

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 12<sup>th</sup> OF JUNE, 2023**

**MISC. APPEAL No. 2830 of 2018**

**BETWEEN:-**

- 1. MANISHA (DIED NAME DELETED AS PER C.O. DTD.06/12/2022) W/O LATE SHRI MUKUND AAPTE, AGED ABOUT 48 YEARS, OCCUPATION: HOUSE WORK 64, VIDHA NAGAR UJJAIN (MADHYA PRADESH)**
- 2. KU. SHREYA D/O LATE SHRI MUKUND AAPTE, AGED ABOUT 26 YEARS, OCCUPATION: SERVICE PERMANANT ADD. 64, VIDHYA NAGAR UJJAIN, CURRENT ADD. A/10, ISHAAN SANSKRUTI, 131/1, VAARJE PUNE- 58 (MAHARASHTRA)**
- 3. KU. SHAKSHI D/O LATE SHRI MUKUND AAPTE, AGED ABOUT 19 YEARS, OCCUPATION: STUDENT PERMANANT ADD. 64, VIDHYA NAGAR UJJAIN, CURRENT ADD. A/10, ISHAAN SANSKRUTI, 131/1, VAARJE PUNE- 58 (MAHARASHTRA)**

**.....APPELLANTS**

***(BY SHRI S.P. JOSHI, ADVOCATE )***

**AND**

- 1. GENERAL PUBLIC NIL BARWANI THROUGH NAGAR PARISAD ANJAD (MADHYA PRADESH)**
- 2. SMT. ASHVINI W/O SHRI KAMLAKAR DHAARAP, AGED ABOUT 47 YEARS, OCCUPATION: SERVICE 9, DICHLINK HILL, CROLI, WEST SUCCESS, UK (UK)**

**.....RESPONDENTS**

***(NONE FOR THE RESPONDENTS, DESPITE SERVICE OF NOTICE)***  
.....

*This appeal coming on for order/judgement this day, the court passed the following:*

**JUDGEMENT**

Heard finally.

**2]** This miscellaneous appeal has been under Section 384 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act of 1925') against the judgement dated 10.03.2018, passed in Succession Case No.27 of 2017, whereby the application filed by the appellants under Section 372 of the Act of 1925 has been partly allowed.

**3]** In brief, the facts of the case are that the late appellant No.1 was the wife of late Shri Mukund Apte, whereas the appellant Nos.2 and 3 are the daughters of late Mukund Apte, who died intestate. Hence, an application was filed u/s.372 of the Act of 1925 in respect of the Bank locker of Allahabad Bank, Branch Ujjain which was in the joint names of late Mrs. Sudha Apte, the mother of late Shri Mukund Apte and late Shri Mukund Apte, who are grandmother and father of appellant Nos.2 and 3, and mother-in-law and husband of appellant No.1 respectively. After issuing notice to the public at large, the application filed by the appellants/plaintiffs was allowed in respect of all the properties of late Shri Mukund Apte, however, the appellants' claim in respect of the ITC shares lying in the name of late Shri Mukund Apte has been rejected on the ground that the appellants have not stated the market value of the

shares, and so far as the bank locker in the joint name of late Mrs. Sudha Apte W/o Vijay Kumar Apte and late Shri Mukund Apte is concerned, the Court has held that the same is barred under Section 372 (2) of the Act of 1925.

4] Counsel for the appellants has submitted that the learned Judge of the trial Court has erred in misreading the application filed by the appellants as in para 7.9 of the same, it is clearly stated along with folio numbers and share certificate numbers, that 6900 shares of ITC are in the name of Mukund Apte the market value of which is stated to be Rs.17,25,000/-. Thus, it is submitted that there was no reason for the trial Court to reject the claim in respect of the share certificates on the ground that its market value is not mentioned.

5] So far as the rejection of the application in respect of the bank locker jointly held by late Sudha Apte and late Shri Mukund Apte is concerned, it is stated that the reliance placed on Section 370(2) of the Act of 1925 was also misplaced as Section 370 is in respect of the property as provided under Sections 212 and 213 of the Act of 1925. Thus, it is submitted that Section 370 would not at all be applicable in the present facts and circumstances of the case.

6] Counsel has also drawn the attention of this Court to Section 212 of the Act of 1925, which clearly provides that this Section shall not be applicable in the case of intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina. Thus, it is submitted that the reliance placed by the trial Court on the decision rendered by the Chhattisgarh High Court in the case of **Vimala Devi Vs. Shobha Walia and others** reported as **2007(1) MPHT 65 (CG)** is misplaced as the Chhattisgarh High Court has not considered the

effect of Sections 212 and 213 of the Act of 1925, which are also referred to in Section 370 of the Act, 1925. Thus, it is submitted that the reasoning assigned by the trial Court is liable to be set aside so far as it relates to rejection of the claim in respect of the articles lying in the bank locker is concerned.

