

Nachhattar Singh and others v. The State of Punjab (N. C. Jain, J.)

of Section 37 of the Act, the contention of the learned counsel for the appellants cannot be accepted and is repelled.

(9) The learned counsel for the appellants has next argued that Rule 10-A was repealed subsequently and such a provision was made in the Act by adding Section 11-A in the Act and this amended section provided a period of 5 years during which action could be taken for the recovery of excise duty which had escaped notice. Since the demand notice in the present case related to more than five years before the commencement of Section 11-A, the same requires to be quashed. In support of this contention, reliance has been placed on the decision of the Supreme Court in *M/s Mysore Rolling Mills (P) Ltd. v. Collector of Central Excise, Belgaum* (6). The ratio of this decision cannot be applied to the case in hand, as in that case a notice issued was within 5 years of the introduction of Section 11-A. The present case is to be governed by the law as it existed when demand notice was issued. Admittedly, at that time, Rule 10-A was in force. Section 11-A had not been introduced. The law then existing is to apply and the case fully falls under the scope of Rule 10-A, which provides no limitation. Neither the notice nor the order calling upon the appellants to pay the excise duty could be quashed on that score. The findings of the Courts below on this point, are, therefore, affirmed.

(10) For the reasons recorded above, finding no merit in the appeal, the same is dismissed with costs.

S.C.K.

Before N. C. Jain, J.

NACHHATTAR SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF PUNJAB,—Respondent.

Civil Revision No. 2615 of 1989.

12th April, 1990.

Code of Civil Procedure, 1908 (Act V of 1908)—S. 115, O. 21 rl. 15—Indian Succession Act, 1925—S. 214—Award providing enhanced compensation—Death of joint decree holder during execution proceedings—Legal representatives—Whether under an obligation to obtain succession certificate.

(6) (1987) I.S.C. cases 695.

Held, that the petitioners were under no legal obligation to obtain a succession certificate before executing the award granting enhanced compensation to them. On analytical examination of O. 21 rl. 15(1) of the Code, it emerges out that the joint decree-holder can take out the execution for the benefit of the legal representatives of the deceased and the survivors meaning thereby that it is not incumbent upon the legal representatives of the deceased to take out the execution because the execution is going to be for their benefit as has been laid in O. 21 rl. 15(1) of the Code. As regards the interpretation of S. 214 of the Indian Succession Act, it can be safely observed that the necessity for obtaining the succession certificate arises only when the decree has been passed in favour of a single person and he dies before executing the same. The wording of S. 214 of the Act as it goes 'No court shall proceed, upon an application of a person claiming to be so entitled to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming, of a succession certificate granted under part X and having the debts specified therein' is a clear pointer to the direction that the need for obtaining the succession certificate arises only when the person claiming the entitlement to execute the decree is a single person. Whenever there is a joint decree-holder, the provisions of O. 21 rl. 15 of the Code would come into play entitling a joint decree-holder to execute the decree for the benefit of survivors and for the benefit of the legal representatives of the deceased. (Para 4)

Petition under Section 115 C.P.C. for the revision from the order of the Court of Shri Nirmal Singh Additional District Judge, Faridkot, dated 26th April, 1989 ordering that the LR's of Lal Singh cannot get the amount of compensation belonging to him without obtaining succession certificate, other decree holder if any can get the amount of their share. Decree-holders are directed to file a detail of their claim so that the amount could be disbursed to them. Claim : Reference U/s 18 of Land Acquisition Act. Claim in revision : For reversal of the order of lower court.

N. L. Dhingra, Advocate with A. S. Bath, Advocate, for the Petitioner.

Rajiv Raina, Asst. Advocate General, Pb., for the Respondent.

ORDER

N. C. Jain, J.

(1) This revision petition is directed against the order of the Additional District Judge, Faridkot, dated 26th April, 1989 declining to execute the award pertaining to the enhanced amount of

Nachhattar Singh and others v. The State of Punjab (N. C. Jain,, J.)

compensation on the ground that the legal representatives of Lal Singh i.e. petitioners should bring a succession certificate after making interpretation of section 214 of the Indian Succession Act (hereinafter referred to as 'the Act') and Order 21 rule 15 of the Code of Civil Procedure (hereinafter called 'the Code'). At the time of hearing today, an affidavit of Jaspal Kaur widow of Lal Singh has been filed before me stating that she along with Harinder Pal Singh, Sukhwinder Pal Singh and Akbinder Pal Singh sons of Lal Singh and Basant Pal Kaur and Chinder Pal Kaur daughters of Lal Singh are the only legal heirs of Lal Singh deceased.

