A MADHVI AMMA BHAWANI AMMA AND ORS.

v.

KUNJIKUTTY PILLAI MEENAKSHI PILLAI AND ORS.

APRIL 27, 2000

B [A.P. MISRA AND M.B. SHAH, JJ.]

Code of Civil Procedure, 1908—S. 11 Explanation VIII.

Principle of Res Judicata—Applicability of—Succession Certificate—
C *Grant of—Whether operates as res judicata to a suit for partition between the same parties?—Held, No-mere grant of Succession Certificate cannot be considered to be final decision on an issue between the parties—Findings incidently recorded on an issue not raised would not operate as res judicata between the same parties in subsequent suit—Thus, High Court erred in apply-*
D *ing the principle of res judicata—Indian Succession Act, 1925—Ss. 372, 373, 381 and 387.*

Indian Succession Act, 1925—S. 387—Succession Certificate—Grant of—Held, would not fall within the purview of Explanation VIII to S. 11 of the Code—Code of Civil Procedure, 1908—S. 11 Explanation VIII.

E *Words & Phrases :*

"Good faith"—Meaning of in the context of S. 381 of the Indian Succession Act, 1925.

F **Respondent No. 1-plaintiff filed a suit for declaring him as the legal heir of deceased and for partition of plaint schedule properties. He also filed an application for grant of Succession Certificate for receiving money from the Insurance Company. Appellant-defendants contested the suit stating that the plaintiff was only their uterine brother and thus was not entitled to succeed as legal heir. Trial Court decreed the suit declaring the**
G **plaintiff as a sole heir and also allowed the application for grant of Succession Certificate. Appellate Court set aside both the orders of the Trial Court in suit and grant of Succession Certificate. However, High Court in second appeal set aside the order of Appellate Court and remanded the matter back to Appellate Court for reconsideration. On remand, the ap-**
H **pellate court dismissed the appeal of the appellant by confirming the trial**

court judgment. Thereafter, appellants' appeal before the High Court was dismissed on the ground that the order granting Succession Certificate would operate as *res judicata* to the suit for partition between the parties. Hence the present appeal.

On behalf of the appellants it was contended that proceeding for the grant of Succession Certificate was a summary proceeding and the same cannot operate as *res judicata* to a proceeding in a regular suit filed in the civil court even if it was between the same parties or issues are the same; the grant of Succession Certificate under Section 373 has only the effect that it was conclusive as against the person owing debts or liability on securities but it in no way puts any legal embargo on the parties to prove to the contrary in any subsequent suit or proceedings.

On behalf of respondents it was contended that as both, the suit and the application for the grant of Succession Certificate were heard and decided by the same court, both at the trial stage and the first appellate stage and since appellant did not prefer any appeal against the order passed by the first appellate court in the connected proceeding arising out of the proceedings for the grant of Succession Certificate, the said decision becomes final and it would operate as *res judicata* to the pending proceedings in the second appeal arising out of the suit; that even though the court deciding the question of grant of Succession Certificate, may have limited jurisdiction and also may not have jurisdiction to decide the regular suit for partition, yet issues decided therein would fall within the ambit of *res judicata* in view of Explanation VIII to S. 11 of the Code.

Allowing the appeal, setting aside the Order of High Court and remanding the matter to the High Court, the Court

HELD : 1.1. Any decision made in proceeding for the grant of Succession Certificate under S. 372 of the Indian Succession Act, 1925 would not bar any party to the said proceeding to raise the same issue in a subsequent suit. Hence, the High Court fell into error in applying the principle of *res judicata* to the second appeal of the appellant. Even if no appeal is preferred by the appellant against the decision of the trial court arising out of proceedings for the grant of Succession Certificate, the principle of *res judicata* would still not apply. [762-G-H]

1.2. S. 373(3) of the Act reveals that the adjudication is in summary

A proceedings and if the question of law and fact are intricate or difficult, it could still grant the Succession Certificate based on *prima facie* title. In other words the grant of certificate under it is only a determination of *prima facie* title. This as a necessary corollary confirms that it is not a final decision between the parties. So, it cannot be construed that mere grant of such certificate or a decision in such proceeding would constitute to be a B decision on an issue finally decided between the parties. That being so the principle of *res judicata* cannot be made applicable to a case in a subsequent suit. [760-B-C]

