CLARENCE PAIS & ORS. ETC. V. UNION OF INDIA (AIR 2001 SC 1151)

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ABSTRACT

Section 213 of the Indian Succession Act, 1925, states that "no right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed. Furthermore, the Section also lays down that it will not apply to any case of wills made by Muhammadans or Indian Christians. The case of Clarence Pais v UOI, challenged the constitutionality of the Section posing it as unconstitutional and discriminatory towards Indian Christians.

Facts

Two writ petitions were filed challenging the validity of Section 213 of the Indian Succession Act, 1925 as unconstitutional. Petitioner Number 1 who filed writ petition No. 137 of 1997, - is an Indian Christian and citizen. He was a lawyer and had appeared in many cases regarding wills and probates. He had 48 years' worth of experience in the profession and that made him decide to file this petition.

Petitioner No. 2 was Catholic Association from Karnataka. In Writ Petition (C) No. 674 of 1998 the petitioner was an Indian Christian who belonged to the Roman Catholic community residing in the State of Kerala. The petitioner was the sole beneficiary of a registered Will dated 15.12.1986 executed by his aunt. She was a Christian and she remained unmarried till her death. Out of love and affection towards the petitioner, she executed a Will on 15.12.1986 bequeathing her entire rights in respect of the said flat in favour of the petitioner. She died on 9.8.1991. Petitioner No 2, received a letter in August 1993 from the Housing Society in Delhi stating that the committee of the society had decided not to hand over the flat to him without any court direction. He was also notified that Mr Barley Arakal was the nominee of the testatrix as per their record.

The petitioner was not in a position to establish his legal right over the property in question or to obtain any relief from the court on account of the fact that he was a Christian who was bound by the restriction provided under Section 213 of the Act and since Section 213 of the Act comes in the way of exercising his right, the petitioner challenged the validity of the said provision for identical reasons as set forth in the connected writ petition. Kerala Legislature had enacted an amendment known as Indian Succession (Kerala Amendment) Act, 1986 dated 14.3.1997 by which sub-section (2) of Section 213 of the Act has been amended to the effect that after the word Muhammadans the words or Indian Christians shall be inserted. This meant Christians weren't required to obtain probate for their property in Kerala but for property situated in other states it was still required.

Issue

The first issue being dealt with in this judgement is the constitutional validity of section 213 of Indian Succession Act, in that the question posed was 'Is Section 213 of the Indian Succession Act, 1925 unconstitutional and discriminatory against the Indian Christians?'. The other issue

was whether the Kerala state amendment, which rendered probate unnecessary for Christians testamentary succession in Kerala was applicable to the property of a Christian situated in other states where the un-amended version of section 213 of ISA was in force.

Petitioner's contention's

Section 213(1) requires that no right as executor or legatee under a will can be established in a Court of Justice without obtaining probate or letters of administration of the Will under which such right is sought to be established. It was submitted that the effect of taking out probate of a Will is to establish the genuineness or validity of the Will and the grant of probate was not a condition precedent to the vesting of the estate in the executor in light of the provisions of Section 213 of the Act. The contention of the petitioner was that there was no rational or discernible basis for making the requirement of probate necessary for only a limited section of Indian citizens such as Indian Christians excluding other sections.

The Indian Succession Act, 1925 repealing the Indian Succession Act, 1865 was enacted by Parliament with a view to consolidating the law applicable to intestate and testamentary succession in India and, as a consequence no intentional change in the law was made at that stage. While no distinction is made with respect to establishing a right to property of a person dying intestate belonging to different communities and professing different faiths, Christians alone are subjected to this requirement.

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The Union of India's Defence

The defence taken by the Government of India was that the members of the Christian community were not put to any discrimination. They were compelled to obtain probate or letters of administration of the Wills only by way of rule of evidence and procedure. It was intended to provide for a right of means of establishing the genuineness of a Will conclusively. The other contention was that the classification had achieved social acceptance. It had been in existence in the statute book for a quite long time and it was not established how such classification in the statute suffers in any manner from discrimination. The provisions being

procedural in nature were intra vires to the Constitution. It was further submitted that the Central Government has been consistently following a policy of non-interference in the personal laws of the minority communities unless the necessary initiative for amendments or repeal from a majority or sizable cross-section of the community arises.

Rule of Law

Section 213 and 57 of the Indian Succession Act

Section 213. Right as executor or legatee when established. —

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in 1[India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed. 2[(2) This section shall not apply in the case of Wills made by Muhammadans 3[or Indian Christians], or and shall only apply—

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the 4[ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immovable property situated within those limits.][1]

Section 57. Application of certain provisions of Part to a class of Wills made by Hindus, etc.— The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September 1870, within the territories which at the said date were subject to the Lieutenant- Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

[1] *India Code: Indian Succession Act, 1925* https://www.indiacode.nic.in/handle/123456789/2385?sam_handle.

