

Mallappa Basappa Desai

Vs

Mallappa Veerabhadrapa Desai and Others

Civil Appeal No. 553 of 1963

(CJI P. B. Gajendragadkar, J. C. Shah, N. Rajgopala Ayyangar JJ)

26.08.1964

JUDGEMENT

GAJENDRAGADKAR C.J.

The short question which this appeal raises for our decision is in relation to the construction of rule 9 of Bombay Regulation VIII of 1827. Purporting to act under the said Rule the learned Additional District Judge at Bijapur has order that the Dy. Commissioner of Bijapur District be appointed the administrator for the management of the estate of deceased Kashibai Sangappa Gadigappa Desai who died on the 1st January, 1958. According to this direction, the Administrator has to manage the estate of the said deceased Kashibai including the scheduled property, both movable and immovable, until the right of succession is determined by a competent court of law. The appellant Mallappa Basappa Desai challenged the propriety and the validity of this order by moving the Mysore High Court in its revisional jurisdiction under section 115 of the Code of Civil Procedure. The High Court was, however, satisfied that there was no ground to interfere with the order passed by the learned Additional District Judge. Against this decision the appellant has come to this Court by special leave; and on his behalf, Mr. Pathak has urged that the impugned order is not justified by the terms of r. 9. That is how the only question which we have to decide in the present case is about the construction of r. 9.

It appears that Sangappa Gadigappa Desai was the last male holder of the Desgat properties with which the present proceedings are concerned. These properties are extensive and yield substantial income. On his death his widow Kashibai came into possession of the said properties. The appellant alleges that in 1929 the Collector of the district held that the appellant's father was the nearest male reversioner to the estate left by Sangappa Desai. In 1943, the appellant's father died. In 1946 again an enquiry was held and it is alleged by the appellant that he was found to be the eldest male member of the eldest branch of the family and as such was entitled to succeed to the Desgat and other properties left by Sangappa. Even so, Kashibai continued to be in uninterrupted and exclusive possession of the properties until she died on the 1st January, 1958. On the 7th January, 1958, the appellant filed an application before the Mamlatdar praying that his name should be entered in the Record of Rights in respect of lands of the Jainapur Desgat estate. This application led to several other applications by different persons who claimed to be entitled to succeed to the estate. These respective applicants are the six respondents to the present appeal. Respondent No. 1 filed Application No. 1 of 1958 under s. 192 of the Indian Succession Act, 1925, on the 8th January, 1958. On the same day, respondent No. 1 applied for the appointment of a Commissioner and an ex parte order was passed appointing Mr. Managoli as the Commissioner. The Commissioner made an inventory and the ex parte order passed appointing him as such Commissioner was later confirmed. On the 9th January, 1958, respondent No. 2 filed Application No. 2 under Bombay Regulation VIII

of 1827. On the 5th February, 1958, respondents 3 & 4 filed Application No. 4/1958 under rules 9 & 10 of the said Regulation. On the 6th February 1958, respondent No. 2 filed Application No. 5/1958 under s. 192 of the Indian Succession Act. On the 10th February, 1958, respondent No. 6 filed a similar application No. 6/1958 under Regulation VIII of 1827. That is how these five applications raised a common question about the succession to the estate of which Kashibai was in possession as the widow of her deceased husband Sangappa Desai.

It appears that on the application made by the appellant for mutation of his name in the Record of Rights the Tehsildar made an order on the 27th February, 1958 directing that the appellant's name should be shown as superior holder in respect of the lands forming part of the Desgat estate. That order was challenged by respondents 1 to 4 by appeals preferred before the Assistant Commissioner of Bijapur. Their appeals were, however, dismissed and the Tehsildar's order was confirmed on the 17th May, 1958. The said respondents then moved the Mysore Revenue Appellate Tribunal in its revisional jurisdiction. The Appellate Tribunal allowed the revision applications by its order dated 5th December, 1958 and directed that the names of the respondents should be entered as superior holders along with the appellant. The appellant then moved the Mysore High Court under Art. 227 of the Constitution and his application was allowed, the order passed by the Appellate Tribunal was set aside and that of the Assistant Commissioner was confirmed. This decision was pronounced on the 7th December, 1959.

