

IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA,

W.P.NO. 204059/2018 (GM-CPC) DATED: 22-10-2019

MALLIKARJUN S/ O GURULINGAPPA KOUJALGI SINCE DECEASED REP.BY HIS LRS. VS. VIJAYALAXMI @JAYASHRI
W/ O LATE BASAVARAJ PATIL

ORDER

' Whether the legal heirs of deceased decree holder are required to produce succession certificate to continue the execution proceedings initiated by the deceased decree holder? 'is the short question that falls for consideration in this petition.

2. The outline facts of the case are as follows:Shri Mallikarjun S/ o Gurulingappa Koujalgi filed an original suit bearing No.54/2009 against the respondents herein for the relief of specific performance of contract. The suit was decreed on 26.11.2013.This judgment and decree was confirmed in RA No.03/2014 dated 19.12.2015.He filed an execution petition before the Court of Senior Civil Judge at Indi and the same was numbered as E.P. No.11/2016 on 18.01.2016.The decree holder died on 16.07.2016 leaving behind the present petitioners as his legal representatives.

3. The petitioners herein filed an application on 04.08.2016 under Order XXII Rule 3 of C.P.C. to come on record as legal representatives of the deceased decree holder.The respondent filed his objection to the application.The trial Court allowed the application by its order dated 02.06.2017.The respondent challenged the said order before this Court in W.P.No.204171/2017.The writ petition was dismissed as withdrawn with liberty to the respondent to resort to appropriate proceedings before appropriate forum.Thereafter the respondent filed her objection to the main petition.

Considering the said objection, the executing court by the impugned order dated 23.08.2018 (vide Annexure-F) dismissed the application filed by the petitioners and stopped the execution proceedings till filing of proper application by the proposed legal representatives of the decree holder on production of succession certificate issued by by the competent Court.The executing court was of the opinion that in view of Section 214 (1) (b) of the Indian Succession Act 1925, the legal representatives of the deceased decree holder are not entitled to proceed with the execution without production of succession certificate.Aggrieved by this order, the present petition has been filed under Articles 226 and 227 of the Constitution of India.

4. Sri Ameet Kumar Deshpande, learned counsel appearing for the petitioners, placing reliance on the decision of this Court in H.V.Veerabhadraiah VS. H.S.Kanteeravachar & Others reported in AIR 2001 Kant 171 and the decision of the Hon'ble Supreme Court of India in the case of V.Uthirapathi Vs. Ashrab Ali & others reported in AIR 1998 SC 1168 as well as the decision in the case of Rukhsana (Smt.) and Others Vs. Nazrunnisa (Smt.) and Another reported in (2000) 9 SCC 240 would submit that the impugned order has been passed by the trial Court by misconstruing the provisions of Section 214 of the Indian Succession Act, which require filing of

Succession Certificate by the heirs of deceased decree holder, only in cases where suit is one for recovery of money seeking decree for payment of debt and it applies to cases only in relation to execution of money decree. It is the submission of the learned counsel that in the instant case, the original decree holder having levied the execution for specific performance of the agreement of sale, the provisions of Section 214 of the Indian Succession Act are not applicable to the facts of this case. Further he contends that succession certificate as envisaged under Part X of the Indian Succession Act can be granted only for recovery or realization of "debts" or "securities" to which the deceased was entitled.

Hence, insistence of succession certificate for continuation of execution petition for enforcing the decree for specific performance runs counter to Section 214 of Indian Succession Act. Further he contends that the original decree holder having died during the pendency of the execution proceedings and the petitioners being the legal representatives of the decree holder are entitled to proceed with the execution under section 146 of CPC, which has not been considered by the executing Court and therefore the impugned order being opposed to law and settled canons of justice is liable to be set aside in exercise of the powers under Articles 226 and 227 of the Constitution of India.