1.3. Further, S. 381 of the Act provides that the Succession Certificate merely affords full indemnity to the debtor for the payment he makes C to the person holding such certificate. The use of words "good faith" in Section 381 reinforces that decision in these proceedings are not final. When statute recognises such payment to be in good faith gives clear under current message that there may be in future better claimant but that would not effect the indemnification of the debtor. Thus accumulatively because D of the grant of Succession Certificate being for a limited purpose, limited in its sphere, the declaration of title being *prima facie*, payment tendered is declared to have been made in good faith, leads to only one conclusion that any decision made therein cannot be treated to be final adjudication of the rights of the parties, except such declaration being final for the purpose of E these proceedings. [760-G-H; 761-A; B]

2. Grant of Succession Certificate falls under Part X of the Act ranging between Ss. 370 to 390. S. 387 of the Act lays down that any adjudication made under Part X of the Act including Section 373 does not bar the same question being raised between the same parties in any subsequent suit or proceeding. This provision takes the decisions under Part X F of the Act outside the purview of Explanation VIII to Section 11. Thus no doubt Explanation VIII to Section 11 enlarges the field of *res judicata*, by including in its field the decisions on the same issue, between the same parties even by a court of limited jurisdiction even though such court may not have the competence of deciding such an issue in a suit. But grant of G certificate would not fall within the field of Explanation VIII to Section 11. [761-C; H; 762-B]

Mt. Chario and Anr. v. *Dina Nath and Ors.*, AIR (1937) Lahore 196(2), relied on.

H 3. The principle of *res judicata* as enshrined in Section 11, is evolved

from the maxim "*nemo debet bis vexari pro una et eadem causa*". This principle enunciates that no man should be vexed twice over for the same cause. In order to apply this general principle of *res judicata*, court must first find, whether an issue in a subsequent suit, was directly and substantially in issue in the earlier suit or proceeding, was it between the same parties, and was it decided by such court. Thus there should be an issue raised and decided, not merely any finding on any incidential question for reaching such a decision. So if no such issue is raised and if on any other issue, if incidentally any finding is recorded it would not come within the periphery of the principle of *res judicata*. In the instant case, there was no issue in the proceedings under S. 372 of the Act whether the respondent claiming inheritance in the estate was uterine brother of the deceased, which was the foundation of challenge by the appellants in the suit proceedings. Thus, even if there be any finding regarding any relationship for grant of such certificate, in the absence of any issue it would be of no help to the plaintiff. [757-H; 758-A; C-D; H]

Pawan Kumar Gupta **v.** *Rochiram Nagdeo,* **[1999] 4 SCC 243, relied on.**

Kalipada De and Ors. **v.** *Dwijapada Das and Ors.,* **AIR (1930) PC 22, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1544 of 1990.

From the Judgment and Order dated 26.9.89 of the Kerala High Court in S.A. No. 618 of 1983.

P.S. Poti, T.L.V. Iyer, Ms. Malini Poduval, Manu Krishnan, Ms. Lansinglu Rongmei, Ramesh Babu M.R. and N. Sudhakaran for the appearing parties.

The Judgment of the Court was delivered by

MISRA, J. This appeal is directed against the High Court order dated 26th September, 1989 in second appeal. The short question raised in this appeal is, whether an order granting Succession Certificate under Section 373 of the Indian Succession Act 1925 would operate as *res judicata* to the suit for partition filed in a civil court between the same parties.

The short facts are : the appellants are the defendants in suit No. 20

A of 1974 which is filed by respondent No. 1 Velu Pillai since deceased claiming to be the only legal heir as brother to the estates of one Kizhangumvilayil died intestate. The suit was for declaration, partition and recovery of possession of the plaint schedule properties. The said respondent also filed O.P. No. 33 of 1974 in the same court for obtaining Succession B Certificate for receiving money from Life Insurance Corporation. The plaintiff case in the suit is that he along with Ramakrishna Pillai and the said deceased Thankappan Pillai were the children of one Parameshwaran Pillai and Karthiyayani Amma. Since the deceased Thankappan Pillai had no other legal heir to succeed his estates, he is entitled to be declared as a legal heir to the estates of the said deceased.

