

Madras High Court

N. Chinnakannu Pillai vs N.S. Sundaram on 14 April, 1950

Equivalent citations: AIR 1951 Mad 437, (1950) 2 MLJ 607

Author: V Sastri

Bench: V Sastri

ORDER Viswanatha Sastri, J.

1. This civil revision petition is directed against an interlocutory order of the Subordinate Judge of Tuticorin in O. P. No. 33 of 1949, a petition for the issue of a succession certificate under Succession Act (XXXIX [39] of 1925), holding that he had jurisdiction to entertain the application. The contention of the petitioner in this Court is that the Subordinate Judge had no jurisdiction. There is no notification of the Provincial Government under Section 388(1), Succession Act, 1925, empowering Subordinate Judges to issue succession certificates. Under Section 26, Sub-section (3), Succession Certificate Act (vii [7] of 1889) there were three notifications by the Local Government conferring jurisdiction on Courts inferior to a District Court to issue succession certificates. Effect of these successions issued under that Act is one of the matters that fall to be decided in this case. The provisions of Act XIV [14] of 1926 passed by the Indian Legislature, where by Section 29, Madras Civil Courts Act, 1873, was inserted in that Act, empowered the High Court, by notification, to invest 'judicial officers with jurisdiction in matters arising under the Succession Act. Sections 265 and 388, Succession Act, empower the High Court and the Provincial Government respectively, by notification, to invest any Court inferior in grade to that of a District Judge with power to exercise the functions of a District Judge under the Act in respect of the matters specified in those sections. The High Court has issued notifications in the exercise of the power conferred upon it under Section 265, Succession Act, and Section 29 (1), Madras Civil Courts Act of 1873, as amended by Act XIV [14] of 1926 of the Indian Legislature authorising all Subordinate Judges to take cognizance of any proceedings under the Succession Act, 1925, which cannot be disposed of by "District Delegates" and appointing all subordinate Judges ex officio as "District Delegates" under the Succession Act, 1925, within the local limits of their respective jurisdiction. It is the effect of these several notifications that has to be considered in arriving at a decision on the question of jurisdiction raised in the present case.

2. Under Section 26 (1), Succession Certificate Act, 1889, the Local Government by G. O. No. 391 dated 22-10-1921 notified that the Subordinate Judge of Tuticorin would have jurisdiction to issue succession certificates. In a later G. O. No. 1731 dated 5-6-1924, the Local Government invested all Subordinate Judges and District Munsifs except those at the headquarters of districts (subject to a few exceptions) with the powers of a District Court under the Succession Certificate Act, 1889, within the local limits of their respective jurisdiction. By another notification, G. O. No. 24 dated 7-1-1925, superseding G. O. no. 1731 (wrongly printed as G. O. No. 371 at p. 274 of vol. I of the Civil Rules of Practice) the Local Government invested all Courts of District Munsifs in the Presidency except those situated at headquarters of districts, with jurisdiction to issue succession certificates. All these notifications were issued under Section 26, Succession Certificate Act, 1889, which has now been repealed and re-enacted as Part x of the Succession Act, 1925. It cannot be successfully contended that with the repeal of the Succession Certificate Act, 1889, and its re-enactment by the Succession Act, 1925, the life of the notifications issued under the earlier Act

came to an end by reason of the omission in the later Act of a provision continuing the notifications issued under the earlier Act. Section 24, General Clauses Act, provides for the continuation in force of such notifications unless otherwise expressly provided in the later Act, and there is no such provision in the Succession Act, 1925. The argument of the petitioner is that the second G. O. No. 1731 dated 5-6-1924, operated as a repeal of the first G. O. No. 391 dated 22-10-1921, and the second G. O. was, in its turn, repealed by the third G. O. No. 24 dated 7-1-1925 and that the result of the several notifications is that District Judges and District Munsifs, except those at headquarters of districts, alone have jurisdiction to issue succession certificates.

3. I am unable to accept this argument.

While the third notification in terms supersedes the second, the second does not purport to supersede the first. It cannot be said that the first notification became otiose or wholly devoid of any effect after the issue of the second notification. The special notifications empowering certain selected Subordinate Judges' Courts, of which the Tuticorin Subordinate Judge's Court was one, to take cognizance of applications for grant of succession certificates, continued to be in force notwithstanding G. O. No. 1731 dated 5-6-1924 because there was nothing in the later G. O. depriving those Courts of the jurisdiction vested in them by the earlier notifications. To some extent, G. O. No. 1731 dated 5-6-1933 (sic) may overlap G. O. No. 391 in cases where Courts of Subordinate Judges specially empowered by G. O. No. 391, fall within the category of Subordinate Judges functioning at places other than headquarters of districts.