5. Disputing this submission, learned counsel for the respondent at the outset assailed the very maintainability of the writ petition contending that the impugned order is a revisable order and is not amenable for writ jurisdiction. In support of his submission, learned counsel referred to the decision of this Court in CRP No.276/2012, dated 06.11.2012, wherein this Court placing reliance on the decision of the Hon'ble Supreme Court of India reported in (2003) 6 SCC 659 in the case of Shiv Shakti Co-operative Housing Society, Nagpur Vs. Swaraj Developers and Others on analyzing Section 115 of CPC before its amendment and after its amendment has held as under:

" A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is 'yes' then the revision is maintainable. But on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the *lis lis*, the revision will not be maintainable. "

6. It is the contention of the learned counsel for respondent that the impugned order having finally terminated the execution petition, the only remedy for the petitioner is to challenge the said order in a revision and not under Articles 226 and 227 of the Constitution of India.

Insofar as merit of the case is concerned, learned counsel argued in support of the impugned order contending that in view of the bar created under section 214 of the Indian Succession Act, the petitioners are not entitled to proceed with the execution without production of Succession Certificate or a probate or letters of administration evidencing their title to represent the estate of the deceased decree holder and the executing Court therefore was justified in rejecting the application and thus sought for dismissal of the petition.

7. I have bestowed my attention to the rival contentions urged by the parties and have carefully scrutinized the material on record particularly with reference to Section 214 of Indian Succession Act, 1925 and allied provisions.

8. Coming to the first contention urged by the learned for the petitioner regarding maintainability of the petition is concerned, though the learned counsel for the petitioner has based this contention on the plea that by the impugned order, the proceedings before the executing Court have been terminated, but from the reading of the impugned order, it is clear that while dismissing the application filed by the petitioner under Order XXII Rule 3, the execution petition as such is kept pending awaiting production of succession certificate by the petitioner. Therefore on fact, the proceedings before the executing Court having not been terminated, the contention urged by the petitioner in this regard is liable to be rejected. Even otherwise, the law is well settled that the test to determine whether an order under challenge is amenable for revision is to find out whether the impugned order if reversed would have given finality to suit or other proceedings? If the answer is 'yes' then the revision is maintainable. But on the contrary if the answer is 'no', then the revision petition is not maintainable. In the instant case, the very nature of the petition filed by the petitioners if allowed would lead to the continuation of the execution petition and would not terminate the execution petition.

That apart, the order in question being interim in nature, it does not finally decide the lis and therefore the revision will not be maintainable and the proper remedy to the petitioners is to invoke Article 227 of the Constitution of India. In that view of the matter, the first contention urged by the petitioners is rejected.

Coming to the real controversy involved in the petition as to the requirement of Succession Certificate to continue the execution levied by the original decree holder is concerned, it has to be first noted that in the present case, the application for execution was initially filed by the decree holder himself and not by his legal representatives or assignees. The decree under execution was one for specific performance of contract. The decree holder died during the pendency of the execution petition. The position of law in cases where the decree holder or judgment debtor dies after filing of the execution petition, is expounded by the Hon'ble Supreme Court in V. Uthirapathi's case referred above.

The relevant portion is extracted herein below.

execution petition in time, the decree holder dies and his legal representatives do not come on record-or judgment debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of execution Court. If it remains pending and if no time limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of decree holder for his legal representatives to come on record at any time. The execution application cannot even be dismissed for default behind and back of decree holder's legal representatives. In case of death of the judgment-debtor,

the decree holder could file an application to bring the legal representatives of the judgment debtor on record, at any time. In any event, execution petition cannot be dismissed as abated.

