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JOGINDER PAL

v.

INDIAN RED CROSS SOCIETY AND ORS.

SEPTEMBER 29, 2000

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[K.T. THOMAS, R.P. SETHI AND S.N. VARIAVA, JJ.]

*Indian Succession Act, : Part X Sections 373 and 387.*

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*Succession Certificate—Grant of—Res judicata—Principles—Applicability of—Succession Certificate granted to applicant on the basis of a subsequent Will—Aggrieved party filed a suit based on an earlier Will—High Court remanded suit for trial—Correctness of—Held: Proceedings for grant of Succession Certificate are summary in nature—No rights are finally decided in such proceedings—Decision given under Part X of the Act is outside the purview of Explan. VIII to S.11 CPC—Findings given in such summary proceedings are not final and do not operate as res judicata—Hence, suit is not barred by principles of res judicata—Code of Civil Procedure, 1908, Explan. VIII to S.11.*

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The Predecessor-in-interest of the appellant executed a Will in respect of her movable and immovable properties in favour of the Respondent Society. Subsequently, the said testator executed another Will by which she cancelled the earlier Will and bequeathed all her properties to the appellant.

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After the death of the said testator the respondent society applied for a Succession Certificate in respect of the properties of the said testator. The appellant got impleaded as a party to this application.

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The trial court dismissed the application and granted a Succession Certificate to the appellant on the basis of the subsequent Will. The appeal and the Revision filed by the respondent society were dismissed.

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Thereafter, the respondent society filed a suit for a declaration that it was the lawful owner of the assets of the said testator on the basis of the earlier Will. The Trial Court rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the ground that the plaint did not make out any case. The appeal filed by the respondent society was allowed and the case remanded back for trial on merits. The High Court dismissed the appeal filed

by the appellant. Hence this appeal.

On behalf of the appellant it was contended that the trial for grant of Succession Certificate was not disposed of in a summary manner; that issues had been raised, parties had been allowed to lead evidence and decision on merits was given by the court; and that the suit for declaration was barred on the principles of res judicata under Explanation VIII to Section 11 CPC.

Dismissing the appeal, this Court

**HELD :** Sections 373, 383 and 387 of the Indian Succession Act, make it clear that the proceedings for grant of succession certificate are summary in nature and that no rights are finally decided in such proceedings. Section 387 permits the filing of a suit or other proceedings even though a succession certificate might have been granted. [632-E-F]

2. Any adjudication under Part X of the Act does not bar the same question being raised between the same parties in a subsequent suit or proceeding. Section 387 of the Act provides that a decision given under Part X of the Act is outside the purview of Explanation VIII to Section 11 of the Code of Civil Procedure, 1908. Section 387 gives a protective umbrella to ward off from the rays of res judicata to the same issue being raised in a subsequent suit or proceedings. [632-H; 633-A]

3. Section 387 of the Act specifically permits filing of a subsequent suit. Merely because issues were raised and/or evidence was led, does not mean that the findings given thereunder are final and operate as res judicata. Even in summary proceedings issue can be raised and/or evidence can be led. The proceedings remain summary even though the Court may, in its discretion, permit leading of evidence and raising of issues. So in a subsequent suit the crucial issues must be decided afresh untrammelled or uninfluenced by any finding made in the proceedings for grant of Succession Certificate. [633-B-C]

*Madhvi Amma Bhawani Amma v. Kunjikutty Pillai Meenakshi Pillai*, JT (2000) 5 SC 336, relied on.

*Smt. Sawarni v. Smt. Inder Kaur*, (1996) 7 JT SC 580 and *Mohan Lal v. Kartar Singh*, [1995] Supp. 4 SCC 684, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5664 of 2000.

From the Judgment and Order dated 5.10.99 of the Punjab and Haryana

**A** High Court in S.A.F.O. No. 14 of 1997.

A.S. Sohal, R.P. Mahajan and Sanjeev Malhotra for the Appellant.

Anil Mittal and K.K. Gupta for the Respondent No. 1

**B** R.C. Kohli for the Respondent Nos. 2-7.

The Judgment of the Court was delivered by

**S. N. VARIAVA, J.** Leave granted.

**C** This Appeal is against a Judgment of the Punjab & Haryana High Court dated 5th October, 1999 by which the second Appeal filed by the Appellant herein has been dismissed.

