

M. S. Premanand

Vs

M. R. Purushotam and Others

Civil Appeal No. 1815 of 1974

(N. D. Ojha, E. S. Vankataramiah JJ)

24.01.1989

ORDER

1. This appeal arises out of an application filed by the appellant in this appeal by special leave for grant of letters of administration with the copy of a will made by late Mr. M. Rajarathnam Mudaliar annexed. The application was registered as suit as it was contested. The Chief Judge of the City Civil Court, Hyderabad who tried the suit found that the will was genuine, that the testator had the necessary testamentary capacity to make it and that there was no impediment for granting letters of administration in favour of the plaintiff. One of the questions raised in the suit however related to the title to the properties bequeathed under the will. The trial court found on that question which was covered by issue No. 1 framed in the suit that the testator was the absolute owner of the properties bequeathed under the will since they were his self-acquired properties. The first respondent, who was the son of the testator and who had contested the suit on the ground that the testator had not got absolute title to the properties in question preferred an appeal before the High Court. The High Court while agreeing with the findings of the trial court on the right of the appellant to obtain the letters of administration found that the testator had only one-fourth share in the properties bequeathed under the will on the ground that the properties involved were joint family properties of the testator and the other coparceners. Aggrieved by the judgment and decree of the High Court the appellant has filed this appeal by special leave.

2. The only contention raised by Shri Krishnamurthy Iyer, learned counsel for the appellant is that the trial court or the High Court could not go into the question of title to the properties bequeathed under the will since the said question was foreign to the scope of the application for the grant of letters of administration with a copy of the will annexed and the said question was already involved in a suit instituted by the first respondent in O.S. No. 36 of 1964 on the file of the City Civil Court, Hyderabad. Shri K. R. Narasimhan, learned counsel for the first respondent very fairly submitted that the question of title should have been allowed to be tried in the suit instituted by the first respondent in the City Civil Court and that the trial court and the High Court should have confined themselves in these proceedings to the question whether the letters of administration could or could not be granted to the appellant. He further submitted that the findings recorded on the question of title by the trial court as well as the High Court may be vacated and the said question may be permitted to be agitated in the suit instituted by the first respondent.

3. In view of the above submissions made by the learned counsel for both the parties we affirm the decree passed by the High Court granting letters of administration with the copy of the will annexed to the plaintiff but we, however, set aside the findings of the trial court as well as of the High Court on the question of title reserving liberty to the parties to urge all their contentions in the suit instituted by the first respondent in the City Civil Court, Hyderabad. We, further, direct that the

letters of administration and the copy of the will annexed shall be granted without limiting it to any particular share of the property. We express no opinion on the question of title. The decree of the High Court is modified accordingly.

4. It is needless to observe that the Suit O.S. No. 36 of 1964 instituted by the first respondent should be taken up by the City Civil Court for disposal immediately. We hope that the suit will be disposed of within six months from today.

5. It is stated that the appellant is managing the property involved in these proceedings as an administrator as per the order dated April 3, 1975 passed by this Court on C.M.P. No. 7008 of 1974. The first respondent has filed an application in C.M.P. No. 29268 of 1988 for a direction to be issued to the appellant to render account of all the amounts which he has realized from the properties in question. We feel that it is appropriate to direct the City Civil Court which is trying O.S. No. 36 of 1964 which is a suit for partition to consider the question relating to the liability of the appellant arising on account of the management of the property as administrator pursuant to the order passed by this Court and to make appropriate orders thereon. The first respondent may make an application for appropriate directions in the Suit O.S. No. 36 of 1964.

6. The appeal is accordingly disposed of. No costs.

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