" It is clear, therefore, that if after filing of an Alternatively, it is also open for the decree holder's legal representatives to file a fresh execution petition in case of death of the decree holder; or in case of death of judgment debtor, the decree holder can file a fresh execution petition impleading the legal representatives of the judgment debtor; such a fresh execution petition, if filed is, in law, only a continuation of the pending execution petition-the one which was filed in time by the decree holder initially. 'This is the position under the Code of Civil Procedure. "

10. The proposition of law expounded in the above decision that once the execution having having beer been validly initiated, the executing court cannot proceed with the execution without bringing the legal representatives of the deceased decree holder is enshrined in Section 146 of the Code, which enables the legal representatives of the deceased decree holder to make an application to come on record in place of deceased decree holder. The section reads as under:

' 146:

Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him. '

11. The trial Court has failed to advert its attention to section 146 of CPC while considering the application, instead rejected the application filed by petitioners solely relying on section 214 of Indian Succession Act 1925. In the light of the facts narrated above, in my view, invocation of section 214 of the Indian Succession Act is wholly misconceived and uncalled for. Section 214 of the Succession Act is extracted herebelow:

"214. Proof of representative title a condition precedent to recovery through the courts of debts from debtors of deceased persons. (1) No Court shall (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of-

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889 (7 of 1889), or

(v) a certificate granted under Bombay Regulation No.VIII of 1827, and, if granted after the first day of May, 1889 having the debt specified therein.

(2) The word " debt " in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

12. A plain reading of the above section makes it clear that it prohibits institution of execution proceedings by a person claiming on succession but it does not bar continuation of the execution proceedings already initiated by the decree holder. This position of law has been lost sight of by the executing Court, which has resulted in passing an erroneous order.

13. On considering the entire material on record, in the light of the facts highlighted above, in my view, the executing Court has misdirected itself in placing reliance on Section 214 of the Indian Succession Act. The expression used in in section 214 (b) of the Indian Succession Act reading, " proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for payment of his debt ", leave no manner of doubt that the section debars the Court from passing a decree against the debtors of the deceased for payment of his debts to a person claiming on succession or to execute against such a debtor, a decree or order for payment of debts without production of a succession certificate granted under different Acts having the debt specified therein.

The applicability of section 214 of the Indian Succession Act, therefore is confined only to a decree for payment of debt. This section will not apply to suits for recovery of possession of immovable property or for specific performance of a contract in relation to immovable property or execution of such decrees. In other words, as per the language of the section, it applies only in matters where the suit is filed for recovery of money or in relation to execution of money decree.

14. In order to understand the scope and amplitude of section 214 of the Indian Succession Act, it is necessary to note that the object behind section 214 of the Indian Succession Act is to protect the interest of the debtor by ensuring that the payment due under the decree is made to the person who is legally entitled to realize the debt due to the decree holder.

The very heading of section 214 suggests that it is a " Proof of representative title " which is " a condition precedent to recovery through the courts of debts from debtors of deceased persons. " It is trite law that succession certificate is granted only to facilitate the collection of debts and securities due to the deceased creditor. It does not confer title to immovable property of the deceased nor can it be granted as a proof of title in relation to immovable properties. The representative title to immovable property of the deceased could be established either through letters of administration granted in accordance with section 212 of the Indian Succession Act in respect of property of a person who died intestate or by means of a probate or letters of

administration with or without a copy of will annexed, when the right is claimed as an executor or legatee, when the deceased died testate, as provided under section 213 of the Indian Succession Act. Therefore viewed from any angle, insistence of succession certificate to continue the execution by the legal heirs of the original decree holder for enforcement of a decree for specific performance of a contract is not contemplated under section 214 of the Indian Succession Act.

15. On going through the impugned order, it is noticed that the trial Court has rejected the application filed by the petitioners for the added reason that Order XXII Rule 12 excludes the applicability of Rules 3, 4 and 8 to the proceedings in execution of a decree or order. Even in this regard, the trial Court failed to take into consideration the real purport and object of Order XXII Rule 12 of the Code. It is explicitly clear from the scheme of the Code that Rules 3, 4 and 8 deal with abatement of suit or proceedings in case of death of plaintiff or defendant or in case of insolvency of the plaintiff during the pendency of the suit or proceedings. But as already discussed above, an execution petition, unlike a suit or appeal, does not abate on the death of the decree holder or the judgment debtor.

