



**IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH**

DATED THIS THE 21<sup>ST</sup> DAY OF APRIL, 2023

BEFORE

**THE HON'BLE MR. JUSTICE C.M. JOSHI**

CIVIL REVISION PETITION NO. 200010/2019

BETWEEN:

Digitally signed by  
SOMANATH  
PENTAPPA MITTE  
Location: High  
Court of Karnataka

...PETITIONERS

(BY SRI SHIVANAND PATIL, ADVOCATE)

...PETITIONERS

**AND:**



PLAINTIFFS

...RESPONDENTS

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO ALLOW THIS REVISION PETITION AND SET ASIDE THE IMPUGNED ORDER DATED 16.09.2011 IN MISC. APPEAL NO.3/2011 OF THE IV ADDL. DISTRICT JUDGE AT KALABURAGI AS PER ANNEXURE-F AND THE ORDER DATED 31.01.2011 IN P & SC NO.33/2009 OF THE III ADDL. CIVIL JUDGE (JR.DN.) GUBARGA AS PER ANNEXURE-E AND MODIFY THE SAME IN ACCORDANCE WITH LAW IN THE INTEREST OF JUSTICE AND EQUITY..

THIS PETITION HAVING BEEN HEARD THROUGH PHYSICAL HEARING/VIDEO CONFERENCE AND RESERVED FOR JUDGMENT ON 31.03.2023, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

1. This civil revision petition is filed under Section 115 of CPC by the respondents in P & SC No.33/2009 assailing the judgment in Misc. Appeal No.3/201 passed by the IV Additional District Judge, Gulbarga dated 16.09.2011 and the order dated 31.01.2011 in P & SC



No.33/2009 by the III Additional Civil Judge (Jr.Dn.) Gubarga, whereby Succession Certificate was granted to the petitioners therein.

2. For the sake of convenience, the parties will be referred to as per their status before the trial Court.

3. The brief facts are as below:

(i) The petitioners, who are the respondents herein, are the wife and son of the deceased Nagappa. Respondents, who are the revisions petitioners herein are father and mother of said Nagappa. The said Nagappa was working as SDA at Sangameshwar Hospital. Petitioners had separated from respondents and they were residing in separate house along with the said Nagappa. Nagappa expired on 07.11.2008 and the petitioners being Class-I heirs are entitled to receive the entire service benefits of the deceased Nagappa. As such they approached the employers of Nagappa. The



employers demanded a Succession Certificate and as such the P & SC No.33/2009 came to be filed.

(ii) On issuance of notice to the respondents and also on publishing of citations in the newspaper, except the respondents none else had appeared before the Court. Respondents/revision petitioners thereby filed their objections admitting the relationship with petitioners, but they contended that the service benefits of the deceased is not to the extent of Rs.2,20,000/- as mentioned in the petition, but it was Rs.3,86,349/-. They also contended that they are the Class-I heirs of the deceased and as such they also have a right over the service benefits of the deceased Nagappa.

(iii) After hearing both the sides, on perusal of the material on record, the learned trial Judge by taking note of the decision in the case of **Shri**



***Banarsi Dass vs. Teeku Datta***<sup>1</sup> has held that the petitioners are entitled for grant of the Succession Certificate and they only represent the hands, in which, the service benefits are to be received from the employer of Nagappa and allowed the petition. In no way learned Judge had stated that respondent Nos.1 and 2 did not have any right in the service benefits of the deceased Nagappa.

(iv) Aggrieved by the said order, respondents approached the District Court in Misc.Appeal No.3/2011, contending that they being the father and mother of the deceased Nagappa they too are the Class-I heirs of deceased Nagappa, as such, the trial Court ought not to have issued Succession Certificate only to the petitioners. The first appellate Court held that the contention of the revision petitioners is not sustainable, since the Court has no power to go into the substantial and intricate

---

<sup>1</sup> (2005) 4 SCC 449



question of facts and law while granting Succession Certificate in the light of the decision in the case of ***Shri Banarsi Dass vs. Teeku Datta*** and that the respondents are at liberty to approach the appropriate Court of law for determination of their grievance and for their share in the death benefits of deceased Nagappa. With such observations, the first appellate Court dismissed the appeal. Aggrieved by the said order, respondents have approached this Court in this revision petition.

