

CASE NO.:
Appeal (civil) 4896 of 2007

PETITIONER:
Basanti Devi

RESPONDENT:
Raviprakash Ramprasad Jaiswal

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 20484 of 2006)

S.B. Sinha, J.

1. Leave granted.
2. A short but interesting question which arises for consideration in this appeal is as to whether an application under Section 263 of the Indian Succession Act for revocation of grant of probate would be maintainable, inter alia, on the premise that the appellant's name was not cited in the said application for grant of probate.
3. The basic fact of the matter is not in dispute.
4. A Will was executed by one Lakhpati Devi widow of late Mahadeo Jaiswal in favour of the respondent herein who was one of the grand sons of late Bhagwatidina, one of the brothers of late Mahadeo Prasad. Appellant herein claimed that the said Lakhpati Devi had executed another will on or about 12.3.1996. The said Lakhpati Devi admittedly expired on 13.03.1996. Whereas the appellant did not file any application for grant of probate in relation to the aforementioned will dated 12.03.1996, the respondent did so on 6.9.1996. In the said application, it was contended that the properties under the Will are situated in Bombay stating :
That the said deceased at the time of her death had a fixed place of abode at Room No.10-11, Bharat Building, Sonapur Lane, Chira Bazar, Mumbai -400 002 and left property within Greater Bombay in the State of Maharashtra.

It was furthermore stated :

That no application has been made to any District Court or District Delegate or to any other High Court for probate of any will of the said deceased or for Letter of Administration with or without the Will annexed to her property and credits.

5. However, an application for amendment of the application for grant of probate was filed in the said testamentary proceedings which was allowed. On the basis of the averments made by the respondent in the amended application, citations were published only at Bombay on 28.1.1997. Respondent, however, filed an application for amendment of the petition for grant of probate on 21.03.1997, inter alia, stating :
That the said deceased at the time of her death had a fixed place of abode at Room No.10-11, Bharat Building, Sonapur Lane, Chira Bazar, Mumbai -400 002 and left property within Greater

Bombay in the State of Maharashtra and elsewhere
in Union of India.\024

It was, therefore, not disclosed at what other places the properties are situated.

6. It was furthermore averred that there was no heir known to the petitioner on the side of husband of the deceased. The schedule of assets allegedly left by the deceased was also inserted in the schedule of the properties stating :

1.

All that piece and parcel of pension tax land of ground (since redeemed) with the messuages tentament or dwelling house standing thereon situate lying behind at Sonapur Street Girgaum Road outside the Fort of Bombay in the Registration Sub-District of Bombay in the land of the Bombay contained by admeasurement 243)two hundred and forty three) square yards or thereabouts and registered in the Books of Collector New No. 980 New Survey No.8158 and Cadastral Survey No.567 of Bhuleshwar Division and in the books of the Collector of Municipal Rates and Taxes under (C) wards No.3385 and Street No.6 and bounded as follows : that is to say on or towards the East by the properties bearings Cadastral Survey Nos.570, 571, 572, 573 and 574 on or towards the west partly by the properties bearing Cadastral Survey No.565 and 566 and partly by a passage on or towards the north by the property bearing Cadastral Survey No.568 and or towards the south by the Sonapur Street Valued at
Accrued gross rent of the above immoveable property from the date of death till filing of this petition

Rs.1,00,000/-

Rs. 7,500/-

2.

S.B. A/c No.21416 with Bank of India, Kolabadevi Branch Mumbai-2 standing in the name of deceased with accrued

interest upto date of filing this petition

Rs. 1,000/-

3.

Amount standing to the credit of the deceased in current A/c No.31080 with Bank of India Kolabadi Branch Mumbai standing in the name of M/s Mahadeo forthwith in which deceased was sole Proprietor

Rs. 3,000/-

4.

The Milk shop being shop No.1/11 situated at Bharat Building Sonapur lane Chira Bazar Mumbai-2 currently infrastructure in the name & style of Mahadeo farm : together with valued at

Rs. 50,000/-

IN THE STATE OF UTTAR PRADESH

5.

