

S.K.MISHRA, J.

CIVIL REVISION NO.177 OF 2002 (Decided on 20.05.2011)

JAGANNATH SAHOO & ANR.

.....Petitioner

.Vrs.

BALARAM SAHOO

..... Opp.Party.

INDIAN SUCCESSION ACT, 1925 (ACT NO.39 OF 1925) – S.264, 265.

For Petitioner - M/s. S.Nayak, A.K.Parida.
For Opp.Parties - M/s. S.B.Das, B.R.Dash, G.K.Mishra,
M.Mohapatra & R.Khatun

S.K.MISHRA, J. The question that arises in this Civil Revision is whether Civil Judge (Senior Division) has jurisdiction to revoke a letter of administration granted under the Indian Succession Act, 1925 in favour of one of the parties, on an application filed by another party.

2. Facts of the case are not disputed. The petitioners were granted letter of administration in their favour vide order dated 17.12.1990 passed by the learned Civil Judge (Senior Division), Puri with respect to a will executed on 05.01.1985 by one Harichandan Sahu. About four years thereafter, one Balaram Sahu claiming to be the son of late Harichandan Sahu initiated Misc. Case No.300 of 1994 praying to revoke the grant on certain grounds. The original legatees were noticed. They appeared and raised objections that Civil Judge (Senior Division), Puri has no jurisdiction to revoke the grant. The opposite party filed objection to such petition.

3. After hearing both the parties, the learned Civil Judge (Senior Division), Puri held that the court of Civil Judge (Senior Division) has jurisdiction, as per the notification issued by the High Court of Orissa under Section 23 of the Bengal, Agra and Assam Civil Courts Act, 1887, hereinafter referred to as “the Civil Courts Act, 1887” to revoke the letter of administration granted by it.

4. In assailing this order the learned counsel for the petitioners took pains to submit that the Indian Succession Act, 1925 envisages the powers of the District Judge both to grant and revoke probate or letter of administration. He, further, argues that though the Civil Judge (Senior Division) has been conferred with the jurisdiction to grant probate or letter of administration, the power of revoking the same has not been expressly conferred on him, and therefore, the court of Civil Judge (Senior Division) do not have the requisite jurisdiction to decide an application for revoking a probate or letter of administration. Therefore, the learned counsel for the petitioners prays that the impugned order be set aside.

Learned counsel for the opposite party, on the other hand, submitted that the power of revocation is inherent in the court, which has been vested with the power of

granting letter of administration. It is further submitted that the distinction between a notification under the Indian Succession Act, 1925 to confer powers of the District Delegate is quite different from the notification under Section 23 of the Civil Courts Act, 1887. Moreover, it is contended that the G.R.C.O. also classifies the applications for revocation of probate or letter of administration in the same manner as application for grant of probate or letter of administration. Alternatively, it is submitted that since the ingredients of Section 115 of Code of Civil Procedure, 1908 are not satisfied in this case, the revision application is not maintainable and it should be dismissed.

5. In order to appreciate the notification in question, it is appropriate to quote the same:

"NOTIFICATION"

The 22nd November, 1961

No.159 A. In exercise of the powers conferred by Section 23 of the Bengal, Agra and Assam Civil Courts, Act, 1887 (Act 12 of 1887), the High Court are pleased to authorize the Courts of all Principal Subordinate Judges to try and dispose of proceedings for grant of probates and letters of administration under the Indian Succession Act 1925 (Act 39 of 1925), transferred to their files by the District Judge.

By order of the High Court

Sd. T.V. Rao
Registrar "

It is apparent on the face of it that the notification does not confer the power of revocation of a letter of administration or probate, but it only confers the power to grant of such probates, etc. The important aspect of the case is whether to read into it any such power of revocation though not specifically mentioned.

6. The golden rule of construction of statute, and in fact, all instruments have been, thus, stated; - "The grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistent but no further." (**Shiv Shakti Co-operative Housing Societies Vs. M/s Swaraj Developers**, 96(2009) CLT 201(SC)).

