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Kaliammal & 5 others v. R. Dhanaraj & 2 others  
(R. Banumathi, J.)

2007-2-L.W.

the Chennai Corporation increasing the annual value to Rs.4,10,974/- as referred to in the impugned arrears intimation slip dated 14.8.2006. While so, in the absence of any increase by the Corporation of Chennai demanding the enhanced rate of tax for water and sewerage is untenable in law. The petitioner by letter dated 25.09.2006 categorically stated that they have not received any communication from the Corporation about the enhancement of property tax, as referred to in the said order dated 14.08.2006, the alleged corresponding increase made by the Board is untenable besides that it is disproportionate and exorbitant, for which, no reply was given by the respondent-Board. The respondent-Board sent the distraint warrant notice dated 3.1.2007, which was received by the petitioner on 8.1.2007 wherein the petitioner was directed to pay arrears of Rs.1,67,495/- towards water and sewerage tax and surcharges within three days, which is unsustainable in law. In any event demanding such exorbitant rate of tax retrospectively with effect from 2/1999-2000 to 1/2006-2007 is *ex facie* illegal. The said distraint warrant notice was issued in total violation of the principles of natural justice and contravention of the statutory provisions. It is further submitted by the learned Senior counsel that in the absence of enhancement of property tax by the Corporation, it is not open to the respondents to enhance the water and sewerage tax, that too without granting opportunity.

6. On the above said contention, this Court heard Mr.B.Mani, learned standing counsel for respondent Nos.1 and 2 and Mr.T.Mathi, learned counsel for respondent No.3.

7. The petitioner has enclosed in its typed set, the property tax book issued by the third respondent-Corporation for 1/2006-2007. The Corporation levied the half yearly

tax of Rs.25,844/-, which is corresponding to the annual value of Rs.2,16,271/-. However, the respondents 1 and 2 in their communication dated 14.8.2006, arrived at the annual value at Rs.4,10,974/- without any basis. It is asserted by the learned Senior counsel appearing for the petitioner that the third respondent-Corporation has not enhanced the annual value till date. At this juncture, it is necessary to mention the argument of the learned Senior Counsel that the respondent-Board has not given any opportunity or notice prior to the impugned communications dated 14.8.2006, 10.10.2006 and 3.1.2007. It is also not in dispute that the petitioner's representation dated 25.9.2006, questioning the demand dated 14.08.2006 by the Board, has not yet been disposed of by the second respondent till date.

8. In view of the said facts, particularly, the grievance of the petitioner that the respondent has not afforded any opportunity and the fact that the property tax stated to have not increased, this Court is of the considered view that the petitioner is entitled to the relief sought for. Accordingly, the impugned orders dated 14.8.2006, 10.10.2006 and 3.1.2007 are quashed. The writ petition is allowed as prayed for. Consequently, connected miscellaneous petition is closed. No costs.

VCJ/VCS

**2007-2-L.W. 1100**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

12..12..2006/C.R.P.No.2521 of 2000

**R. Banumathi, J.**

*Kaliammal & 5 others ..... Petitioners*

Part 13

Kaliammal & 5 others v. R. Dhanaraj & 2 others  
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Vs -

*R. Dhanaraj & 2 others.....Respondents*

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 22.06.2000 of the Principal District Judge, Erode in C.F.R.No.11160 of 1999, as stated therein.

**(Indian) Succession Act, Section 214/Succession Certificate whether necessary for the heirs of the deceased claimant (in the MACTOP) to withdraw the compensation deposited in Court; Amount in Court deposit, whether is a "debt" within S.214, Motor Vehicles Act (1988), Section 164, Constitution of India, Article 227/Revision against order of M.A.C. Tribunal returning application filed for payment out of compensation to the heirs of a deceased claimant, for production of Succession Certificate, allowed — Held: Petitioners, who are Widow, Sons and Daughters of the deceased claimant are only seeking to withdraw the compensation amount awarded to the deceased — To show that they are the legal heirs, the Petitioners have also produced Legal Heirship Certificate issued by the Tahsildar.**

*As the compensation payable to the injured claimant is not a "Debt", the provisions of Section 214 (1)(b) of the Act are not attracted — Impugned Order returning the Application, directing the Petitioners to produce the Succession Certificate is liable to be set aside.*

**Practice/Succession Certificate whether necessary for the heirs of the deceased claimant to withdraw the compensation deposited in Court, Amount in Court deposit, whether is a "debt" within S.214 — See (Indian) Succession Act, Section 214.**

**Motor Vehicles Act (1988), Section 164 — See (Indian) Succession Act, Section 214/Succession Certificate whether necessary for the heirs of the deceased claimant to withdraw the compensation deposited in Court, Amount in Court deposit, whether is a "debt" within S.214.**