One open piece of land situate at Dist. Pratap Gad, Village \026 Mahadeo Nagar, (U.P.) Valued at
The above plot does not fetch any rent of income.

Rs. 1,000/-

TOTAL

Rs.1,62,500/-

7. However, no citation was made in the State of Uttar Pradesh. A probate was granted in favour of the respondent by the High Court by order dated 7.4.1997. An application for revocation of the said grant of probate was made by the petitioner herein, inter alia, on the premise that although she was one of the heirs of the said Lakhpati Devi, no citation was made. Furthermore, a Will had also been executed in her favour.

8. A learned Single Judge of the Bombay High Court dismissed the application for revocation of probate filed by the petitioner which was marked as Miscellaneous Petition No.1 of 2000 by a judgment and order dated 23.6.1996 opining :

\023The requirements for letter of administration and grant of probate are different. It is an admitted position that public notice was issued before issuing a probate. The petitioner neither filed any caveat nor filed any objection after the publication. Therefore, this petition does not survive for consideration.\024

8. On an intra court appeal having been preferred thereagainst, a Division Bench of the said Court, on the premise that the appellant was not a legal heir of the deceased being an agnate, dismissed the same.

9. Mr. Raju Ramachandran, learned senior counsel appearing on behalf of the appellant, inter alia, would submit that the High Court committed a grave error in passing the impugned judgment insofar as it failed to take into consideration that an agnate is also an heir in terms of the provisions of the Hindu Succession Act. It was furthermore contended that the said application should have been entertained also having regard to Explanation (c) appended to Section 263 of the Indian Succession Act irrespective of the fact as to whether the appellant had any notice of the probate of the said Will or not. Even on the ground of non-compliance of the requirement of Sub-section (3) of Section 283 of the Indian Succession Act, the learned counsel would contend, probate was granted without complying with the requirements of law.

10. Husband of late Lakhpatri Devi late Mahadeo Prasad was one of the five sons of Vindeshwari Prasad-Ganesh Jaiswal; his brothers being late Bhagwatidina, late Gayadin, late Mahavir Prasad and late Kailash. Late Bhagwatidina had three sons, namely, late Mata Prasad, late Ram Prasad and late Moti Lal. Respondent herein is one of the sons of late Rama Prasad. Late Ramaprasad died leaving behind his widow Sursati and three sons, Suresh, Ramesh and Ravi Prakash (Respondent). Other brothers of Mahadeo Prasad have died leaving behind their respective heirs and legal representatives. Late Mahabir Prasad had six sons. Appellant is widow of late Harihar Prasad, one of the sons; other sons being being late Ganga Prasad, Jamuna Prasad, Babulal, Late Amrit Lal and Surya Lal.

11. Parliament enacted the Hindu Succession Act, 1956 to amend and codify the law relating to intestate succession among Hindus. Section 3(f) of the Hindu Succession Act defines "heir" to mean any person, male or female, who is entitled to succeed to the property of an intestate under the Act. Section 15 of the Act lays down the general rules of succession in the case of female Hindus in the following terms :

15. General rules of succession in the case of female Hindus.(1)The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16.

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),--

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

12. For the purpose of ascertaining as to who would be heirs of the husband if the deceased did not leave any sons and daughters or husband;

reference has to be made to Section 8 of the Act which reads as under :

\023Section 8. General rules of succession in the case of males.\027The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter\027

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.\024

It is, therefore, not correct to say that agnates of the deceased are not heirs.

13. Mr. R.P. Bhatt, senior counsel appearing on behalf of the respondent, however, would contend that in terms of the Rules framed by the Bombay High Court, it was not necessary to make any citation in the State of Uttar Pradesh. Rule 683 of the Bombay High Court Rules reads as under :

\023683. Notice to next-of-kin \026 In all applications for Probate, Letters of Administration and Succession Certificate, Notice of the application shall be given to all the heirs and next-of-kin of the deceased mentioned in the Petition except to those whose consent has been filed in the proceedings.\024

14. It is, therefore, not correct to contend that no citation in regard to the heirs of Lakhpati Devi was necessary. The properties left by the deceased Lakhpati Devi were situated at two places, one in the State of Maharashtra and another in the district of Pratapgarh in the State of Uttar Pradesh.

