

THE HIGH COURT OF MADHYA PRADESH, JABALPUR

Misc. Petition No. : **1325 of 2021**
Parties Name : Haliman Bee vs. Joya Khan & others.
Bench Constituted : Hon'ble Justice Shri Rajendra Kumar
(Verma)
Whether approved for reporting : Yes/No
Name of counsel for parties : **For Petitioner:**
Shri Ankit Saxena, Advocate.
Law Laid Down : **When there is alternative remedy under Section 388(3) of the Indian Succession Act read with Section 115 of the Code of Civil Procedure, Misc. petition under Section 227 of the Constitution of India is not maintainable and only a civil revision lies.**

Significant Paragraphs

O R D E R

(Dated: 08.11.2021)

The present petition has been filed under Article 227 of the Constitution of India being aggrieved by the order dated 20.01.2021 (Annexure P/3) passed by the Additional District Judge Berasiya, District Bhopal in Misc. Civil Appeal No.19/20219 arising out of the order dated 31.8.2019 passed by the Judicial Magistrate First Class Berasiya, District Bhopal in M.J.C. No.18/2014.

2. The respondent Joya Khan filed an application under Section 372 of the Indian Succession Act (hereinafter referred to as "the Act"), which was allowed by the trial Court. Against the aforesaid order, petitioner Haleeman Bee filed an appeal under Section 384 read with Section 388 (2) of the Act for grant of succession certificate, which was dismissed by the appellate Court by the impugned order. Thereafter, she filed the present petition before this Court

under Article 227 of the Constitution of India.

3. At the very outset, learned counsel for the petitioner ask to satisfy the Court as to the maintainability of this petition under Article 227 of the Constitution of India in view of objection raised by the Registry.

4. Learned counsel for the petitioner submits that an order passed in original proceedings alone is revisable and that an appellate order is not amenable to revisional jurisdiction of the High Court under Section 115 of the C.P.C. 1908 and the law has been laid down by full Bench of the Allahabad High Court in *Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarkas Diesh Dayal and Ors. AIR 1979 All 218*. Learned counsel for the petitioner submits that impugned order is not passed in original proceedings and is passed in appeal under Section 384 of the Indian Succession Act, so revision under Section 115 of the C.P.C. is not maintainable and only the remedy against this order passed in appeal, is a petition under Article 227 of the Constitution of India.

5. Heard learned counsel for the petitioner on question of maintainability.

6. Here, it is necessary to note that the case, where from the instant revision arises, was one for grant a Succession Certificate under Section 372 of the Act. Part 10 of the Indian Succession Act deals with succession certificates.

7. Section 371 contained in this Part provides that it is the District Judge in whose jurisdiction the deceased ordinarily resided at the time of his death or the District Judge within whose jurisdiction any part of the property of the deceased may be found, is competent to grant a certificate.

8. Section 372 and 373 lay down the contents of an application for grant of a certificate as also the procedure for dealing with such an application.

9. Section 384 provides for an appeal to the High Court from an order of the District Judge granting, refusing or revoking a certificate issued under Part 10. Sub-section (3) of this Section also provides what is provided by sub-section(3) of Section 388 of the Indian Succession Act, 1925.

10. Sub-section (1) of Section 388 empowers the State Government to bestow upon any Court, inferior in grade to a District Judge, the functions of a District Judge under this Part. It, therefore, follows that where the power conferred by Section 371, upon the District Judge to grant a succession certificate, on account of a notification by the State Government, is being exercised by a Court subordinate in grade to the District Judge, the appeal would lie to the District Judge under Section 384.

11. Such appellate order, in view of sub-section (3) of Section 384, is final subject to a reference or revision or review in accordance with Code of Civil Procedure, 1908 by the High Court. It means that the appellate jurisdiction exercised by the District Judge, while passing the order impugned, herein, is a power concurrent with that of the High court and this appellate power has been exercised by the District Judge only because the order on the application under Section 372 had been passed by a Court subordinate in grade to the District Judge.