Briefly stated the facts are as follows:

**D** One Ms. Raj Mohini possessed moveable and immovable properties. She was unmarried and did not have any issue. She executed a Will dated 2nd April, 1985 in favour of the 1st Respondent, which is the Indian Red Cross Society. The Appellant is related to Ms. Raj Mohini. He is the son of the maternal uncle of the lady. On 12th June, 1987 Ms. Raj Mohini executed another Will by which she cancelled the earlier Will and bequeathed all her properties to the Appellant. The said Raj Mohini died on 27th April, 1998. (For  
**E** sake of convenience she will hereinafter be referred to as the said deceased.)

The 1st Respondent applied for a Succession Certificate in respect of the movable assets of the said deceased. They claimed to be beneficiaries under the Will dated 2nd April, 1985. When the Appellant learnt about this  
**F** Application he got himself impleaded as a party to that Application. The Appellant also filed a Petition for probate of the Will dated 12th June, 1987. The 1st Respondent applied for stay of this Petition under Section 10 of the Code of Civil Procedure on the ground that the parties and issues, in the Probate Petition and in their Application for Succession Certificate; were the  
**G** same. The Probate Petition was stayed.

In the Application for Succession Certificate the Court raised issues as follows:

**H** "1. Whether Miss Raj Mohini executed a valid Will dated 2.4.1985 in favour of the Red Cross Society-appellant as alleged ?"

2. Whether Miss Raj Mohni executed a valid Will in favour of Joginder Pal, respondent no. 2 on 12.6.87 as alleged ?" A

Parties were allowed to lead oral and documentary evidence. Ultimately by an Order dated 30th March, 1993 the Application was dismissed. The operative part of the Order reads as follows:

"5. For the above stated reasons I do not find any merits in the instant application and therefore the same is dismissed. However, the respondent namely, Joginder Pal is entitled to receive the liquid assets of deceased Raj Mohni as her only legal heir on the basis of will executed in his favour by deceased Raj Mohni during her life time in sound disposing mind. The said will is Ex. R.1 dated 12.6.87 on the record. The respondent no. 2 is directed to file security in the sum of Rs. 2,50,000 by filing a personal bond and surety bond. The application is disposed of accordingly. File be consigned to the record room." B C

Thus a Succession Certificate was granted to the Appellant in respect of the Will dated 12th June, 1987. The Appellant withdrew his Probate Petition. D

At this stage, it must be mentioned that, on 20th August, 1996, an Appeal filed by the 1st Respondent against the Order dated 30th March, 1993 was dismissed. A Revision filed against that order was dismissed by the High Court on 10th October, 1996. E

1st Respondent then filed this Suit for a declaration that they were the lawful owner and in possession of the assets of the said deceased. They have based their claim on the Will dated 2nd April, 1985. The Appellant filed an Application that the plaint did not make out any case and that it should be rejected under Order VII Rule 11 of the Code of Civil Procedure. F

By an Order dated 18th January, 1997 the Trial Court rejected the plaint under Order VII Rule 11 C.P.C. The 1st Respondent preferred Civil Appeal No. 73. By a Judgment dated 5th April, 1997 this Appeal was allowed. The case was remanded back for trial on merits. The Appellant preferred Second Appeal No. 14 of 1997. This was dismissed by the impugned Judgment dated 5th October, 1999. G

Mr. Sohal submitted that the impugned Judgment should be set aside inasmuch as a full trial had already taken place in the Application, filed by the 1st Respondent, for Succession Certificate. He submitted that those H

- A proceedings were not disposed off in a summary manner. He submitted that issues had been raised, parties had been allowed to lead evidence. He submitted that a decision on merits had been given by that Court. He submitted that the 1st Respondent now could not claim any rights under the Will dated 2nd April, 1985. He also relied upon Explanation VIII of Section 11 of the Code of Civil Procedure. He submitted that the principles of res-judicata would also apply.

- B In support of his submission Mr. Sohal relied upon the case of *Smt. Sawarni v. Smt. Inder Kaur and others*, reported in 1996(7) JT S.C. 580. In this case it has been held by this Court that rights flowing from a succession certificate cannot be ignored without getting it annulled. It has been held that the lower Court committed a serious error of law in ignoring the Will and the succession certificate which unequivocally clinched the issue. It must, however, be noted that these observations are made in the context of the facts of that case. In that case, the plaintiff had filed a suit claiming her share in the property of the deceased on the basis of a Will and a Succession Certificate obtained by her. The lower Court had, on basis of oral and documentary evidence, concluded that the plaintiff had no right in the assets of the deceased. The lower Court had ignored the Will and the Succession Certificate. It is in that context that the above observations had been made.

