

A JOSEPH EASWARAN WAPSHARE & ORS.

v.

SHIRLEY KATHELEEN WHEELER

(Civil Appeal No. 2284 of 2019)

FEBRUARY 26, 2019

B [R. F. NARIMAN AND VINEET SARAN, JJ.]

Succession Act, 1925:

ss. 372, 383, 33(a) and 25 – Revocation of Succession Certificate granted u/s. 372 in favour of appellant No.1 – Respondent filed application u/s. 383 seeking revocation of the Succession

- C *Certificate – Sub-Judge held that the respondent being the outsider for the family could not maintain the application for revocation; and that since the previous proceedings for probate of Will initiated by the mother of the respondent had abated, the application for revocation was barred by res judicata – High Court, in revision set aside the finding as regards res judicata and remanded the matter to Sub-Judge to decide the matter afresh – On appeal, held: Succession Certificate can be revoked only for the reasons set out in Section 383 – The reasons mentioned in s. 383 is not satisfied in the present case – Respondent is neither a family member nor a lineal descendant – Revocation of Succession Certificate was rightly refused by Sub-Judge – Though the High Court was right in its finding on res judicata but the High Court should have decided the case on the other grounds instead of remanding the case.*
- D *as aside the finding as regards res judicata and remanded the matter to Sub-Judge to decide the matter afresh – On appeal, held: Succession Certificate can be revoked only for the reasons set out in Section 383 – The reasons mentioned in s. 383 is not satisfied in the present case – Respondent is neither a family member nor a lineal descendant – Revocation of Succession Certificate was rightly refused by Sub-Judge – Though the High Court was right in its finding on res judicata but the High Court should have decided the case on the other grounds instead of remanding the case.*
- E *as aside the finding as regards res judicata and remanded the matter to Sub-Judge to decide the matter afresh – On appeal, held: Succession Certificate can be revoked only for the reasons set out in Section 383 – The reasons mentioned in s. 383 is not satisfied in the present case – Respondent is neither a family member nor a lineal descendant – Revocation of Succession Certificate was rightly refused by Sub-Judge – Though the High Court was right in its finding on res judicata but the High Court should have decided the case on the other grounds instead of remanding the case.*

Allowing the appeal, the Court

HELD : 1. Under Section 383 of Succession Act, 1925, the

- F **Certificate granted u/s. 372 could only be revoked for the reasons set out in Section 383. Revocation cannot be granted unless any one of sub-sections (a) to (e) of Section 383 is satisfied, which is not the case on facts in the present appeal. It is clear therefore, that on this ground alone, the Sub-Judge was justified in refusing**
- G **to revoke the Succession Certificate so granted. Even otherwise, it is clear that the respondent has nothing whatsoever to do with the Wapshare family which is clear from her averment in her Section 383 application. [Para 9][737-G-H]**

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2. Section 33(a) makes it clear that the intestate's property goes only to his widow and his lineal descendants. Since father of appellant No. 1 died intestate, the Will set up in the application for probate having abated, the appellant is the only living lineal descendant, together with his two sons. This would make it clear that, in any event, the respondent would have no interest whatsoever either as a member of the family or as a lineal descendant in setting aside the Succession Certificate so granted as she is neither a family member nor a lineal descendant. [Para 10][738-C-D]

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3. Though the High Court was correct in setting aside the Sub-Judge's order on its finding on *res judicata*, but that was not the end of the matter. The High Court ought to have gone into the other two grounds, which found favour with the sub-Judge, which it did not do. [Para 10][738-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2284
of 2019

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From the Judgment and Order dated 23.03.2015 of the High Court of Judicature at Madras in C.R.P. (NPD) No. 1261 of 2006

R. Anand Padmanabhan, Romil Pathak, Prawal Chaturvedi, Ms. Nishaka Tyagi, Aravind C. and Shashi Bhushan Kumar, Advs for the appearing parties.

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The Judgment of the Court was delivered by

R. F. NARIMAN, J.

1) Nobody appears for the respondent, even though service is complete.