4. It is contended that, though an enquiry under Section 372 of Indian Succession Act is summery enquiry, it does not prevent Courts from deciding who amongst the parties to the *lis* would be entitled to the Succession Certificate. When the Courts below were unanimous in saying that respondents are also the Class-I heirs to conclusion, ought to be that the Succession Certificate is required to be issued in the joint names, leaving it to the parties to decide their actual percentage of shares from



the Civil Court. It is contended that excluding a person and granting to some others and calling upon the excluded litigants to have their rights to decide in the Courts would amount to non-application of the judicious mind. It is contended that the equity requires that when neither of the parties are agitating against the right of the other, Succession Certificate was required to be issued in the joint names of the parties.

5. On issuance of notice, respondents have appeared through their counsel.

6. The arguments by learned counsels for revision petitioners and the respondents are heard.

7. The first aspect to be noticed is that the revision petitioner No.2 who happens to be the father of the deceased Nagappa cannot be termed as the Class-I heir of deceased Nagappa. The schedule to Section 8 of the Hindu Succession Act makes it clear that the mother alone happens to be the Class-I heir of deceased and



therefore the first revision petitioner cannot claim himself to be the Class-I heir of deceased Nagappa.

8. Learned counsel for the revision petitioner would contend that the revision petitioners are entitled for the benefits conferred on them concerning the service benefits of deceased Nagappa and there was no justifiable reason to deny the grant of Succession Certificate. He has reiterated the contention taken up by him in the revision petition.

9. On the other hand, counsel for the respondents would submit that the respondents who are the petitioners before the trial Court have received service benefits on the ground of grant of Succession Certificate in their favour and they have also executed an indemnity bond as directed by the Court. It is submitted that the argument of the learned counsel for the revision petitioners that the Succession Certificate should have been granted in the joint names, cannot be accepted and no purpose would be





served if there are many people who are issued with the Succession Certificate.

10. In addressing this revision, the scope of Sections 372 and 373 of the Indian Succession Act needs to be kept in view. Section 373 merely lays down that the Court is required to be satisfied that there is ground for entertaining the application namely by a person who desires to make a claim. It is not necessary for the Court to enter upon other questions involved. The entitlement of the benefits or other issues which would be consequence of such character, which cannot be litigated upon on an application for Succession Certificate cannot be gone into. In this regard it would be appropriate to refer the decision in the case of **Brojendra Sundar Banarjee Versus Niladrinath Mukerjee and ors**<sup>2</sup>. In the said decision it was held as below:

*"Sec. 372 of the Succession Act provides that an application for a succession*

---

<sup>2</sup> AIR 1929 Cal 661 (FB)



*certificate must be verified like a plaint and shall set forth inter alia the right under which the Petitioner claims and the debts and securities in respect of which the certificate is applied for. Sec. 373 provides that if the Judge is satisfied that there is ground for entertaining the application, he shall fix a date for hearing and issue certain notices and upon the date fixed or as soon thereafter as may be practicable "shall proceed to decide in a summary manner the right to the certificate." Cls. 2 and 3 are as follows:—*

*"(2) When the Judge decides the right thereto to belong to the Applicant, the Judge shall make an order for the grant of the certificate to him."*

*"(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to him to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having primâ facie the best title thereto."*



*An examination of this section leads me to the conclusion that the Legislature contemplated first that the District Judge should be satisfied not that a succession certificate will be necessary or exigible under sec. 214 or otherwise, but that there is "ground for entertaining the application." That is to say, that it is a serious and sensible application by a person who desires to make a claim in the representative character which he seeks. Cls. 2 and 3 contemplate that the Judge shall endeavour to determine whether the Applicant is the proper person or a proper person to be clothed with the representative character and it is made abundantly clear that any intricate questions of fact or law bearing upon this question may be solved in a summary manner. The Legislature by exacting fees and by making provision for the requirement of a bond would seem to have taken away all temptation to apply for a succession certificate save in cases where a succession certificate will enable the grantee to prosecute a claim as a representative of the deceased with greater advantage than he would have been able to do in the absence of this representative right. Sec. 387 provides that no decision under this part upon any*