7] Heard. On due consideration of submission and perusal of the record, this Court finds force in the submissions advanced by the learned Counsel for the appellants, and it is found that so far as the ITC shares are concerned, in respect of which the claim of the appellants has been rejected, in para 7.9 of the application filed under Section 372 of the Act of 1925, the same reads as under:-

“7.9. शेयर आई.टी.सी. लिमिटेड, अंश संख्या 6900, अंश क्रमांक 2504970761 से लगायत 2504973060 एवं अंश क्रमांक 3092281 से लगायत 3096880 अनुमानित मुल्य रूपये 17,25,000 /—”

8] It is apparent from the above that the appellants have clearly mentioned the market value of the shares to be Rs.17,25,000/- in the year 2017, when the application was filed. Thus, the **finding recorded by the trial Court in respect of the ITC shares is hereby set aside and it is directed that the appellants shall be entitled to claim the aforesaid ITC shares.** Thus, it is directed that on appellants' paying the requisite Court fees before the trial Court in accordance with law, commensurate to the market value of the ITC shares, the trial Court shall issue a fresh certificate of succession to the appellants in respect of the aforesaid ITC shares.

9] So far as the rejection of the appellants' application in respect of the articles/jewellery lying in the bank locker of the Allahabad Bank is concerned, it is found that the learned Judge of the trial

Court has relied upon Section 370(2) of the Act of 1925, which being relevant, reads as under:-

**“370. Restriction on grant of certificates under this Part.—**

(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate: Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

(2) For the purposes of this Part, “security” means—

- (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
- (b) any bond, debenture, or annuity charged by Act of Parliament 1[of the United Kingdom] on the revenues of India;
- (c) any stock or debenture of, or share in, a company or other incorporated institution;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority;
- (e) any other security which the 2[State Government] may, by notification in the Official Gazette, declare to be a security for the purposes of this Part.”

**10]** Section 371 of the Act of 1925 is also relevant, which reads as under:-

**“371. Court having jurisdiction to grant certificate.—**The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.”

**11]** A perusal of the Section 370 clearly reveals that it provides that succession certificate shall not be granted under this part to which a right is required by Section 212 or Section 213 of the Act of 1925 to be established through letter of administration or probate. So far as Sections 212 and 213 are concerned, the same read as under:-

**“212. Right to intestate’s property.—**

- (1) No right to any part of the property of a person who has died

intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, 1[Indian Christian or Parsi].

**213. Right as executor or legatee when established.—**

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 1[India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed. 2[(2) This section shall not apply in the case of Wills made by Muhammadans 3[or Indian Christians], or and shall only apply—

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the 4[ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits.]”

**12]** A conjoint reading of the aforesaid provisions clearly demonstrates that s.370 cannot be read in isolation, as its scope is confined to the provisions of s.212 and 213 of the Act and second proviso to s,212 specifically provides inter alia that it would not be applicable to an instacy of a Hindu. It is also found that so far as the definition of security as provided under Sub-section (2) of Section 370 is concerned, admittedly, the bank locker and the articles lying therein would not be covered by the said definition of security. However, the provisions of section 370 itself is not applicable in the present case as the appellants are Hindu. Similarly a reference to Section 371 also reveals that a District Judge has all the powers to grant certificate under whose jurisdiction *any part of the property* of the deceased may be found, and since the locker was well within the territorial jurisdiction of the District Judge, Ujjain,

there was no reason to interpret the aforesaid section in any other manner.

13] So far as the decision rendered by the Chhattisgarh High Court in the case of **Vimala Devi (supra)** is concerned, it is found that that it has not referred to Sections 212 and 213 of the Act of 1925, and also does not refer to Section 371 of the Act of 1925 and in such circumstances, the decision rendered by the Chattisgarh High court is distinguishable and does not bind this court. Accordingly, **the aforesaid finding regarding the locker and the articles lying therein is also hereby set aside, and it is directed that the appellants shall be entitled to claim the articles lying the Bank Locker No.77 of Allahabad Bank, Branch Ujjain which is in the joint name of Sudha Apte and Mukund Apte and in this regard, appropriate certificate may also be issued by the trial Court itself within the period of 4 weeks from the date of receipt of the certified copy of the this order.**

14] With the aforesaid directions, the appeal stands *allowed and disposed of*.

**(Subodh Abhyankar)**  
**Judge**