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2) Leave granted.

3) The present appeal arises out of a proceeding to revoke a Succession Certificate that was granted in favour of the appellant on 16.03.2005.

4) The appellant No.1 is the son of one Gorden Wapshare. Gorden Wapshare had a brother called Edward Wapshare, who married one Beatrice. Apparently, this marriage was fruitless as there was no issues therefrom. He also had two sisters, one of whom Miss Dorothy Wapshare was unmarried, who is since dead; and the other Miss Violet Wapshare, who was married and has a daughter called Ellen Mary Jackson. Gorden Wapshare was himself married and had two sons - one of whom is the

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- A appellant No.1, and the other son called Robert Babu Wapshare, who is dead. The appellant No.1, in turn, is married and has two sons. The respondent before us Ms. Shirley Kathleen Wheeler is said to be the daughter of Beatrice, who, as stated herein above, was the wife of Edward Wapshare.
- B 5) Gorden Wapshare died on 18.01.1991. As a result, a petition was preferred under Section 372 of the Indian Succession Act, 1925 being O.P. No. 17 of 2005 before the Court of Civil Judge, Nilgiris, which petition was allowed and Succession Certificate dated 16.03.2005 granted to the appellant. The respondent, in an application filed under Section 383 of the Act dated 28.03.2005, applied to revoke the Succession Certificate so granted. In this application, a counter affidavit was filed in which it was clearly stated that the respondent was an outsider to the Wapshare family as she was the daughter of Beatrice and born to a second husband and not Edward Wapshare, who was the brother of Gorden Wapshare, as stated hereinabove.
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- D 6) An application for probate of the will of Gorden Wapshare was moved by Beatrice in 1993, being O.P. No. 55 of 1993. Beatrice died on 29.01.1999. It may be mentioned that this application was dismissed for non-prosecution. At no point of time did the respondent ever apply as legal heir of Beatrice to be substituted therein.
- E 7) By an order dated 10.04.2006, the Sub-Court, Nilgiris, held that the respondent, not being the daughter of Edward Wapshare, was an outsider who could not, therefore, maintain the application for revocation. The Sub-Court also decided that, in any case, since the previous proceeding had abated, the matter is *res judicata* between the parties. It then went on to decide:
- F “Since the petitioners in O.P. 17/05 are the direct heirs of then deceased G.O. Wapshare; neither Ms. Ellen Mary Jackson nor her step sister the present petitioner in this application did have any right to question the Succession Certificate obtained by the petitioners in O.P. 17/2005 dated 16.3.2005. The evidence adduced on the side of the respondents in this application clearly proves that the deceased G.O. Wapshare during his life time has legally married one Valliammal and had given birth to a male child, who had been named Easwaran. The 1st respondent in this application and who in turn given a birth of 2nd and 3rd respondents in this application. Since, the 1st respondent in this application being the
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son of G.O. Wapshare and the 2nd and 3rd respondents being the son of the 1st respondent in this application are the direct heirs of G.O. Wapshare who are alone entitled to inherit the immoveables as well as the moveables of deceased G.O. Wapshare is completely been established by the respondents in this application. In the absence of any testament left by G.O. Wapshare the property of G.O. Wapshare will naturally go to his son Joseph Easwaran Wapshare and his sons W.E. Prince Kumar and W.E. Praveen Kumar, only when the petitioner Mary Jackson able to prove that G.O. Wapshare left a will or other testament to inherit the properties left by G.D. Wapshare, claim of the petitioner in this petition will become mischievous as the petitioner in this application herself know that her step sister Ms. Ellen Mary Jackson's claim in the previous suits O.S.No. 41/97, 42/97 and 86/96 were dismissed as abated.”

8) A revision petition was filed against the said judgment. By the impugned judgment dated 23.03.2015, the Madras High Court allowed the revision on only one point, namely, that the finding of the Sub-Judge on *res judicata* was incorrect. However, it noticed the arguments made by the petitioners' counsel that, in any event, the revocation application was not maintainable and, in any case, not being a direct lineal descendant of Gorden Wapshare, the respondent could not, in any event, succeed to the estate of Gorden Wapshare. The High Court therefore, set aside the order dated 10.04.2006 and remanded the matter to the Sub-Judge to decide the matter afresh after hearing the parties.