12. Therefore, the appellate order is final subject to any reference revision or review by the High Court in accordance with the powers for the said purpose existing under the Code of Civil Procedure, 1908.

13. In this connection it would also be relevant to note that application of the provisions of the Code of Civil Procedure, 1908, be it under sub- section (3) of Section 384 or under sub-section (3) of Section 388 are by reference to the provisions in the Code of Civil Procedure, regarding the power of reference, review and revision.

14. A provision of another Act can be applied to proceedings under another enactment. Such application may be either by way of reference or by way of incorporation.

15. It is settled law that where the provisions of another Act are made applicable in another enactment, by reference, such reference would necessarily entail application of the referred provisions in the manner, the said provision exists, on the date of its application. However, in case, the provisions are applied by incorporation, the provision as it existed on the date of incorporation would be applicable.

16. There is no doubt that the provisions of reference, revision, and review be it under Section 384 or Section 388, are by reference. Therefore, the provisions relating to reference review and revision in the Code of Civil Procedure, as existing on the date of their application, are to be taken into consideration.

17. The provision of revision as provided under the Code of Civil Procedure, 1908 can therefore, be invoked only to the extent the revisional powers are conferred upon the High Court by Section 115 of the Code of Civil Procedure, 1908 as it stands today.

18. As per above discussion, while Section 384 provides an appeal to the High Court against the order of the District Judge, Section 388(2) provides that in case the order is passed on the succession application by a court inferior to the court of District Judge, such an appeal would lie to the Court of District Judge. Section 384(3) and Section 388(3) proviso are also similarly worded. Section 384(3) provides that an order of the District Judge passed under Part-X is final subject to the appeal, as provided under Sub-Section (1) and also subject to the provisions, as to reference or appeal or review, as provided and

applied by Section 141 of the C.P.C. Similarly, Section 388(3) provides that an order passed by a court inferior to the District Judge shall be final subject to an appeal to the District Judge and subject to the provisions as to reference or appeal or review, as provided and applied by Section 141 of the C.P.C. Section 141 of the C.P.C. reads as :-

"Miscellaneous proceedings:- The procedure provided in this Court in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction.

[Explanation-In this Section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.]"

19. Thus, by invoking Section 141, the provisions of C.P.C. are made applicable and thus any revision, if maintainable, would be as per the provisions of C.P.C. Section 384(3) or Section 388(3) by themselves **do not provide for any revision. They only provide for a revision, as provided under the C.P.C.**

20. In the State of Uttar Pradesh, there are amendment in 1976 vide "Central Amending Act 104 of 1976" in Section 115 of the C.P.C., which provides for revision against certain orders. The opening line of Section 115 of the C.P.C. as amended in the State of U.P. reads as under:-

"A superior Court may revise an order passed in a case decided in an original suit or other proceedings."

21. Thus, in State of U.P. due to the aforesaid amendment, a revision is maintainable only with regard to original suit or proceedings similar to original suit and is not maintainable with regard to any order passed in an appellate proceeding but in Madhya Pradesh, which is a different State, there are provisions of reference, revision and review be it under Section 384 or Section 388 of the Act, therefore, the provisions relating to the reference, review and revision in the Code, as existing on the date of their application, are to be taken

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into consideration.”

22. Thus, there is alternative remedy under Section 388(3) of the Indian Succession Act read with Section 115 of the Code of Civil Procedure. Accordingly, this petition under Section 227 of the Constitution is not maintainable and only civil revision is maintainable.

(Rajendra Kumar (Verma))
Judge

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THE HIGH COURT OF MADHYA PRADESH JABALPUR

(SB : HON. SHRI JUSTICE RAJENDRA KUMAR (VERMA))

M.P. No.1325/2021

Petitioner: Haliman Bee

Vs.

Respondent: Joya Khan and others

O R D E R

Post for: 08-11-2021

**(Rajendra Kumar (Verma))
Judge
-11-2021**

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