XXXIX of 1925), section 372—Application for succession certificate—"District Judge"—Judge of a High Court which has no original civil jurisdiction can not entertain application for succession certificate—Letters Patent, clause 25—Testamentary jurisdiction.

A Judge of a High Court who has no ordinary original civil jurisdiction is not a "District Judge" within the definition of that term incorporated in the Succession Act, 1925, by the Amending Act XVIII of 1929, and can not entertain an application for the grant of a succession certificate. For cases arising in territories outside presidency towns, where he has no such original jurisdiction, the application can not be made to him.

So far as the grant of probate or letters of administration is concerned, there is specific provision in section 300 of the Succession Act, as well as in clause 25 of the Letters Patent, conferring jurisdiction on this High Court; no jurisdiction is conferred on this High Court for granting succession certificates.

A proceeding for the grant of a succession certificate is a civil proceeding and not a testamentary or intestate proceeding within the meaning of clause 25 of the Letters Patent.

Mr. *H. P. Sen*, for the applicant.

Mr. *A. M. Gupta*, for Indra Bhushan Sen Gupta.

MUKERJI, J.:—Originally there was only one application before us, namely, for grant of a succession certificate. In our opinion this Court has no jurisdiction to grant a succession certificate, which can be granted only by the "District Judge". The definition of "District Judge" as put in by Act XVIII of 1929 points to a Judge

*Testamentary Case No. 8 of 1934.

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of principal civil court of original jurisdiction. This definition would include High Courts which have got original civil jurisdiction, a jurisdiction which this Court does not possess. Mr. *Sen* has cited before us some cases in order to show that a High Court which does not possess original civil jurisdiction is entitled to grant a succession certificate. The first case cited by him is the case of *In the goods of Bholanath Pal* (1). This is a single Judge decision and it does appear that the learned Judge exercised jurisdiction, although the matter came from a place which was not within the local limits of the original jurisdiction of the High Court. It was contended before the learned Judge that the High Court had no jurisdiction, but that objection was overruled. The ground on which the objection was overruled was that as regards certain sections of the Succession Act, 1925, the words "District Judge" included a Judge of the High Court. The learned Judge disregarded as incorrect the argument that for the purposes of grant of a succession certificate the expression "District Judge" would not include a Judge of the High Court.

In our opinion the true solution to the question is to be found in the several sections of the Succession Act of 1925. Section 300 gives concurrent jurisdiction to the High Court and the District Judge in the matter of grant of probate and letters of administration. But where the grant of succession certificate is dealt with, the powers are given to the District Judge alone. As we have already mentioned, this definition of a "District Judge" as inserted by the Act of 1929 would not include a High Court which has no original jurisdiction. We, therefore, with respect, are not prepared to follow the decision of the Calcutta High Court cited above.

A Rangoon case has been cited, namely, *In the matter of the Estate of Aroonachellam Chettyar* (2). In this case the learned Judge exercised the powers on the

(1) (1930) I.L.R., 58 Cal., 801. (2) (1931) I.L.R., 9 Rang., 205.

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original side of the High Court. This was quite correct according to our own interpretation.

There is yet another case, decided by the Madras High Court, *In the matter of the Estate of Kuppuswami Nayagar* (1). In this case the jurisdiction was assumed on the original side of the Madras High Court and not on the appellate side. We are, therefore, definitely of opinion and hold that the application for a succession certificate is not maintainable in this Court.

Mr. *Sen*, the learned counsel for the applicant, has, however, put in another application on behalf of his client, to the effect that letters of administration might be granted to Shishir Kumar Sen Gupta. [This matter, not being material for the purpose of this report, has been omitted.]