9) Mr. R. Anand Padmanabhan, learned counsel appearing on behalf of the appellants, has painstakingly taken us through the record and has referred to the various provisions of the Indian Succession Act. It is necessary to first set out Section 372 of the said Act, under which an application for a Succession Certificate has to be made. Section 372 reads as follows:

“372. Application for certificate.- (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:-

(a) the time of the death of the deceased;

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- A (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- B (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- C (f) the debts and securities in respect of which the certificate is applied for.
- (2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).
- (3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.”
- E Equally, if such certificate is to be revoked it can be so revoked if any of the grounds under Section 383 are made out. Section 383 of the Act is set out herein below:

“383. Revocation of certificate.- A certificate granted under this Part may be revoked for any of the following causes, namely:-

 - F (a) that the proceedings to obtain the certificate were defective in substance;
 - (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
 - G (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
 - (d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.”

At this juncture, it is important to set out Section 33 (a) which reads as follows:

“33.(a) if he has also left any lineal descendants, one-thirds of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;”

The expression “lineal descendant” has reference to Section 25 of the Act which is set out herein below:

“25. Lineal Consanguinity.- (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line, or between a man and his son, grandson, great-grandson and so downwards in direct descending line.

(2) Every generation constitutes a degree, either ascending or descending.

(3) A person’s father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.”

A reading of the aforesaid provisions of the Succession Act make it clear that a Succession Certificate can be granted in an application in which necessary particulars are set out as mentioned in Section 372. There is no dispute that the application made by the appellant set out the aforesaid particulars. Under Section 383, the Certificate so granted could only be revoked for the reasons set out in the said Section. It will be noticed that revocation cannot be granted unless anyone of sub-sections (a) to (e) of Section 383 is satisfied, which is not the case on facts in this appeal. It is clear therefore, that on this ground alone, the learned Sub-Judge was justified in refusing to revoke the Succession Certificate so granted. Even otherwise, it is clear that the respondent has nothing whatsoever to do with the Wapshare family. This becomes clear from her averment in her Section 383 application in which, in para 1, she stated:

- A "1. The Petitioner is Mrs. Shirley Katheleen Wheeler w/o late Mr. A.J. Wheeler and Daughter of Late Mrs. Beatrice Wapshare, Christian aged about 68 years, a British Citizen and permanent resident at 43, Cuttons Corner, Hemblinton, Norfolk-NR 134 PS, England, United Kingdom, and presently at Compton Estate, Naduvattam Post, Udhagamandalam in the District of Nilgiris."
 - B 10) It will be noticed that the respondent describes herself as the wife of the late A.J. Wheeler and daughter only of the late Beatrice Wapshare. Edward Wapshare's name is conspicuous by its absence, making it clear that she was, by no means, a lineal descendant of Edward Wapshare and therefore, had nothing whatsoever to do with the
 - C Wapshare family. Apart from this, since Gorden Wapshare died intestate, the will being set up in the application for probate having abated, Section 33(a) makes it clear that the intestate's property goes only to his widow and his lineal descendants. The appellant is today the only living lineal descendant, together with his two sons, of Gorden Wapshare. This would
 - D again make it clear that, in any event, the respondent would have no interest whatsoever either as a member of the Wapshare family or as a lineal descendant in setting aside the Succession Certificate so granted as she is neither a family member nor a lineal descendant as has been held herein above. It may only be added that the High Court was correct in setting aside the Sub-Judge's order on his finding on *res judicata*, but
 - E that was not the end of the matter. The High Court ought to have gone into the other two grounds, which found favour with the sub-Judge, which it did not do.
- 11) This being the case, we set aside the judgment of the High Court and restore that of the learned Sub-Judge.
- F 12) Accordingly, the appeal is allowed.

Kalpana K. Tripathy

Appeal allowed.