On the 18th January, 1960, the Additional District Judge who heard the several applications made before him by respondents 1 to 6 came to the conclusion that a case had been made out for the appointment of an Administrator to the property in question under r. 9 of the Regulation and accordingly, he made the order which is the subject-matter of the present appeal. The appellant challenged this order before the Mysore High Court, but his attempt failed. That is how he came to this Court in appeal.

Before dealing with the question of the construction of rule 9, it is necessary to set out the facts found by the learned Additional District Judge in the present proceedings. He has found that there is a dispute as to the succession to the estate left by the deceased Kashibai; in fact, several persons have applied setting forth their respective claims to succeed to the said estate. He has also found that there is no person amongst the parties before him who can be said to have taken possession of the estate. In other words, according to the learned Judge, a dispute exists in regard to the estate between two or more claimants and none of them has taken possession of the estate. It was urged before him on behalf of the appellant that a substantial part of the immovable property consisting of agricultural lands was in his possession, and reliance was placed in that behalf on the rent notes executed by the tenants who were cultivating the said lands. The learned Judge held that these documents had come into existence subsequent to the commencement of the proceedings before him, and so, they did not help the appellant. He also seems to have taken the view that these rent notes would be affected by *lis pendens*. In regard to the movables, it is not disputed that the said movable property was in the custody of the Court. A Commissioner had been appointed to make inventory of the said properties and after the inventory had been made, they were taken into the possession of the Court. On these findings, the learned Judge held that r. 9 applied, and so, he appointed an Administrator and authorised him to take charge of the properties in question.

When this order was challenged by the appellant before the High Court under s. 115, C.P.C., the High Court held that the question as to whether the appellant was in possession, was a question of fact and the finding recorded by the learned Additional District Judge could not be challenged under the said section. The High Court agreed with the appellant's contention that the learned Additional

District Judge maybe in error in taking the view that the rent notes executed in favour of the appellant after the commencement of the present proceedings were affected by *lis pendens*; that, however, according to the High Court, did not affect the position that the appellant was not in possession of the said properties at the date of the commencement of the proceedings. As we have already indicated, the mutation in favour of the appellant by the revenue authorities and the rent notes taken by him from the tenants who are in possession of the agricultural lands were all subsequent to the commencement of the present proceedings, and both the Courts below have held that the relevant date by reference to which the question about the possession of the parties has to be decided, is the date of the commencement of the proceedings; and it is this view the correctness of which is challenged by Mr. Pathak before us.

Bombay Regulation VIII of 1827 provides for the formal recognition of heirs, executors and administrators, and for the appointment of administrators and managers of property by the courts. The preamble to the Regulation indicates that it was thought in general desirable that the heirs, executors or legal administrators of persons deceased should, unless the right is disputed, be allowed to assume the management or sue for the recovery of property belonging to the estate, without the interference of courts of justice. Yet, it was realised that in some cases such heirs, executors or administrators should obtain a certificate of heirship, executorship, or administratorship, from the Zila Court; the preamble further shows that where it appeared that there was no person on the spot entitled or willing to take charge of the property of the deceased person, or when the right of succession is disputed between two or more claimants, none of whom has taken possession it is essential that the Zila Court should appoint an Administrator for the management of the estate. It is in the light of this policy mentioned in the preamble to the Regulation that Rules were framed. Rule 1 authorised the legal heir, executor, or legal administrator to assume the management, or sue for the recovery, of the property in conformity with the law or usage applicable to the disposal of the said property, without making any previous application to the court to be formally recognised. Rule 2, however, contemplated that if an heir, executor or administrator wanted to obtain recognition, he could move the court in that behalf, and rules 3 to 6 provide for the manner in which an application for recognition should be dealt with. That takes us to r. 9 with which we are directly concerned in the present appeal.