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Defendants-appellants contested the said case. They pleaded that plaintiff was only their uterine brother and thus was not entitled to succeed as legal heir. In fact, they are in possession of the suit property which could not be disturbed except by any legal heir. Both, the suits and the said proceeding D under the Indian Succession Act were tried together and decided by a common judgment by the trial court. The trial court held, there was no evidence to show that the marriage between Karthiyayani Amma and Parameshwaran Pillai had been dissolved. The presumption is that Thankappan Pillai was born to Karthiyayani Amma and Parameswaran Pillai. The plaintiff being the real brother of the deceased Thankappan Pillai is entitled to inherit E his property. Thus the trial court decreed the suit declaring the plaintiff as a sole heir and also allowed the said application O.P. No. 33 of 74 by granting the Succession Certificate to the plaintiff. The appellate court set aside both the judgments of the trial court in suit and grant of the Succession Certificate, holding that there was no valid marriage between Karthiyayani Amma and F Parameswaran Pillai. The High Court in second appeal set aside this appellate court judgment as findings were not supported by pleadings in the case hence remanded the case back for reconsideration. After remand, the appellate court dismissed the appeal of the appellant by confirming the trial court judgment. Thereafter the appellant filed the second appeal.

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Submission for the respondent-plaintiff before the High Court was that since appeal was not preferred against the order of the appellate court arising out of the proceeding for the grant of the Succession Certificate, it became final, thus it operates as *res judicata*. The High Court by its impugned order, upheld this contention. Thus High Court dismissed the second appeal on this H limited ground which is impugned before us.

The learned counsel for the appellants submits that proceeding for the grant of Succession Certificate is a summary proceeding and the same can not operate as *res judicata* to a proceedings in a regular suit suit filed in the civil court even if, it is between the same parties or issues are the same. The grant of Succession Certificate under Section 373 has only the effect that it is conclusive as against the person owing such debts or liability on such securities (as in the present case LIC) and it affords full indemnity to such debtor against all such future claimant, when it tenders the amount to such person holding Succession Certificate. The submission is, this is merely a summary proceeding in which adjudication is made *prima facie* as to whom such payment is to be tendered by such debtor. In other words leaves the battle if any *inter se* between claimants to be adjudicated in a regular proceeding. Thus any decision under it has this limited effect, but it in no way puts any legal embargo on the parties to prove to the contrary in any subsequent suit or proceedings. On the other hand learned counsel for the plaintiffs-respondents submits, as both, the suit and the application for the grant of Succession Certificate were heard and decided by the same court, both at the trial stage and the first appellate stage and when the appellant did not prefer any appeal against the order passed by the first appellate court in the connected proceeding arising out of the proceedings for the grant of Succession Certificate, the said decision becomes final and it would operat as *res judicata* to the pending proceedings in the second appeal arising out of the suit. The learned counsel for the respondents also placed strong reliance on Explanation VII to Section 11 of C.P.C. which is quoted hereunder :

> "*Explanation VIII* - An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

Submission thus is even the court deciding the question of grant of Successing Certificate, may have limited jurisdiction and also may not have jurisdiction to decide the regular suiit for parttion, yet issues decided therein would fall within the ambit of *res judicata* in view of the Explanation VIII.

Within the said parameter now we proceed to examine the question raised in this appeal. The principle of *res judicata* as enshrined in Section 11, is evolved from the maxim "*nemo debet bis vexari pro una et eadem*

A *causa*". This principle enunciates that no man should be vexed twice over for the same cause. This principle gradually developed further by bringing within its compass more such litigations. Thus with the passage of time this principle gradually expanded. This shows that sphere of *res judicata* as enshrined in Section 11 C.P.C. is not exhaustive, it is ever growing. One such B example of its growth is exhibited by the incorporation of Explanation VIII in Section 11 by means of Amending Act in 1976. The submissions made are broadly under two heads. Firstly under the broad and general plrinciple of *res judicata* in view of Explanation VIII and Secondly, whether in a proceeding for the grant of Succession Certificate, any adjudication or issue decided therein would operate as *res judicata* to a suit proceeding. In order C to apply the general principle of *res judicata* court must first find, whether an issue in a subsequent suit, was directly and substantially in issue in the earlier suit or proceeding, was it between the same parties, and was it decided by such court. Thus there should be an issue raised and decided, not merely any finding on any incidental question for reaching such a D decision. So if no such issue is raised and if on any other issue, u incidentally any finding is recorded it would not come within the periphery of the principle of *res judicata.*

