

Civil Revision

Present :

The Hon'ble Justice Harish Tandon.

Judgment on 02.09.2010

C.O. No. 3203 of 2006.

Smt. Krishna Dey & Ors.

-vs-

Smt. Renuka Roy & Ors.

Points:

**Succession certificate**-Order granting the extension of succession certificate- whether appeal lies against the order-Indian Succession Act 1925- S 384

Facts:

Petitioner filed the revisional application challenging the order granting extension of succession certificate under section 376 of the Indian Succession Act.

Held:

From the harmonious reading of all these sections contained under Part X of the said Act it is apparent that an appeal lies from an order granting, refusing or revoking a certificate under that part. Such part not only contains the power to grant the original succession certificate but also contains a power to grant the extended certificate. Grant of extension of certificate has the same effect as if the debt or security to which the certificate is extended had been originally specified, even the form prescribes contains all ingredients which is contained in the original certificate.        Para 8 and 9

Considering the interpretation made by the apex court as to the word 'extension', the view contrary to the view taken by the supreme Court in

case of Provash Chandra Dalui & Anr. (supra) is no longer a good law. The judgment relied upon by the learned Advocate for the petitioners of the Madras High Court (Venkateswarulu (A minor, by his father and guardian Muktala Venkatachallam) (supra) runs counter to the judgment of the Supreme Court and is no longer a good law. Para 11 and 12

An order granting the extension of succession certificate is as good as an order granting certificate and is appealable under section 384 of the Indian succession Act 1925. Para 12

Cases cited:

Venkateswarulu (A minor, by his father and guardian Muktala Venkatachallam) Vs. Brahmaravutu Raja Kristnaji & Ors., ILR 25 Madras 634.; Estralla Rubber Vs. Dass Estate (P) Ltd., (2001) 8 SCC 97; Chandavarkar Sita Ratna Rao Vs. Ashalata, AIR 1987 SC 117; State Bank of India Vs. M. S. Basi & Ors. , (2004) 11 SCC 347; Brij Bihari Mishra & Ors. Vs. Vijai Shanker Mishra & Ors.,AIR 1991 Allahabad 236; Provash Chandra Dalui & Anr. Vs. Biswanath Banerjee & Anr., AIR 1989 SC 1834

For the petitioner : Mr. Samarjit Ghosh

For the Opposite Party : Mr. Basudev Gayen

HARISH TANDON, J.:

The petitioners have filed this revisional application challenging the order by which an application for grant of the extended succession certificate was allowed.

2. A point is taken whether an order granting the extension of succession certificate under section 376 of the Indian Succession Act 1925 is appealable under section 384 of the said Act. Learned Advocate appearing on behalf of

the petitioners contends that section 384 of the said Act provides an appeal against granting, refusing or revoking a certificate and the present case does not fall in any of such category and as such the order under challenge is not appealable. To support such contention he relies upon a judgment of the Madras High Court in the case of Venkateswarulu (A minor, by his father and guardian Muktala Venkatachallam) Vs. Brahmaravutu Raja Kristnaji & Ors. reported in ILR 25 Madras 634.

3. Learned Advocate appearing on behalf of the petitioners further submits that even if it is held that the order is appealable, the power of the High court under Article 227 of the Constitution of India is wide enough to invoke if there is serious dereliction of duty and flagrant violation of fundamental principles of law or justice. Reliance is placed upon a judgment by the apex court in case of Estralla Rubber Vs. Dass Estate (P) Ltd. reported in (2001) 8 SCC 97 and in case of Chandavarkar Sita Ratna Rao Vs. Ashalata reported in AIR 1987 SC 117. However to further attack the impugned order, he relies upon a judgment of the Supreme Court in case of State Bank of India Vs. M. S. Basi & Ors. reported in (2004) 11 SCC 347 that an order without affording opportunity of hearing to the party adversely affected, deserves to be set aside for want of opportunity of hearing.

4. Per contra, learned Advocate appearing on behalf of the opposite parties submits that the order granting the extended certificate is appealable under section 384 of the said Act and relies upon a judgment of the Allahabad High Court in case of Brij Bihari Mishra & Ors. Vs. Vijai Shanker Mishra & Ors. reported in AIR 1991 Allahabad 236.

5. Having considered the submissions, I find that Part X of the Indian Succession Act deals with the succession certificates. Section 372 of the said Act provides the procedure for making an application for certificate before

the District Judge and the power to adjudicate such application is also conferred upon the said District Judge under section 373 of the said Act.

6. Section 376 of the said Act deals with the extension of the succession certificate and it would be profitable to quote the same :

*“376. Extension of certificate. (1) A District Judge may, on the application of the holder of a certificate under this Part, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.*

*(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in section 375 may be required, in the same manner as upon the original grant of a certificate.”*

7. Section 377 of the said Act provides that the certificate as well as extended certificate shall be made in the form set forth in schedule VIII appended to the said Act. The power to revoke the certificate is also provided under section 383 of the said Act. Section 384 is a provision where right of appeal is conferred from an order granting, refusing or revoking a certificate under this part i.e. Part X.

8. From the harmonious reading of all these sections contained under Part X of the said Act it is apparent that an appeal lies from an order granting, refusing or revoking a certificate under that part. Such part not only contains the power to grant the original succession certificate but also contains a power to grant the extended certificate.

9. Grant of extension of certificate has the same effect as if the debt or security to which the certificate is extended had been originally specified, even the form prescribes contains all ingredients which is contained in the original certificate.

10. The word 'extension' connotes the prolongation or stretching further of the original. Support can be made from the judgment of the apex court in case of *Provash Chandra Dalui & Anr. Vs. Biswanath Banerjee & Anr.* reported in AIR 1989 SC 1834 where the apex court had an occasion to deal with the distinction between an 'extension' and 'renewal' and was pleased to observe :

*"12. It is pertinent to note that the word used is 'extension' and not 'renewal'. To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word 'extension' when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole. The purposes of the lease were not expected to last for only 10 years and as Mr. A. K. Sen rightly pointed out the schedule specifically mentioned the lease as "for a stipulated period of twenty years." As these words are very clear, there is very little for the Court to do about it."*

11. Considering the interpretation made by the apex court as to the word 'extension', I have no hesitation in holding that the view contrary to the view taken by the supreme Court in case of Provash Chandra Dalui & Anr. (supra) is no longer a good law.

12. The judgment relied upon by the learned Advocate for the petitioners of the Madras High Court (Venkateswarulu (A minor, by his father and guardian Muktala Venkatachallam) (supra) runs counter to the judgment of the Supreme Court and is no longer a good law. Furthermore there is no reason provided in the said judgment as to why an appeal does not lie against an order granting extension of certificate. Thus, I have no hesitation to hold that an order granting the extension of succession certificate is as good as an order granting certificate and is appealable under section 384 of the Indian succession Act 1925.

13. Once I have held that the order impugned is appealable in think I need not venture to enter into the merit or demerit of the impugned order. The order impugned herein is appealable. I do not intend to invoke the power conferred under Article 227 of the Constitution as I do not find that there is a manifest injustice apparent on the face of the record or a case of such rare of rarest which warrants the invocation of such power. The revisional application is, therefore, dismissed. However I make it clear that I have not gone into the merit of the case and as such this order shall not have any persuasive effect on merit.

14. Revisional application is dismissed as not maintainable.

15. However, there shall be no order as to costs.

16. The department concerned shall supply the certified copy of this order to the parties if the same is applied for on an urgent basis.

(Harish Tandon, J.)