SULAIMAN, C.J.:—I quite agree. Before 1925 the proceedings under the Succession Certificate Act used to be taken in the court of the District Judge and were treated as civil proceedings. The General Clauses Act, section 3, sub-section (15) defined a "District Judge" as meaning a Judge of the principal civil court of original jurisdiction, not including a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. The result was that an application for the grant of succession certificates could not be made to a Judge of a High Court exercising its ordinary or extraordinary jurisdiction. This obviously caused some inconvenience in presidency towns where the High Court was the principal civil court of original jurisdiction and there was no District Judge having such jurisdiction. In 1925 the provisions of the Succession Certificate Act were incorporated in the Indian Succession Act. In 1929 the Indian Succession Act was amended and "District Judge" was defined as meaning the Judge of the principal civil court of original jurisdiction. Accordingly the bar contained in the General Clauses Act against a High

(1) (1929) I.L.R., 53 Mad., 237

Court Judge was removed and a High Court Judge could be a principal civil court of original jurisdiction.

It does not, however, follow that applications for grant of succession certificates in all cases can be made to a High Court. Even as regards Presidency High Courts only such applications would be cognizable by a High Court Judge as invoke his jurisdiction as a principal civil court of original jurisdiction. For cases arising in territories outside presidency towns, where he has no such original jurisdiction, the application cannot be made to him.

So far as the Allahabad High Court is concerned, testamentary jurisdiction is conferred upon us by clause 25 of the Letters Patent and relates to the grant of probates of last wills and testaments, letters of administration of goods, chattels, credits and all other effects of persons dying intestate. No jurisdiction is conferred by that clause upon us for granting succession certificates.

The last mentioned proceeding is a civil proceeding and not a testamentary or intestate proceeding within the meaning of clause 25 and our High Court has no ordinary original civil jurisdiction at all. Clause 9 only confers extraordinary original jurisdiction to try a suit by transferring it on to its own file.

So far as the grant of probate or letters of administration in part IX of the Succession Act is concerned, there is specific provision in section 300 that the High Court shall have concurrent jurisdiction with the District Judge in the exercise of such powers. But no such provision has been made in part X of the Act which relates to the grant of succession certificates. On the other hand sections 384 and 388 clearly show that the High Court is distinct from the District Judge.

The position now is that although there is no longer any statutory bar against a High Court Judge granting a succession certificate if he otherwise possesses the necessary jurisdiction he cannot grant it unless he is

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the Judge of a principal civil court of original jurisdiction. A Judge of the Allahabad High Court is not such a Judge, but a District Judge is. An application for grant of the succession certificate cannot therefore be made to the High Court.

APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bajpai

1934
May, 4

GURMUKH RAI (APPLICANT) *v.* SECRETARY OF STATE FOR INDIA (OPPOSITE PARTY)*

Income-tax Act (XI of 1922), sections 66(3) and 66A—Order of High Court refusing to require the Commissioner to state and refer a case—Not a judgment "on a reference"—Appeal to Privy Council—Civil Procedure Code, section 109—Letters Patent, clauses 30, 35—Limitation Act (IX of 1908), section 12(2)—Time requisite for obtaining copy—Copy of judgment filed but not of decree or order.

An order of the High Court dismissing an application under section 66(3) of the Income-tax Act, praying that the Commissioner of Income-tax be required to state a case and refer it to the High Court, is not a judgment on a reference within the meaning of section 66A(2) of the Act and no appeal lies from it to the Privy Council.

Under the provisions of section 66A(2) of the Income-tax Act the right of appeal to the Privy Council is restricted to cases of appeals from any judgment of the High Court delivered on a reference made under section 66, in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council. Before the case can be certified to be a fit one for appeal, there must be a judgment of the High Court delivered on a reference made under section 66. But the stage of a reference made to the High Court does not arrive at all when the High Court declines to require the Commissioner to state the case and refer it.

The provisions of clause 30 of the Letters Patent, conferring a right of appeal to the Privy Council in certain circumstances, must be deemed, by virtue of clause 35, to have been superseded by similar provisions contained in sections 109 and 110 of the Civil Procedure Code, and these latter provisions must now be

*Application No. 7 of 1934, for leave to appeal to His Majesty in Council.