**Constitution of India, Article 227/Revision against order of the M.A.C. Tribunal returning application filed for payment out of compensation to the heirs of a deceased claimant for production of Succession Certificate, allowed — See (Indian) Succession Act, Section 214/Succession Certificate whether necessary for the heirs of the deceased claimant to withdraw the compensation deposited in Court, Amount in Court deposit, whether is a "debt" within S.214, Motor Vehicles Act (1988), Section 164.**

*Resilikutty Chacko ..Vs.. State of Kerala (A.I.R. 1999 Kerala 56);*

*Aparanji ..Vs.. Arunnachalam (A.I.R. 1953 Madras 28);*

*Anchakana Sur ..Vs.. Abani Bhusan Sur (A.I.R. 1982 CAL 378);*

*Lakhan Mahto ..Vs.. State of Bihar (A.I.R. 1972 Patna 37); and*

*Narayanaswami Naidu ..Vs.. Chellammal and others (1970 (2) M.L.J. 633 = (1970) 83 L.W. 791); — Referred to.*

**CRP under Art.227 allowed.**

For Petitioners : : Mr. A.K.Kumarasamy

For Respondents: : Mr. A. Arunkumar

**ORDER**

This Civil Revision Petition is directed against order dated 22.06.2000 of the Principal District Judge, Erode in C.F.R.No.11160 of 1999 in M.A.C.T.O.P.No.869 of 1993, returning the unnumbered application and directing the Petitioners to produce Succession

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Certificate for withdrawal of the amount in M.A.C.T.O.P.No.869 of 1993.

2. 1. The Revision Petition arises out of the following facts:-

The Petitioners are Widow, Sons and Daughters of one Arumugam. The said Arumugam sustained injuries in a Motor Accident. He filed a claim Petition in M.A.C.T.O.P.No.869 of 1993 on the file of Principal District Court, Erode claiming compensation of Rs.3,00,000/- against the Respondents. After contest, an award of Rs.85,000/- was passed on 30.09.1997 in favour of the injured claimant – Arumugam and no appeal was filed against the same.

2.2 The said Arumugam died intestate on 11.08.1998 leaving behind the Petitioners as his legal representatives. The entire amount has been deposited in State Bank of India, Main Branch, Erode. After the death of Arumugam, the Petitioners have filed petition for permission to withdraw the deposited amount along with Legal Heirship Certificate dated 30.11.1998 issued by Tahsildhar, Erode. By the Impugned order, learned District Judge, Erode directed return of the Application stating that Succession Certificate as per Section 214 of the Indian Succession Act is necessary.

2.3. Assailing the Impugned Order, learned counsel for the Revision Petitioners has contended that the compensation payable under the Motor Accident cases is not a "Debt" within the meaning of Section 214 of the Indian Succession Act and the Tribunal has erroneously ordered return of Application. It was further submitted that the lower Court erred in holding that the decision reported in A.I.R. 1999 KERALA 56 is not applicable to the case.

3. In this Civil Revision Petition, an important question of law arises for consideration is with regard to the interpretation of the

word "Debt" as used in Section 214 of the Indian Succession Act (In short "Act"). The question of law which arises for consideration is whether on the death of the claimant, having an award passed in his favour, whether the legal heirs of the deceased – claimant can withdraw the amount without obtaining the Succession Certificate or production of Succession Certificate. The decision on this point would depend on the interpretation of the word "Debt" as used in Section 214 of the Act.

4. Admittedly, a sum of Rs.1,39,000/- has been deposited in State Bank of India, Main Branch, Erode. Arumugam died intestate. Section 214 (1) of the Act runs as follows:-

"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..."

5. Under Section 214(1) of the Act, when the Suit is for recovery of "debt" filed by the representatives of a deceased person, a Succession Certificate is necessary. Similarly under Section 214(1)(b) of the Act, in an Execution Petition to execute the decree for recovery of a debt, Succession Certificate is necessary. The question for consideration is whether in the Application to withdraw the Award Amount a Succession Certificate is necessary?

6. The word "debt" appears both in clause (a) and (b) of Section 214 of the Act. A

"Debt" is a sum of money, which is payable or will become payable in future. The amount deposited in the name of the deceased claimant is a compensation amount awarded in a Motor Accident case towards pecuniary and non-pecuniary losses. The compensation amount was payable on the tortious liability and not on certain obligations to fall within the ambit of "Debt".

7. Considering the meaning of "Debt" and production of Succession Certificate in the Execution Proceedings arising out of the land acquisition proceedings, in the decision reported in *Resilikutty Chacko .. Vs.. State of Kerala* (A.I.R. 1999 Kerala 56), learned Single Judge of Kerala High Court held thus:-

"...5. A debt has been defined as an obligation to pay an ascertained sum of money. In that definition, compensation does not come. Further, this is not a suit to recover a debt from a person. Hence, I am of the view that so far as a reference under Section 18 of the Land Acquisition Act is concerned, that proceeding is not a proceeding for recovery of a debt.