The Hon'ble Supreme Court further cautioned that the latter part of the golden rule must, however, be applied with much caution, "if" the precise words used are plain and unambiguous, then the courts are compelled to construe them in their ordinary sense, even though it may lead certain absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But courts assume the functions of legislators when they depart from the ordinary meaning of the precise words used because of the fact that the court is of the opinion that an absurdity or manifest injustice from adherence to their literal meaning arises.

7. In the aforesaid case, the Hon'ble Supreme Court has held that while interpreting a provision of law, the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to abuse the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. The legislative *casus omissus* cannot be supplied by the judicial interpretative process. The Hon'ble Supreme Court further held that two principles of construction, one relating to *casus omissus* and other in regard to reading the statute as a whole appears to be well settled. Under the first principle a *casus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of section should be construed with reference to the context and every clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature.

8. Keeping in view the settled principle of law, it is necessary to examine the various provisions of the Indian Succession Act, 1925 and to gather whether such a notification issued by the High Court of Orissa in consultation with the State Government, which is, in fact, contains *casus omissus* as regards the jurisdiction to revoke probate or letter of administration. Chapter-IV of the Indian Succession Act, 1925, hereinafter referred to as "the Act, 1925" provides for practice of granting and revoking probate or letter of administration. Section 264 of the Act, 1925 provides for jurisdiction of District Judge. The same reads as follows:-

" 264. Jurisdiction of District Judge in granting and revoking probates etc.-(1) the District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district. (2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras, and Bombay, shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorized it so to do.

Thus, it is clear that the Act recognizes the District Judge having jurisdiction both to grant and revoke probate and letter of administration in all cases within his territorial jurisdiction.

Section 265 of the Act, 1925 provides for delegation of jurisdiction to district delegates. It reads as follows:-

" 265. Power to appoint delegate of District Judge to deal with non-contentious cases.-(1) The High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointments shall not be without the previous sanction of the State Government.

(2) Persons so appointed shall be called "District Delegates".

It is not disputed in this case that no notification has been issued regarding the appointment of any such district delegates by the High Court of Orissa. However, a notification has been issued under the Civil Courts Act of 1887. Section 286 of the Act, 1925 provides that the district delegate do not have the jurisdiction to grant probate or letter of administration in which there is contention as to the grant. "Contention" has been explained to mean the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding. It is not disputed that a notification under the Indian Succession Act, 1925 has not been issued by the Orissa High Court. Rather, the notification in exercise of the jurisdiction under Section 23 of the Civil Courts Act, 1887 has been issued. Section 23 of the Civil Courts Act, 1887 reads as follows:-

" Section **23**: Exercise by Sub-ordinate Judge or Munsif of jurisdiction of District Court in certain proceedings:-

(1) The High Court may, by general or special order, authorize any Subordinate Judge or Munsif to take cognizance of, or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The proceedings referred to in Sub-Section (1) are the following, namely:-

(a) X X X X X X X

(b) The proceedings under the Indian Succession Act, 1865 (10 of 1865) and the Probate and Administration Act, 1881 (5 of 1881), which cannot be disposed of by District Delegates; and"

9. In interpreting these provision of law, this Court in **Loknath Bhoi vs. Gaya Prasad Bhoi and two others**, Vol. 98 (2004) CLT 328 has held that State Government Notification No.IIJ-93/60/7658-Judl., dated 14.11.1961 have invested power under Chapter-X of the Succession Act, 1925 in favour of the Civil Judges within local limits of their respective jurisdiction. Civil Judges (Junior Division), i.e. Munsifs have been authorized to entertain such applications within the limits of their respective pecuniary jurisdiction. But Section 18 of Orissa Civil Court Acts, 1984, hereinafter referred to as the Act, 1984 for brevity, provides that the High Court may, by general or special order, authorize any Civil Judge (Senior Division) to take cognizance of any proceeding or class of proceedings under the Indian Succession Act and the District Judge may transfer such cases to a Civil Judge (Senior Division) under his administrative control when such cases can not be disposed of by a district delegate. Section 265 of the