15. We have noticed hereinbefore that the respondent, for the reasons best known to him, did not, at the first instance, disclose that any property belonging to the testator was situated at a place other than the State of Maharashtra. Such disclosure was required to be made in terms of sub-section (3) of Section 283. Citations were also required to be published by the concerned District Judge in terms thereof.

16. In the application for amendment of the application, a vague statement was made. Even therein it was not disclosed that another property is situated in the District of Pratapgarh in the State of Uttar Pradesh, the reason therefor is beyond anybody\022s comprehension.

17. The provisions contained in sub-section (3) of Section 283 are mandatory in nature. Once the statutory requirements are found to have not been complied with, an application for revocation of the grant of probate would be maintainable in terms of Section 263 of the Act, apart from the fact that non-publication of citation could be one of the ground to revoke the grant of probate. Explanation (c) appended thereto in a case of this nature would be attracted. The said provision reads thus :

263. Revocation or annulment for just cause.\027
The grant of probate or letters of administration may be revoked or annulled for just cause.
Explanation.\027Just cause shall be deemed to exist where\027

- (a) & (b) ...
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) to (e) ... \024

18. It may, therefore, be permissible for the appellant to show that a Will was executed by said Lakhpati Devi in her favour also on 12.03.1996. Mr. Bhat contends that the appellant had given up the right to the property under the said Will. Even if that is so, this Court is not concerned therewith at this stage.

Appellant had merely filed an application. The said application has not been entertained although the same, in our opinion, should have been done. The question, therefore, is as to whether the said application should have been entertained.

19. Reliance has been placed by Mr. Bhat on a decision of this Court in *Ishwardeo Narain Singh v. Smt. Kamta Devi & Ors.* [AIR 1954 SC 980] wherein, inter alia, it was held :

\023The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate Court.\024

20. The Probate Court, indisputably, exercises a limited jurisdiction. It is not concerned with the question of title. But if the probate has been granted subject to compliance of the provisions of the Act, an application for revocation would also lie.

21. In *Chiranjilal Shrilal Goenka v. Jasjit Singh & Ors.* [(1993) 2 SCC 507], whereupon again Mr. Bhat relied upon, this Court held :

\023On a conspectus of the above legal scenario we conclude that the Probate Court has been conferred with exclusive jurisdiction to grant probate of the will of the deceased annexed to the petition (suit); on grant of refusal thereof, it has to preserve the original Will produced before it. The grant of probate is final subject to appeal, if any, or revocation if made in terms of the provisions of the Succession Act, It is a judgment in rem and conclusive and binds not only the parties but also the entire world. The award deprives the parties of statutory right of appeal provided under Section 299. Thus the necessary conclusion is that the Probate Court alone has exclusive jurisdiction and the Civil Court on original side or the Arbitrator does not get jurisdiction, even if consented to by the parties, to adjudicate upon the proof or validity of the Will propounded by the executrix, the applicant. It is already seen that the executrix was nominated expressly in the will is a legal representative entitled to represent the Estate of the deceased but the heirs cannot get any probate before the Probate Court. They are entitled only to resist the claim of the executrix of the execution and genuineness of the Will. The grant of probate gives the executrix the right to represent the estate of the deceased, the subject-matter in other proceedings. We make it clear that our exposition of law is only for the purpose of finding the jurisdiction of the arbitrator and not an expression of opinion on merits in the \023probate suit\024.\024

22. It is now well settled that an application for grant of probate is a proceeding in rem. A probate when granted not only binds all the parties before the Court but also binds all other persons in all proceedings arising out of the Will or claims under or connected therewith. Being a judgment in rem, a person, who is aggrieved thereby and having had no knowledge about

the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him. We are, therefore, of the opinion that the application for revocation of the grant of probate should have been entertained.

23. The impugned judgment, therefore, is set aside and the appeal is allowed and the matter is remitted to the learned Single Judge of the Probate Court with costs. However, we make it clear that we have not entered the merit of the matter.

JUDIS