6. In *Aparanji .. Vs.. Arunnachalam* (A.I.R. 1953 Madras 28) a similar question came up for consideration. There the question was whether a reversioner under the Hindu Law is obliged to produce a succession certificate to receive the compensation amount. His Lordship Justice Krishnaswami Nayudu held as follows:-

"...Further, from a reading of Section 214 of the Succession Act, a succession certificate is necessary only in respect of the debt due to a deceased person. It cannot be said that this debt was due and owing to Kanniya Chetti whose properties only the Petitioner is claiming, not the properties of Bangaru. It is obviously a case where it could not be said to be the recovery of a debt to the deceased person, Kanniya".

7. In *Anchakana Sur .. Vs.. Abani Bhusan Sur* (A.I.R. 1982 CAL 378), the question was whether a suit for recovery of profits misappropriated by receiver will come under the provisions of Section 214(1) of the Succession Act. The Division bench of the Calcutta High Court held as follows:-

"...the claim in the suit was apparently not a claim for a liquidated sum. To all intents and purposes it was a suit for accounts. An action claiming an account is not an action for recovery of debt and is not covered by Section 214 of Succession Act..."

8. Setting aside the order of the Court below, the Kerala High Court has held that the compensation amount payable under the Land Acquisition Act is not one for recovery of "Debt" and Succession Certificate need not be produced. The learned Judge was not right in observing that the decision of the Kerala High Court was not applicable since it relates to the Execution Proceedings.

9. In a similar case arising under the Land Acquisition Act, the State Government has deposited the compensation amount in Reference Court. One of the awardee died and his widow made an application for being substituted in the place of Awardee and sought for permission to withdraw the compensation money in deposit. The Court below disallowed the prayer of the widow of the Awardee on the ground that the Succession Certificate is to be produced. Setting aside the order of the Court below, in *Lakhan Mahto .. Vs.. State of Bihar* (A.I.R. 1972 Patna 37), the Patna High Court held that an Application by the widow of the awardee for withdrawal of compensation money already in deposit cannot be treated as an application for execution of award, which amounts to decree within the ambit of Section 214(1)(b) of the Act and held that permission cannot be refused on the

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ground of non-production of Succession Certificate.

10. Holding that the Succession Certificate was necessary only if the decree had been obtained on the basis of a pre-existing debt in *Narayanaswami Naidu .. Vs.. Chellammal and others* (1970 (2) M.L.J. 633 = (1970) 83 L.W. 791), a Single Judge observed as follows:-

"...I agree that a plain reading of Section 214 (1)(a) and (b) clearly shows that the intention of the legislature was that a succession certificate was necessary only if a decree had been obtained on the basis of a pre-existing debt. The emphasis throughout is on the word "debt". In my view, in order to attract the provisions of Section 214(1)(a), a decree must be sought for on a pre-existing debt due to the deceased and the order sought to be executed by the legal representatives must be for the payment of a debt due to the deceased. If the decree is not for the payment of money due prior to the institution of the suit but for damages or compensation for breach of contract or for tort, then the decree would not be one for a debt due to the deceased. Where costs have been awarded to the deceased in the suit, the decree cannot be said to be for a debt. Section 214 (2) of the Act does not purport to define the word "debt", but merely states that it includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes. The meaning of the word "debt" has therefore to be ascer-

tained by reference to the judicial decisions cited supra. The meaning adopted by the Courts also tallies with the ordinary connotation of the word as accepted in public parlance. The word "debt" is defined in Concise Oxford Dictionary as money, goods or services owing. The emphasis is upon the word "Owing" and this necessarily connotes that there must be a pre-existing debt...."

11. In this case, it is clear that the Petitioners, who are Widow, Sons and Daughters of Deceased Arumugam are only seeking to withdraw the compensation amount awarded to the deceased. To show that they are the legal heirs, the Petitioners have also produced Legal Heirship Certificate issued by the Tahsildar, Erode. Since I have taken the view that the compensation amount payable to the injured claimant is not a "Debt", the provisions of Section 214 (1)(b) of the Act are not attracted. The Impugned Order returning the Application, directing the Petitioners to produce the Succession Certificate is liable to be set aside.

12. This Civil Revision petition is allowed. The Impugned Order dated 22.06.2000 in C.F.R.No.11160 of 1999 in M.A.C.T.O.P.No.869 of 1993 is set aside. Learned Principal District Judge, Erode is directed to take up the application on file and pass appropriate orders in accordance with law. No costs.

ATMS/VCJ/VCS

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