- C Mr. Sohal also relied upon the case of *Mohan Lal v. Kartar Singh*, reported in [1995] Supp 4 SCC 684. In this case, the effect of Sections 43 and 47 of the Pepsu Tenancy and Agricultural Lands Act, 1955 were considered. This Court held that even though proceedings under Section 43, were summary in nature the legislature did not exclude from the purview of Section 43 cases where disputes were complicated because of facts and pleas raised by the contesting parties. This Court held that the decision of the Collector becomes final in the sense that it could not be called in question in any Court. The finality attached to the decision of the Collector was in view of Section 47. This Section barred jurisdiction of Civil Courts in matters which were required to be settled, decided and/or dealt with by the Collector.

- D Relying on these two decisions Mr. Sohal submitted that even though proceedings for successions certificate are summary in nature, the finding given therein and the succession certificate issued cannot be ignored without getting it annulled. He further submitted that in cases like the present case where issues had been raised, evidence had been led by the parties and the Court did not proceed in a summary fashion the finding would also become final and would operate as res-judicata between the same parties.

In order to consider the submission of Mr. Sohal the provisions of the Indian Succession Act require to be looked into. The Indian Succession Act deals with grant of Letters of Administration (with or without the will being annexed thereto) or grant of Probate or grant of Succession Certificates. It is admitted that, by virtue of Section 57, it is not necessary to apply for Letters of Administration or Probate in the States of Punjab and Haryana. The deceased Mohini was a resident of Punjab and, therefore, no probate was required. It must, however, be noted that Section 273 of the Indian Succession Act, provides that probate or letters of administration have effect over all the property and estate, movable or immovable, of the deceased throughout the State in which they have been granted and such probate should be conclusive as to the representative title of the executor or legatee.

Part X of the Indian Succession Act deals with Succession Certificates. Sections 373, 383(e) and 387 are relevant. They read as follows:

“373. *Procedure on application.*—(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing-

- (a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and
- (b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

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 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 *prima facie* the best title thereto.

4. When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding

- A to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants. (emphasis supplied)

383. *Revocation of certificate.*—A certificate granted under this Part may be revoked for any of the following causes, namely:—

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(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

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387. *Effect of decisions under this Act, and liability of holder of certificate thereunder.*—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, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.”

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- E These Sections make it clear that the proceedings for grant of succession certificate are summary in nature and that no rights are finally decided in such proceedings. Section 387 puts the matter beyond any doubt. It categorically provides that no decision under Part X upon any question of right between the parties shall be held to bar the trial of the same question in any suit or any other proceeding between the same parties. Thus Section 387 permits the filing of a suit or other proceeding even though a succession certificate might have been granted.
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This question was also considered by this Court in the case of *Madhvi Amma Bhawani Amma & Ors. v. Kunjikutty Pillai Meenakshi Pillai & Ors.*, reported in JT (2000) 5 SC 336. In this case after having considered the provisions of Sections 370 to 390 of the Indian Succession Act as well as Section 11 of the Code of Civil Procedure, it has been held that any adjudication under Part X does not bar the same question being raised between the same parties in a subsequent suit or proceeding. It has been held that Section 387 of the Indian Succession Act takes a decision given under Para X of the

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H Indian Succession Act outside the purview of Explanation VIII to Section 11

of the Code of Civil Procedure. It has been held that Section 387 gives a protective umbrella to ward off from the rays of res judicata to the same issue being raised in a subsequent suit or proceeding. We are in full agreement with the view expressed in this case. A

In view of the specific provisions of law it is not possible to accept Mr. Sohal's submissions. Section 387 specifically permits the 2nd Respondent to file a subsequent suit. Merely because issues were raised and/or evidence was led, does not mean that the findings given thereunder are final and operate as res-judicata. Even in summary proceedings issue can be raised and/or evidence can be led. The proceedings remain summary even though the Court may, in its discretion, permit leading of evidence and raising of issues. So in a subsequent suit the crucial issues must be decided afresh untrammelled or uninfluenced by any finding made in the proceedings for grant of Succession Certificate. B C

In this view of the matter, we see no substance in this Appeal. The same stands dismissed. There will be no order as to costs. D

V.S.S.

Appeal dismissed.