(2) It has been vehemently argued by Mr. N. L. Dhingra, the learned counsel for the petitioners that Lal Singh deceased was one of the joint decree-holders and, therefore, his legal representatives are under no legal obligation to obtain in the first instance a succession certificate before claiming the enhanced amount of compensation. It has further been argued by him that Section 214 of the Indian Succession Act is applicable to a person who is a solitary decree-holder. In support of his arguments, he has cited *Ramnibas Agarwalla v. Mt. Padumi Kalita and others* (1), *Maddula Kasiyya v. Jallipalli Pullayya and others* (2), *Nandlal v. Mahavir Kumar and others* (3), and *M. C. Sreedharan v. Pattieri Kumaran* (4). On the other hand Mr. Raina, the Assistant Advocate General, has taken the help of the authority reported as *K. T. Thimme Gowda v. Shri Thimme Gowda and another* (5), for the proposition that the legal representatives of the deceased cannot execute the decree in the absence of a succession certificate.

(3) Before discussing the case law cited at the bar by the counsel for the parties and in order to interpret the provisions of Order 21 rule 15 of the Code of Civil Procedure and Section 214 of the Indian Succession Act, it is necessary to have a look at the bare provisions of the statute which are as under :

"Section 214 of the Indian Succession Act:—Proof of representative title a condition precedent to recovery through

- (1) A.I.R. 1967 Assam and Nagaland 27.
- (2) A.I.R. 1974 A.P. 220.
- (3) A.I.R. 1974 Rajasthan 189.
- (4) A.I.R. 1981 Kerala 51.
- (5) A.I.R. 1986 Karnataka 204.

the Court of debts from debtors of deceased persons.—(1)
No Court shall,—

- (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or
- (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

- (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
- (ii) a certificate granted under section 31 or section 32 of the Administrator-General's Act, 1913, and having the debt mentioned therein, or
- (iii) a succession certificate granted under Part X and having the debt specified therein, or
- (iv) a certificate granted under Bombay Regulation No. VIII of 1927 and, if granted after the first day of May, 1889, having the debt specified therein."

"Order 21 rule 15 of the Code of Civil Procedure:—

Application for execution by joint decree-holder.—(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

- (2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary

Nachhattar Singh and others v. The State of Punjab (N. C. Jain, J.)

for protecting the interests of the persons who have not joined in the application.”

(4) Having given my thoughtful consideration to the entire matter and after analysing the provisions of the two Statutes i.e. the Indian Succession Act and Code of Civil Procedure, this Court is of the considered view that the petitioners were under no legal obligation to obtain a succession certificate before executing the award granting enhanced compensation to them. It has remained undisputed before me that Lal Singh deceased was one of the joint decree holders before the Land Acquisition Court. The other decree-holder Nachhattar Singh has also taken out execution of the award. Lal Singh deceased would, therefore, naturally be considered to be a joint decree-holder who was entitled to execute the award before his death. Order 21, rule 15 of the Code lays down the procedure for filing the application for execution by joint decree-holder. It lays down in explicit terms that where a decree has been passed jointly in favour of more persons than one, any one can apply for execution of the whole decree for the benefit of all until and unless, the decree has imposed any condition to the contrary. In case one of them has died, the execution would be for the benefit of the survivors and the legal representatives of the deceased. On analytical examination of Order 21 rule 15(1) of the Code; it emerges out that the joint decree-holder can take out the execution for the benefit of the legal representatives of the deceased and the survivors meaning thereby that it is not incumbent upon the legal representatives of the deceased to take out the execution because the execution is going to be for their benefit as has been laid in Order 21 rule 15(1) of the Code. As regards the interpretation of section 214 of the Indian Succession Act, it can be safely observed that the necessity for obtaining the succession certificate arises only when the decree has been passed in favour of a single person and he dies before executing the same. The wording of Section 214 of the Act as it goes ‘No court shall proceed, upon an application of a person claiming to be so entitled to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming, of a succession certificate granted under part X and having the debts specified therein’ is a clear pointer to the direction that the need for obtaining the succession certificate arises only when the person claiming the entitlement to execute the decree is a single person. Whenever there is a joint decree-holder, the provisions of Order 21 rule 15 of the Code would come into play entitling a joint decree-holder to