Succession Act, 1925 provides that the High Court may appoint such Judicial Officers within any district, within such local limits as may be prescribed by the High Court, to act for the District Judge as delegates to grant probates and letters of administration in non-contentious cases. Where such High Court is not established by royal charter, then such appointment be made by the High Court with the previous sanction of the State Government. Therefore, as per Notification No.159 of November, 1961 of the High Court of Orissa such authorization has been made in favour of principal subordinate judges (Civil Judge, Senior Division) to try and dispose of proceedings for grant of probates and letters of administration under the Succession Act, 1925 transferred to their files by the District Judge. It, thus, appears that there is no inconsistency in the authorization of the State Government in the above noted Notification dated 14.11.1961 and provisions under Section 18 of the Act, 1984, inasmuch as, contentious applications under the Succession Act, as per the aforesaid authorizations are to be considered and disposed of by the Civil Judge (Senior Division).

10. It is worthwhile to mention here that Section 18 of the Act, 1984 confers power on the High Court to authorize any Civil Judge (Senior Division) to take cognizance of or any District Judge to transfer to a Civil Judge (Senior Division) under his administrative control, any proceedings or class of proceedings under the Indian Succession Act, 1925, which cannot be disposed of by a district delegate. It has been reported by the Registry of High Court that no such notification has been issued under Section 18 of the Act, 1984. In such a situation, it is to be seen whether the notification issued by the High Court of Orissa in the year 1961 also confers jurisdiction on the Civil Judge (Senior Division) to revoke letter of administration or probate. It is undisputed that the notification itself do not expressly provide for such jurisdiction for revoking the letter of administration.

11. In such a situation, the Civil Court should be cautious in supplying words and expression not found in the notification. It is worthwhile to mention here that though the Bengal, Agra and Assam Civil Courts Act, 1887 has been repealed by passing of Orissa Civil Courts Act, 1984 by virtue of provisions of Sub-section (2) of Section 25, the Notification issued by the High Court has not been nullified. Sub-section 2 of Section 25 provides that notwithstanding such repeal, all courts constituted, appointments made, rules framed, notifications and order issued, jurisdictions and powers conferred and lists published under the Act so repealed shall be deemed to have been respectively constituted, made, framed, issued conferred and published under the Orissa Civil Courts Act. Therefore, the notification is not in dispute. What is disputed in this case is the jurisdiction that the notification confers.

12. By reading the relevant provisions of law, which has been quoted above, this Court comes to the conclusion that the Indian Succession Act, 1925 clearly lays down the jurisdiction of the District Judge to grant as well to revoke probate or letter of administration. It also speaks of jurisdiction of district delegate to decide non-contentious cases. Section 23 of the Civil Courts Acts, 1887 provides that High Court may by general or special order authorize any subordinate judge or munsif to take cognizance or any District Judge to transfer to a subordinate judge or munsif under his administrative control, any such proceeding. Section 23 of the said Act provides for notification to be issued for proceedings under the Indian Succession Act, 1925 and probate and letter of administration, which cannot be disposed of by the district

delegates. The intention of the legislator appears that the High Court has the powers to issue a notification taking into consideration the distinction of contentious and non-contentious cases and the jurisdiction of the district delegate or any court subordinate to the District Judge to dispose of the non-contentious cases. These provisions do not provide for revocation of probate or letter of administration. Even, Section 18 of the Orissa Civil Court Act, 1984 provides that the High Court may, by general or special order authorize any Civil Judge (Senior Division) to take cognizance of any proceeding or class of proceedings, which can not be disposed by a district delegate. There is no mention of any jurisdiction to revoke such probates, etc. The dichotomy is clear. The district delegate has the jurisdiction only to decide non-contentious cases. The intention of the legislator appears to be doing away such distinction and to allow the Civil Judge (Senior Division) in case of notification issued by the High Court to decide the contentious cases only but from the provisions nowhere it is borne out that the legislator also intended to confer the Civil Judge (Senior Division) with the jurisdiction to revoke the probate or letter of administration granted by it.