With reference to Subordinate Judges functioning at the headquarters of districts and empowered by G. O. No. 391 to take cognizance of applications for grant of succession certificates, their jurisdiction would remain unaffected by G. O. No. 1731 dated 5-6-1924 which confers jurisdiction only on Subordinate Judges and District Munsifs not functioning at headquarters of districts. It is therefore not possible to say that the scope and ambit of G. O. No. 1731 dated 5-6-1924 are comprehensive enough to make provision. In other words, the two G. Os.

can exist and have operation side by side.

The doctrine of repeal by implication must not be resorted to unless the implication is quite clear. An enactment or a rule having the force of law cannot be held to be repealed by implication by a later enactment or statutory rule unless the provisions of the earlier enactment or rule are plainly repugnant to those of the subsequent enactment or rule and the entire subject-matter of the first is taken away by the second. If the two provisions standing together would lead to wholly absurd consequences or if the entire subject-matter of the earlier statutory provision is provided for by a later statutory provision, then there may be room for the application of the rule of repeal by implication. Repeal by implication is not to be lightly inferred and the mere inclusion in a later statutory provision of a portion of the subject-matter contained in an earlier statutory provision cannot by itself have the result of a repeal of the earlier provision. Repeal by implication is the consequence of contradictory or inconsistent legislation and should not be imputed to a legislative or rule-making authority unless one is driven to do so. See Halsbury's Laws of England, vol. 31, p. 561. Even in a case where there is repeal or amendment of an earlier Act by necessary implication,

the repeal need not extend to the whole of the provisions of an earlier enactment and certain provisions of the earlier enactment may survive the repeal or amendment. The present is such a case. In my opinion, G. O. No. 1731 dated 5-6-1924 neither expressly nor by necessary implication repeals the earlier G. O. No. 391. In this view, the Subordinate Judge of Tuticorin would have jurisdiction to entertain the petition for the grant of succession certificate.

4. It is unnecessary to consider the effect of the notifications issued by the High Court in 1939 acting under the provisions of Section 26, Succession Act, 1925 and the provisions of Section 29 (1), Madras Civil Courts Act, 1873, as amended by Act, XIV [14] of 1926. These notifications do not, in so many terms, confer jurisdiction on Subordinate Judges to take cognizance of applications for grant of succession certificates. At the same time, the notification authorises "all Subordinate Judges to take cognizance of any proceedings under the Indian Succession Act 1925, which cannot be disposed of by district delegates."

District delegates had no place in the old Succession Certificate Act, and under the Succession Act of 1925, could not entertain applications for the issue of succession certificates. The words of the notification are, however, wide and quite general and, literally interpreted, would include proceedings under Part X of the Succession Act. There is a decision of this Court in *Karthiruma Goundan v. Rangammal*, 55 Mad. 701 : (A. I. R. (19) 1932 Mad. 456) favouring such a wide and literal interpretation of the notification which adopts the language of Section 29 (1), Madras Civil Courts Act, as amended by Act XIV [14] of 1926. *Panchapagesa Sastri J.* in the decision reported in *Rengaraja Rao v. Dulasibai Ammal*, 1949-1 M. L. J. 650 : (A. I. R. (36) 1949 Mad. 818), was inclined to place a more restricted interpretation on the scope of the notification and to hold that it did not authorise Subordinate Judges to entertain applications for the issue of succession certificates. It is unnecessary for me to express an opinion as to which of these divergent views represents the true intention of the Legislature. The difficulty has arisen from the Succession Act, 1925, assembling together different enactments which dealt with different topics without reference to each other, namely, the Succession Certificate Act, 1889, the Probate and Administration Act, 1881, the Succession Act, 1865, the Succession (Property Protection) Act, 1841, and the Hindu Wills Act, 1870. There was no place for a District delegate in the Succession Certificate Act 1889 while the Probate and Administration Act 1881 gave jurisdiction to a District delegate in non-contentious applications for probate or letters of administration. The Consolidating Act of 1925 has, to some extent, to be interpreted in the light of the history of the previous legislation embodied in the several enactments above referred to, and, if so interpreted, the reasoning of *Panchapagesa Sastri J.* if I may say so with respect, appears to me to be convincing. I need not pursue the matter further as the civil revision petition fails on my interpretation of G. o. No. 391 of 1921 and the subsequent notifications issued by the Government.

5. The civil revision petition is therefore dismissed with costs.