As held in the decision referred above, after filing of execution petition in time, if the decree holder dies and his legal representatives do not come on record or the judgment debtor and his legal representatives are not brought on record, then there is no abatement of the execution petition. The execution petition cannot even be dismissed for default behind the back of the decree holder's legal representatives. It is always open for them either to come on record or to get them impleaded. It is because of this legal position Rules 3, 4 and 8 of Order XXII are not made applicable to proceedings in execution of a decree or order, since no application could be filed to set aside the abatement in execution proceedings.

16. In this context, it may be apposite to note that in case of death of decree holder or judgment debtor during the pendency of execution petition, section 146 and Order XXI Rule 16 of the Code enable the legal representatives of deceased decree holder or judgment debtor to make necessary application to come on record in place of the deceased decree holder or deceased judgment debtor as the case may be.

The expression " by operation of law " appearing in Order XXI Rule 16 of CPC covers the situation where right in property passes to the legal representatives of the deceased either by devolution or succession (testamentary or intestate). By virtue of this provision, the legal representatives of deceased decree holder or his official assignee, in the case of insolvency of the decree holder or transferee of decree as the case may be are entitled to come on record as of right to continue the execution of the decree without production of any succession certificate. Thus, to clarify the legal position, the principles that emerge from the above provisions of law and the precedents discussed above could be summed up as herein below:

(1) Succession certificate under Part X of the Indian Succession Act or under other enactments specified in Section 214 is required to be produced before a Court of law only when persons claiming on succession apply

for a decree for payment or recovery of " debt " due and payable to the deceased and/or for execution of such decree.

(2) The bar under section 214 of the Indian Succession Act is applicable only for institution of suit for recovery of debts payable to the deceased and/or for execution of decree obtained by the deceased for payment or realization of the debts or securities due to the deceased.

(3) Section 214 of the Indian Succession Act is applicable only in case of suit for recovery of money in the nature of debt or security and for execution of money decrees. It does not apply to suits relating to immovable property or for execution of decree relating to immovable properties.

(4) An executor or legatee under a will who is required under law to obtain probate or letters of administration with or without the will annexed cannot be granted succession certificate to recover debts or money due to the deceased in view of section 212 and 213 of the Indian Succession Act.

(5) Succession certificate is not necessary for the continuation of suit initiated by the deceased or for continuation of the execution levied by the decree holder who dies during the pendency of the suit or execution proceedings.

(6) Where the decree holder dies during pendency of the execution petition, his legal heirs or legal representatives are entitled to come on record in place of deceased decree holder in terms of section 146 and order XXI Rule 16 of CPC without production of succession certificate.

(7) The provisions of Order XXII Rules 3, 4 and 8 of the Code are not applicable to execution proceedings for the reason that execution proceedings do not abate on the death of the decree holder or the judgment debtor.

17. Before parting with this order, it is necessary to note that in the instant case, the application in question was filed by the petitioner under Order XXII Rule 3 of CPC. The said provision undoubtedly, is not applicable to execution proceedings, in view of the restriction contained in Order XXII Rule 12 of CPC. Nonetheless, solely on that ground, the trial Court could not have dismissed the application. The executing Court was well within its powers to mould the relief to subserve the ends of justice. Procedural law is only a handmaid of justice. Mere misquoting a legal provision does not disentitle a party for substantive relief, if he or she is otherwise entitled thereto. In view of the legal position discussed above, decree holder himself having filed the execution petition, on his death his legal heirs or legal representatives namely the petitioners were entitled to come on record, as of right, by making an application under section 146 read with Order XXI Rule 16 of CPC. In that view of the matter, the executing Court was not justified in rejecting the application filed by the petitioners on the purported ground that the provision of law quoted by the petitioners was incorrect.

18. In the light of the factual and legal position discussed above, the impugned order passed by the learned Senior Civil Judge and JMFC, Indi directing the petitioners to obtain succession certificate and the consequent order stopping the execution proceedings till the production of succession certificate is liable to be set aside. Accordingly petition is allowed. Impugned order dated 23.08.2018 is set aside. Petitioners are permitted to come on record as the legal representatives of the original decree holder. The trial Court shall proceed with the execution, in accordance with law.