In *Pawan Kumar Gupta* v. *Rochiram Nagdeo,* [1999] 4 SCC 243 this Court observed that the rule of *res judicata* incorporated in Section 11 of the E Code of Civil Procedure (CPC) prohibits the court from trying an issue which has been directly and substantially in issue in a former suit between the same parties, and has been heard and finally decided by that court. It holds, it is the decision on an issue, and not a mere finding on any incidental question to reach such decision, which operates as *res judicata.*

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For the respondent, reliance was placed in *Kalipada De and Ors.* v. *Dwijapada Das and Ors.,* AIR (1930) PC 22. The reliance is that this decision holds, where a question of relationship between the parties has been decided in a court of limited jurisdiction also operates as *res judicata* to a subsequent suit between the same parties involving the same question of relationship. G Though we shall be referring later, the effect of various provisions of the Indian Succession Act on this question, but suffice it to say that this decision renders no help to the respondent, as in our case there was no issue, in the earlier proceeding, whether uterine brother would be entitled to inherit the estate of the deceased in the proceeding under Section 372 of the Indian H Succession Act, which is the fountation of challenge by the appellant to the

claim of the plaintiff as the legal heir of the deceased. Even for applying this decision it has to be shown that the claim of the plaintiff to inherit the question property in the suit was raised through such an issue in earlier proceeding i.e. in Succession Certificate proceedings. No such issue could be pointed by the learned counsel for the respondent.

As this Court has held in the case of *Pawan Kumar Gupta* (supra), it is only the decision on an issue and not mere finding on any incidental question to reach such decision, which operates as *res judicata*. So, even if there be any finding regarding any relationship for grant of such certificate in the absence of any issue it would be of no help to the plaintiff.

Next we proceed to examine the other head of submission viz. whether decision on any issue in a proceeding to grant Succession Certificate would operate as *res judicata* to the issue raise in the subsequent suit. First we proceed to examine the various provisions under the Indian Succession Act. Section 372(1) refers to the application to be made for the grant of Succession Certificate. Sub-section (1) gives the detail and the manner of making such an application. Sub-section (3) gives the sphere of such application viz. it to be in respect of any debt or debts due to the deceased creditor or in respect of portions thereof. Sub-section (3) is quoted hereunder :

> "*Sub-section (3)* : Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof."

Under sub-section (1) of Section 373 if the court is satisfied that there is ground for entertaining the application, he fixes a date of hearing after notice. Sub-section (2) decides the right of the applicant, whether entitled for a grant of the certificate. Under sub-section (3), if such Judge can not decide such right, as the question raised both on fact or law are intricate and difficult then in a summarily proceeding it can still grant such certificate, if it appears to the court, that the person making such application has a *prima facie* title thereto. Sub-section (3) of Section 373 is quoted hereunder :

> "*Sub-section (3)* : If the Judge cannot decide the rihgt to the certificate without determining questions of law or fact which seems 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."

A This sub-section reveals two things, first adjudication is in a summarily proceedings and secondly if the question of law and fact are intricate or difficult, it could sill grant the said certificate based on his *prima facie* title. In other words the grant of certificate under it is only a determination of *prima facie* title. This as a necessary corollary confirms that it is not a final B decision between the parties. So, it cannot be construed that mere grant of such certificate or a decision in such proceeding would constitute to be a decision on an issue finally decision between the paries. If that be so how could principle of *res judicata* be made applicable to a case in a subsequent suit? The effect of such certificate is also laid down in Section 381 which is quoted hereunder :

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> "*Section 381* :
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> *Effect of certificate* : Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and D securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of Section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in *good faith* in respect of such debts or securities to or with the person to whom the certificate was granted." E

(Emphasis supplied)

So, this certificate merely affords full indemnity to the debtor for the payments he makes to the person holding such certificate. Thus when the F debtor pays the debts or the securities as specified in the certificate, to the holder of such certificate, then on such payment, he is absolved from his obligation to pay to any one else as it conclusively concludes his part of his obligation and such payment is construed to be in good faith. This safeguards such debtor or person liable to pay that he may not be later dragged into any litigation which may arise subseqently *inter se* between the claimants. The G use of words "good faith" in Section 381 reinforces that decision in these proceedings are not final. When statute recognises such payment to be in good faith gives clear under current message that there may in future better claimant but that would not affect the indemnification of the debtor. Thus we find accumulatively because of the grant of Succession Cetrificate being for H a limited purpose, limited in its sphere, the declaration of title being *prima*

facie, payment tendered is declared to have been made in good faith, leads to only one conclusion that any decision made therein cannot be treated to be final adjudication of the rights of the parties, except such declaration being final for the purpose of these proceedings. If that be so, the amount received by the holder of such certificate can yet be questioned, and in subsequent proceeding it may hold it to belong to other claimant, including the contesting party.