execute the decree for the benefit of survivors and for the benefit of the legal representatives of the deceased. In the present case, the petitioners have themselves come as the legal representatives of the deceased claiming execution of the decree. They cannot either under the provisions of section 214 of the Indian Succession Act or under the provisions of Order 21 rule 15 of the Code of Civil Procedure be legally asked to obtain the succession certificate. This in my view is the only possible interpretation to the provisions of section 214 of the Indian Succession Act and Order 21 rule 15 of the Code of Civil Procedure.

(5) In the view which has been taken by me above, sufficient support can be drawn from the case law. In *Ramnibas Agarwalla's case* (supra), it has been held that if a decree is passed jointly, application for substitution of heirs of one of the deceased-decree-holders can be maintained and Section 214 of the Act applies only to those cases where decree stands solely in the name of one person. It has further been ruled therein that Section 214 of the Indian Succession Act is inapplicable to the case of joint decree-holders, some of whom survive deceased decree-holder. It has also been held by a Division Bench of Rajasthan High Court in *Nand Lal's case*, (supra) that if execution is taken out by two decree-holders and one of them has died, the person can proceed with the execution for the benefit of the legal representatives of the deceased decree-holder without producing succession certificate. Section 214 of the Act has been held to be applicable only when there is one decree-holder and execution is taken out by his legal representatives. A learned Single Bench of Kerala High Court in *M. C. Sreedharan's case* (supra), while interpreting the provisions of Order 21 rule 15 of the Code has held that when there are two decree-holders who joined in the execution application and one of them died before executing the decree, the surviving decree-holder could execute the decree on his own behalf and on behalf of the legal representatives of the deceased decree-holder without production of succession certificate.

(6) The solitary ruling cited by Mr. Rajiv Raina, the learned Assistant Advocate General, Punjab, i.e., *T. T. Thimme Gowda's case* (supra) is inapplicable as the facts therein were that both the decree-holders had died before the institution of the execution proceedings and on the facts of that case while interpreting the provisions of Section 214 (1), (b) of the Act it was felt that until and unless the persons claiming to be the legal representatives of

Chamkaur Singh & another v. The State of Punjab and another
(I. S. Tiwana, J.)

the deceased bring a succession certificate, they cannot execute the decree. The ruling in the said case of the Karnataka High Court is distinguishable on facts because both the decree-holders had died before executing the decree. Moreover, the provisions of Indian Succession Act were not interpreted vis-a-vis the provisions of Order 21 rule 15 of the Code. In view thereof the rule of law laid down by the Karnataka High Court is inapplicable to the facts of the instant case.

(7) For the reasons recorded above, this revision petition deserves to be allowed. The order under revision is consequently quashed by accepting this petition. The petitioners are entitled to execute the decree and they be disbursed the amount of compensation in accordance with their share and law. Since delay has already been caused in executing the decree, the Additional District Judge is directed to proceed with the execution expeditiously. Since ticklish question of law had arisen in the instant case, there will be no order as to costs.

P.C.G.

Before I. S. Tiwana and G. R. Majithia, JJ.

CHAMKAUR SINGH & ANOTHER,—Petitioners.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 7360 of 1988.

May 18, 1990.

Indian Stamp Act, 1899—S. 47-A—Registration Act, 1908—S. 68—Collector issuing guidelines to Registering authorities—Such guidelines fixing minimum price of different kinds of land—validity of such guidelines—Whether the Collector had power to issue such guidelines.

Held, that a reading of S. 47-A makes it manifestly clear that the Registering Officer as well as the Collector have to perform, if not a judicial, at least a *quasi-judicial* function in determining or in estimating the price of the properties, subject-matter of a particular transaction as if the property is being sold in "open market"