In that view of the matter, this Court comes to the conclusion that the Civil Judge (Senior Division) has no jurisdiction to entertain an application for revocation of letter of administration.

13. The learned counsel for the opposite party submitted that the GRCO reflects that all petitions for revocation shall be treated in the same manner as that of application for probate or letter of administration. It appears in the form of a note to clause-430, which provides for treating an application for probate and letter of administration as miscellaneous judicial cases till contest and then as a suit. Those provisions are intended to guide the nomenclature and registration of a particular class of cases and it does not reflect that the GRCO confers power on the Civil Judge (Senior Division) of revocation also.

14. The Learned counsel for the opposite parties has also cited the reported cases **Gaya Prasad Bhoi and another vs. Loknath Budhia Bhoi and others**, AIR, 1996 Orissa 44 and **Mr. Doughlas Garden Wilson vs. None**, 2008 (I) OLR-823 . In the first case, though a petition was filed before the Civil Judge (Senior Division), Sambalpur for revocation of certificate granted to the petitioner with a prayer to grant of the same in favour of the opposite party, the Civil Judge (Senior Division) passed orders with respect to first prayer only. This Court held that, in such a case, where prayer is combined one and prayer for grant of certificate has not been considered specifically, the only conclusion possible is that the prayer has been rejected by application of the principle contained in explanation-V to Section 11 of the Code of Civil Procedure, 1908. In **Gaya Prasad Bhoi's** case the question whether the Civil Judge (Senior Division) has jurisdiction to revoke a letter of administration or probate was not decided. Hence, the case is not applicable to this case. Similarly in the later case of **Mr. Doughlas Garden Wilson vs. None**, the question involved in this case is not decided, and therefore, the ratio decided in that case is not applicable.

15. The residual question is regarding the maintainability of impugned order. The law is well settled in **Sitaram alias Mahendra Ghose vs. Sri Antaryami Mohapatra and 18 others**, 2003 (II) OLR-409. This Court has held that a Civil Revision at the

instance of a litigant is maintainable on satisfaction of the following circumstances cumulatively:

- “(a) (i) Impugned order amounts to a case decided.
 (ii) Such order must have been passed by any Court subordinate to such High Court.
 (iii) Such order must not be appealable one.
- (b) There must be allegation of jurisdictional error, i.e. to say.
 - (i) exercise of jurisdiction not vested in the Court below by law, or
 - (ii) a jurisdiction vested in it by law was failed to be exercised, and/or
 - (iii) has acted in the exercise of its jurisdiction illegally or with material irregularity.
- (c) If the impugned order had been passed in favour of the revision - petitioner then that would have finally disposed of the suit or other proceedings.”

16. Applying this principle to this case, it is seen that the order impugned is a case decided as it decided in an important aspect of the case regarding jurisdiction. Secondly, it is seen that there is no provision of appeal against such an order. Thirdly, it is seen that the allegation is regarding jurisdiction or complete lack of jurisdiction of the Civil Judge (Senior Division) and fourthly, it is seen that if the impugned order has been passed in favour of the revision-petitioners, then it would have finally disposed of by the proceeding as the same petition has to be returned to be presented before the appropriate court.

17. Generally speaking, when a court finds that the petition or plaint is filed beyond its jurisdiction then the proper course is to return it to the presenter. In this case, however, the matter is pending since 2002 and such an order of return of petition will further delay the matter. Keeping such aspect in view, I allow the revision by setting aside the order impugned and direct that the Civil Judge (Senior Division), Puri shall submit the records to the District Judge, Puri. The learned District Judge shall then afford a reasonable opportunity to the parties for filing their pleadings, if not filed, and try and dispose of the case as expeditiously as possible, preferably by the end of September, 2011. The parties are directed to appear before the Civil Judge (Senior Division), Puri on 27.06.2011. On that date the records shall be submitted to the District Judge and a date be given to the parties to appear before the District Judge either in person or through pleader. No costs.

Revision allowed.