

RAJASTHAN HIGH COURT

Chandra Shekar Dave

Vs.

Administrator General of Rajasthan

D.B. Civil Spl. Appeal No. 26 of 2000
(B.J. Shethna and Sunil Kumar Garg, JJ.)

19.12.2000

JUDGEMENT

Sunil Kumar Garg, J.

1. This special appeal under Section 18 of the Rajasthan High Court Ordinance has been preferred by the appellant-petitioner against the order dated 16-10-2000 passed by the learned Single Judge of this Court in S.B. Civil Misc. Petition No. 50/98, by which the learned Single Judge dismissed the application of the appellant-petitioner under Section 10 of the Administrators-General Act, 1963 (hereinafter referred to as 'the Act of 1963').

2. The necessary facts giving rise to this special appeal are as follows :-

The appellant-petitioner filed an application under Section 10 of the Act of 1963 before this Court on 23-3-1998, which was registered as S.B. Civil Misc. Petition No. 50/98, inter-alia stating that appellant-petitioner's father Shreekrishan Dave (hereinafter referred to as the deceased) was residing at Pali in the ancestral house. The appellant-petitioner has been in service in the Rajasthan Financial Corporation and was posted at Jodhpur since 1984 and the wife of the deceased was also living with the appellant-petitioner at Jodhpur. The deceased was retired as Teacher, Education Department, Government of Rajasthan and had been living at Pali and he was interested in pursuing the private job of doing 'sewa puja' and other religious pursuits at Pali. The deceased died on 27-2-1998 and at the time of his death, deceased had left various assets including deposits of Bank, Post Office, securities etc. and cash amounting to about Rs. 2 lacs. It is further stated in the application that taking

undue advantage of deceased living all alone at Pali, the respondents No. 6 to 13 misguided deceased and since they were related to him, it was not difficult for them to misguide deceased. It is further stated in the application by the appellant-petitioner that he had the apprehension that these persons have removed many articles left by the deceased and on being asked by the appellant-petitioner, they started fighting and thus, these persons have removed many assets and are further trying to misappropriate them and if these persons were allowed to do so, the appellant-petitioner would be deprived of his claim. Therefore, the present application under Section 10 of the Act of 1963 was filed by the appellant-petitioner with the prayer that in order to avert the danger of misappropriation, deterioration or waste of the assets of the deceased, the Administrator General concerned be directed to immediately collect and take possession of all the assets of the deceased and to act under the directions of this Court.

This application of the appellant-petitioner was contested by some of the respondents by filing a separate reply and in the file, there is a reply dated 15-9-1999 filed by the respondents No. 8, 11 and 12 stating inter-alia that the appellant-petitioner in the application under Section 10 of the Act of 1963, has not incorporated all the legal representatives of the deceased and beneficiary of the Will executed by the deceased and, therefore, on this ground alone, the same may be dismissed. It is further stated in the reply that a separate petition being Civil Misc. Case No. 43/1998 for issuance of probate is already pending in the Court of District Judge, Pali in respect of the Will executed by the deceased and in that petition, the appellant-petitioner is also shown as non-applicant No. 1 and the deceased executed Will in favor of Srimali Brahman Samaj Sansthan. From this point of view also, the present application is not maintainable. It is further stated in the reply that for ascertained sum, the Administrator General cannot be appointed to look after the property since this amount can be recovered by a suit. From this point of view also, the application of the appellant-petitioner under Section 10 of the Act of 1963 is liable to be dismissed.

The learned Single Judge of this Court vide order dated 16-10-2000 dismissed the application of the appellant-petitioner under Section 10 of the Act of 1963 holding inter-alia :-

1. That he was not satisfied looking to the totality of the circumstances and facts

of the case that discretion should be exercised under Section 10 of the Act of 1963.

2. That looking to the fact that matter was pending for more than two and half years and knowing assets of the deceased, the appellant petitioner has not taken any steps or action to establish his rights to recover the property whether by applying for succession certificates or otherwise, the learned Single Judge was not inclined to exercise powers under Section 10 of the Act of 1963.

Aggrieved from the said order of the learned Single Judge dated 16-10-2000, the present special appeal has been filed by the appellant-petitioner.

3. In this special appeal, the learned counsel for the appellant-petitioner has made the following two submissions:-

1. That the provisions of Section 10 of the Act of 1963 are meant for preserving the assets of the deceased persons by getting the same to be taken into possession by the Administrator General and the learned Single Judge of this Court should have exercised the discretion for taking action under the provisions of Section 10 of the Act of 1963 and by not doing so, the learned Single Judge has gravely erred in passing the impugned order.

That the observations of the learned Single Judge that the appellant- petitioner did not file any petition under the provisions of the Indian Succession Act, 1925 before the District Judges are not proper in the matters like this, as the said provisions, according to the learned counsel for the appellant-petitioner, cannot give effective relief and in such circumstances, provisions of Section 10 of the Act of 1963 are more appropriate and from this point of view also, the application of the appellant-petitioner should have been granted.

4. On the other hand, the learned counsel for the respondent No. 8 supported the impugned order passed by learned Single Judge.

5. We have heard the learned counsel for the parties.

6. In our consideration, this special appeal is without substance and deserves to be dismissed.

7. From the reply of the respondents, it is very much clear that a petition being Civil Misc. Case No. 43/98 for issuance of probate is already pending in the Court of District Judge, Pali in respect of alleged Will to be executed by the deceased in favour of the Shrimali Brahman Samaj Sansthan and in that petition, the appellant-petitioner is also shown as non-applicant No. 1. When this being the position, the whole prayer and submissions which the appellant-petitioner wants by this Court under the garb of Section 10 of the Act of 1963, he should have taken before the Court of District Judge, Pali in the said petition and in our considered opinion, that is the best forum for granting the relief for which the present application under Section 10 of the Act of 1963 was filed by the appellant-petitioner. From this point of view alone, this special deserves to be dismissed, as the matter is already sub-judice with the civil Court of competent jurisdiction, which is competent to pass orders under the provisions of Order 39 or Order 40 Rule 1 read with Section 151 Civil Procedure Code even in matters of probate and grant of administration, while dealing with the matters of granting probate and letters of administration under the provisions of Indian Succession Act, 1925.

8. Thus, looking to the facts and circumstances of the case, no interference is called for with the impugned order of the learned Single Judge in this special appeal, as the learned Single Judge has given cogent reasons while dismissing the application of the appellant-petitioner under Section 10 of the Act of 1963. The learned Single Judge was right in holding that this is not a fit case for exercise of power under Section 10 of the Act of 1963. For the reasons given above, this special appeal fails and the same is hereby dismissed. The interim stay, if any, stands vacated.

Appeal dismissed.