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits; 2[and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January 1927, to which those provisions are not applied by clauses (a) and (b):] Provided that marriage shall not revoke any such Will or codicil.[2]

Analysis (inclusive of the legal and social analysis)

The contracts or differences mentioned in the case were not based on any particular religion but for colonial reasons that during the British Empire in India, probate was required to prove the right of an executor or a legatee but not in Part B or C States. The stance seemed to continue even after the Constitution came into force. Colonial reasons may justify the variance of treatment of the geographical regions, however, provided that it bears a justification to the matter as to why a biased treatment is provided.

In our opinion, the section should be amended as a step to bring forth uniformity. Either the requirement to bring out probate should be removed for testamentary succession altogether, or if the legislation thinks for it to be necessary to keep a stringent check on the validity of the Wills, then it should be enforced on all testamentary successions and Wills for and by everyone notwithstanding of their place of birth, their religion and the geographical location of the property.

The case, in our opinion, strongly hints for the system to have a Uniform Civil Code, referred to as UCC hereinafter. The UCC is when there's a formulation of one law for the country which would be applicable to all religious communities that exist, which would especially ease the problems that the judiciary faces with respect to matters such as adoption, marriage, divorce and inheritance. The Code does come under Article 44 of the Indian Consitution which states that 'the State shall endeavour to secure a Uniform Civil Code for the citizens throughout the territory of India.'

The UCC aims to safeguard the vulnerable sections of the society as envisaged by Dr B.R. Ambedkar, with women and religious minorities, and at the same time endorse

[2] *Id,* 1

nationalistic ardour through unity.

Moreover, it would also be a nod and agreement toward the ideals of gender justice considering that India has a separate set of rules and personal laws for religions that govern adoption, maintenance, marriages and divorces. The example of the triple talaq is a classic to explain how women's rights are usually limited under religious personal laws. Once, if and when, UCC is enacted, the contrasts and biases one can see under the Hindu Laws, Christian Laws, and Muslim Laws, and how they have been time and again challenged by women for clarity and majorly that they violate the right to equality that stem from the personal laws, will cease to exist.

The judgement caused an uproar of a high degree amongst the Indian Christians, particularly in Kerela. It was acknowledged by the Central Government and the Indian Succession (Amendment) Act, 2002, Act No. 26 of 2002 was introduced on May 27th 2002.

An article published in Law Weekly in 2003 also challenged the validity of Section 213 of the Indian Succession Act. Later, an amended editorial note stated "if in regard only to properties in Chennai, Mumbai or Kolkata or in the event of the testator having executed the testament while within those cities, is a probate made requisite by this provision leaving aside the entire country does not this provision appear an anachronism?"[3]

The Law Commission that was headed by Dr A.R. Lakshmanan in its 209th report recommended the exclusion of Section 213. However, it seems as though it has been put in cold storage by the Ministry of Law and Justice.

Through the 2002 amendment introduced on 27th May the terms "or Christian" were inserted right after the Mohammedans in the sub-section (2) of the ISA, excusing them from the requirement of probate for wills and codicils, as was done in the Kerela Amendment Act 1 of 1997.

The said provision, however, still carries on with the Wills made by any Hindu, Sikh, Buddhist, or Jaina, as those Wills are of the classes specified in Section 57, of the Act.

[3] Person. "Anachronism in the Succession Act." *Return to Frontpage*, The Hindu, 23 May 2016, https://www.thehindu.com/opinion/open-page/anachronism-in-the-succession-act/article6471736.ece.

The subjects of "Wills" and "Succession" are in the Concurrent List, and the States have the free leeway to pass amendments to the ISA, deleting Section 213, as was done by Kerela. The Government intervention seems understandably required to gather probate for testamentary succession. The discrimination under the light of the case is on the grounds of the place of birth and religion, and it is in stark contradiction of the principles as laid down by the Constitution of India.

Conclusion

The Supreme Court's reasoning that section 213 is not only applicable to Christians but also clearly extends to certain sects of Hindus and Parsis is sound, but it creates a paradox or confusion. In this paradoxical element of the judgement, the court demonstrates that the section is not only applicable to Christians by shedding light on how it is applicable to certain Hindu sects.

The section solely applies to Hindu sects from the colonial empire's former 'A' states. Hindus from all other regions can exercise their rights through legatees or executor wills without the need for probate. On the surface, this appears to be discriminatory based on place of birth and a violation of Article 14 of the Constitution.

The historical and procedural grounds for this are understandable, but that time has gone, and reform to implement uniformity is required. Other communities may consider the non-application of this clause to all Muslims as exclusionary or even discriminatory.

The Supreme Court established that the provisions of Section 213 are not discriminatory based on place of birth or religion. They demonstrated how it is not limited to Christians and extends to people of other faiths.

They identified historical and geographical reasons for this and expressed a willingness to correct it in the long run. The Apex Court thus once again shown itself to be in favour of UCC and has accepted its complex and lengthy process, which will require time and patience from all parties involved.