This can be examined from another angle. The grant of Succession Certificate falls under Part X of the aforesaid Act. Its range is between Sections 370 to 390. It is significiant to refer here Section 387. This declares the effect of decisions made under this Act and the liability of holder of such certificate. It lays down that any decision made under this *Part*, (Part X) upon any question of right between the parties shall not bar the trail of the same question in any suit or other proceedings between the same parties. It further records that nothing in this Part shall be or any part of any debts or security to account therefor to the person lawfully entitled thereto. Section 387 is quoted hereunder :

> "*Section 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 debts or security or any interest or divident on any security, to account therefor to the person lawfully entitled thereto."
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> (Emphasis supplied)

This leaves no room for doubt. Thus any adjudication made under Part X of this Act which includes Section 373 does not bar the same question being raised between the same parties in any subsequent suit or proceeding. This provision takes the decisions under Part X of the Act outside the perview of Explanation VIII to Section 11. This gives protective umbrella to ward off from the rays of *res judicata* to the same issue being raised in a subsequent suit or proceedinggs.

A No doubt Explanation VIII to Section 11 enlarges the filed of *res judicata*, by including in its field the deisions on the issue, between the same parties even by a court of limit jurisdiction even though such court may not have the competence of deciding such an issue in a suit. But as we have held above this grant of certificate would not fall within the field of Explanation B VIII of Section 11.

As far back as in 1937, this principle was upheld and recognised. In *Mt. Charjo and Anr.* v. *Dina Nath and Ors.*, AIR (1937) Lahore 196(2).

> C "The enquiry in proceedings for grant of succession certificate is to be summary, and the Court, without determining questions of law or fact, which seem to it to be too intricate and difficult for determination, should grant the certificate to the person who appears to have *prima facie* the best title thereto. In such cases the Court has not to determine definitely and finally as to who has the best D right to the estate. All that it is required to do is to hold a summary enquiry into the right to the certificate, with a view, on the one hand, to facilitate the collection of debts due to the deceased and prevent their being time-barred, owing (for instance) to dispute between the heirs *inter se* as to their preferential right to succession, and, on the other hand, to afford protection to the debtors by E appointing a representative of the deceased and authorising him to give a valid discharge for the debt. The grant of a certificate to a person does not give him an absolute right to the debt nor does it bar a regular suit for adjustments of the claims of the heirs *inter se*.

F So we have no doubt to hold that any decision made in proceeding under Section 372, for the grant of Succession Certificate under the Indian Succession Act, would not bar any party to the said proceeding to raise the same issue in a subsequent suit. Hence, the High Court fell into error in applying the principle of *res judicata* to the second appeal of the appellant arising out of the aforesaid suit. Thus even if no appeal is preferred by the G appellant againt the decision of the trial court arising out of proceedings for the grant of Succession Certificate, the principle of *res judicata* would still not apply. But we further record, and accept the contention of the learned counsel for the appellant that the memorandum of second appeal itself reveals that he has preferred appeal against both the appellate orders where it records H both appeals, case No. 237 of 1977 and 93 of 1978. Hence High Court was

not right in holding that no appeal was preferred. Learned counsel for the respondent could not dispute this but submits that no second appeal lies against the appellate order in the proceedings for the grant of Succession Certificate, only a revision lies. However, it is not necessary for us to go into this question as this is for the appellants to make such submission as permissible under the law and it is for the respondent to raise such objection, as he deemed fit and proper in this regard. A B

In view of the aforesaid findings we set aside the High Court order dated 26th September, 1989 and remand the case to it for deciding afresh on merits, the second appeal, in accordance with law. The present appeal is allowed. Costs on the parties. C

S.V.K. Appeal allowed.