Rule 9 reads thus :

"Whenever there is no person on the spot entitled and willing to take charge of the property of a person deceased, where the right of succession is disputed between two or more claimants, none of whom has taken possession, or where the heirs are incompetent to the management of their affairs from infancy, insanity or other disqualification, and have no near relations entitled and willing to take charge on their behalf, the Judge, within whose jurisdiction such property is, may appoint an administrator for the management thereof, until the lawful heir, executor or administrator appears, or the right of succession is determined, or the disqualification of the heir is removed, as the case may be, when the Judge on being satisfied of the facts, shall direct the administrator in charge to deliver over the property to such person, with a full account of all receipts and disbursements during the period of his administration."

In the present case, the relevant clause is 'where the right of succession is disputed between two or more claimants, none of whom has taken possession'. It is common ground that the right of succession is disputed between the claimants who have moved the Additional District Judge. The

point of dispute between the parties is whether any of the claimants has taken possession. The appellant contends that at the date when the administrator was appointed by the Additional District Judge he was in possession, and so, the requirement that none of the claimants should be in possession before an administrator can be appointed is not satisfied. The argument is that the relevant date by reference to which the question of possession should be determined is, in the context, the date of the order, and if that be so, the appellant was in possession of the bulk of the properties and the appointment of an administrator was, therefore, not justified. It is also urged in support of this plea that the fact that the rent notes were executed in favour of the appellant after the commencement of the present proceedings cannot obviously introduce considerations of *lis pendens*, and what the Court has to consider is just the bare question as to whether any of the claimants is in possession of the property or not, and the answer to this question should be in favour of the appellant because he produced before the Court rent notes executed by the tenants who were cultivating the lands in question.

This argument is not well-founded. What the Court has to consider in dealing with the question of properties succession to which is in dispute at the date of the commencement of the proceedings under this Regulation? The proceedings may commence either on an application made by one of the claimants, or may be started *suo motu* by the Judge; in either case, the relevant point of time by reference to which the requirement as to possession has to be judged is the date of the commencement of the proceedings. It may be that one of the claimants may have obtained possession soon after the death of the last holder, and before the proceedings commenced under the Regulation, he would be able to show that he was in possession; but if no one was in possession at the date when the proceedings commenced, the requirement of the relevant clause of r. 9 is satisfied, because possession obtained after the commencement of the proceedings would not make any difference. If the appellant's construction is accepted, it would lead to anomalous results. Take a case where none of the claimants is in possession at the date when the District Judge makes his order, and that when the matter is taken to the High Court under section 115, some one or the other of the claimants manages to secure possession. On the appellant's construction, the High Court would have to set aside the order appointing the administrator, because at the date when the High Court is passing the order one of the claimants has secured possession. Besides, the basic idea underlying the provisions of r. 9 is to provide for smooth, peaceful and legal devolution of the estate on the rightful owner; and so, in cases where there is a dispute as to title amongst different persons and none of these persons has been able to secure possession soon after the succession opened, r. 9 steps in and provides for the appointment of an administrator. The appointment of the administrator does not prejudice the claim of any person who has set up a title to succession. The only result of the appointment of the administrator is that the property is taken under the charge of an administrator and is managed by him pending the final decision of the question of succession to the estate by a court of competent jurisdiction. Therefore, we are satisfied that the Courts below were right in holding that since the appellant was not in possession at the date when the present proceedings commenced and obviously there is a dispute as to the title between two or more claimants, the material requirement of r. 9 is satisfied and that justifies the appointment of an administrator.

We have already seen that r. 2 contemplates that an executor, heir or administrator may apply for formal recognition as a measure of safety and subsequent Rules provide for the manner in which such an application should be dealt with. If the application succeeds, a certificate is issued. If the application fails, the certificate is refused. But rule 8 specifically provides that the refusal of a certificate by the Judge shall not finally determine the rights of the person whose application is refused, but it shall still be competent to him to institute a suit for the purpose of establishing his claim. Rules 8 and 9 both make it clear that the decision recorded by the Court under the provisions

of the relevant Rules is a summary decision and it does not purport to bar the jurisdiction of the civil courts by which questions of title would be finally determined. That being so, it seems clear that under the relevant clause of r. 9, the date of possession must be the date before the proceedings commenced.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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