*question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties. In my opinion nothing could be more misguided, unnecessary and objectionable than that questions of the exact character of an Applicant's claim should be litigated upon an application for a succession certificate and in the absence of the party or authority against whom the claim is made. The objector in the present case, for example, is in no way damnified by the grant of the certificate. He is entitled to object before the Land Acquisition Judge to any order for payment out of the compensation money upon any ground which he can establish showing that the money was not due to the deceased but is money which, in the events that have happened, is payable to him. If he has any grievance against the order of the 18th April 1928, he has his remedy. To insist upon litigating the questions at issue between the parties under the provisions of sec. 373 of the Succession Act is merely the tactics of obstruction.*

*On the other hand, it would clearly be inconvenient if in a case such as this the Land*



*Acquisition Court should take the view that the nature and character of the claim was such as to entitle it to require the production of a succession certificate, while at the same time the Judge to whom application for such certificate must be made purported to decide between these parties that the debt in question could not be regarded as having been due to the deceased and that accordingly no right to represent the deceased for the purpose could be given to any one. In my opinion it is not the law that the Court upon an application for a certificate has to decide for itself, as a condition of granting the certificate, that the case is one in which the debt was due to the deceased person within the meaning of sec. 214. A reasonable and sensible claim to be enabled to proceed against a third party as being a debtor of a deceased person is sufficient for the purpose of clothing the Court with jurisdiction under sec. 373 and may be regarded as ground for entertaining the application."*

11. Even in the contentious proceeding under Section 295 of the Indian Succession Act for probates,



though the proceedings shall take as nearly as possible the form of a regular suit, the issues to be tried in such suit are however limited to the question as to whether the testator was of a sound and disposing state of mind and whether Will was duly executed and attested. It is not the duty of the probate Court to consider any issue as to the title of the testator to the property with which the Will was propounded purports to deal with or the disposing power the testator may have possessed over such property. Therefore, the scope to determining the shares of the parties would not be available in a proceedings under Sections 372 and 373 of the Act.

12. In the case on hand, the trial Court as well as the first appellate Court has considered the scope of the petition with reference to Sections 372 and 373 of the Indian Succession Act and granted the Succession Certificate in favour of the petitioners with liberty to the respondents/revision petitioners herein to approach the proper forum.



13. In a decision rendered by a co-ordinate Bench of this Court in the case of **Smt. Vidya Udaykumar Toranagatti and others Versus Smt. Shobha and antoher**,<sup>3</sup> wherein at Para Nos 7, 8 and 9 it was observed as below:

*"7. The grant of such certificate does not however render any finality to rival claims to the benefits, nor does it conclude other question of fact or law, which may exist, as between the rival claimants, as in the case on hand. Therefore, the mere grant of succession certificate in favour of respondent no. 1 and others does not disentitle the appellant no. 1 from raising a claim in appropriate proceedings before a competent Court of law, which shall then, address any contentious issues as regards the entitlement and status of parties, as have been addressed in the course of the impugned order of the lower Court. Opinions expressed and finding on such issues by the lower Court will not operate as resjudicata in such proceedings that may be brought by appellant no. 1. Any*

---

<sup>3</sup> (2011) 1 KCCR 17



*payments that may be made to respondent no. 1 on the basis of the succession certificate would necessarily have to be accounted for and respondent no. 1 would have to indemnify and keep indemnified of any such claims that are raised by appellant no. 1*

*8. In any event, the grant of succession certificate in favour of several parties, as has been done by the Trial Court is not contemplated under the provisions of the Act.*

*9. Accordingly, the appeal is allowed in part. The succession certificate granted in the form by the Court below is made subject to such claims that the appellants may raise in independent proceedings before a competent Court of law and it would be open to the appellants to seek such interim reliefs, if so warranted, to protect their interest in those proceedings."*

*(Emphasizes by me)*

14. The above observations are also in consonance with the observations made by the full Bench of the Ccutta High Court in the case of **Brojendra Sundar Banarjee Versus Niladrinath Mukerjee and ors.**





Under these circumstances, no purpose would be served by directing for issuance of the Succession Certificate in the joint names of the petitioners and the respondents. Any how, respondent No.2/revision petitioner No.2 is not entitled for the claim as he does not fall in the category of Class-I heir. Therefore, no interference is required in this revision petition. Moreover, grant of Succession Certificate merely identifies the hands in which the death benefits/debts/securities be given and it does not entitle such person to appropriate such securities, debts, etc, to himself. Grant of Succession Certificate will not determine the rights of the parties in any way. Hence, the revision petition is bereft of any merits and therefore the same is dismissed.

**Sd/-  
JUDGE**

SBS  
List No.: 1 Sl No.: 17