

**Atul Gupta vs.state**

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**SooperKanoon Citation :** [sooperkanoon.com/1221443](http://sooperkanoon.com/1221443)

**Court :** Delhi

**Decided On :** Feb-14-2019

**Appellant :** Atul Gupta

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. Premtosh Mishra, Mr. Mayank Tripathi, Ms. Gaurangi Gupta, Mr. D.N.Goburdhun, Mr. Sriansh Prakash, Mr. Milind Srivastava

**Judgement :**

\* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

14. h February, 2019 ATUL GUPTA TEST.CAS. 64/2016 .....

... Petitioner

Through: Mr. Premtosh Mishra with Mr. Mayank Tripathi & Ms. Gaurangi Gupta, Advs. Versus STATE Through: Mr. D.N.Goburdhun & Mr. Sriansh Prakash, ..... Respondent Advs. for applicants in IA No.14432/2018 Mr. Milind Srivastava, Adv. for R-9 & 10. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW IA No.14432/2018(u/O.I R.10 CPC) 1. Ms. Anju Chandna, Ms. Ritu Menon and Ms. Rina Sharma seek impleadment at the stage of recording of evidence, in this petition seeking probate, filed by the executor named in the document claimed to be the validly executed last Will of deceased Dr. Vimla Lal.

2. On enquiry, it is informed that objections to the grant of probate have been filed by the sisters of the husband of the deceased, claiming that the husband of the

deceased had predeceased the deceased and the deceased had no issues and the applicants who are the sisters of the husband of the deceased are natural heirs under Section 15 of the Hindu Succession Act, 1956.

3. The applicants are the daughters of the sisters of the deceased and the counsel for the applicants on enquiry states that the applicants are supporting the document of which probate as a Will of the deceased is sought. On enquiry, as to how the applicants are necessary and/or proper parties, the TEST.CAS.No.64/2016 Page 1 of 7 counsel for the applicants states that since under the said document claimed to be the validly executed last Will of the deceased, a bequest has been made to the applicants, the applicants are necessary and proper parties. On further enquiry as to what purpose the applicants want to serve by seeking impleadment, if are supporting the petitioner, the counsel for the applicants states that the applicants are in the dark as to how the petitioner, in his capacity as executor, is dealing with the estate of the deceased and the applicants desire to become parties to safeguard the interest in the bequest made in their favour.

4. I am of the opinion that when objections from the public are invited by issuing citation of a testamentary case and/or when notice thereof is directed to be issued to the close relatives / natural heirs of the deceased, the purport thereof is to give an opportunity to all those who have a chance of succession to the estate in the absence of a Will or under any other Will, if so desire to oppose the grant of the probate or letters of administration with copy of the Will annexed. The purport is to allow only those to be parties, who have a caveatable interest. Else, the petitioner seeking probate and/or letters of administration with copy of the Will annexed, is already seeking the said relief and all parties who may be beneficiaries under the document of which probate/letters of administration is sought, are not required to be impleaded.

5. The counsel for the applicant, of course, contends that it was incumbent on the petitioner to name the applicants and have the notice of the petition issued to the applicants.

6. I do not find any merit in the said plea. The purport of the notice as aforesaid is to call upon all persons who may be desirous of disputing the document as the Will, to do so and to inform them of the claim in the TEST.CAS.No.64/2016 Page 2 of 7 petition. There is no principle of law, requiring all beneficiaries under Will/letters of administration to be invited and impleaded. It cannot be forgotten that more the parties to a litigation, more the chances of delay in disposal thereof, not only in service of summons and completion of pleadings, but also on account of absence of lawyer of any of them at the time of hearing and resultant adjournments.

7. The High Court of Gujarat in Jadeja Pravinsinhji Anandsinhji Vs. Jadeja Mangalsinhji Shivsinhji AIR1963 Guj 32 held that an executor to a Will seeks to establish the Will not for himself but as a representative for those who take benefits under the Will; a petition seeking probate is not a personal action but it is in reality a representative action; such a proceeding is not for his personal benefit inasmuch as he is not interested in the estate of the deceased except to administer the estate of the deceased according to the directions of the testator contained in the Will; the action of an executor is a representative one for those whom he represents. It was further held that if the executor fails in his duty, any of those whom he represents are entitled to intervene and carry on the proceedings with a formal modification that the prayer must then be read for Letter of Administration with Will annexed. The said dicta of the Gujarat High Court, recently in Vatsala Srinivasan Vs. Shyamala Raghunathan (2016) 13 SCC253 was affirmed by the Supreme Court.

8. As far as the apprehension expressed by the counsel for the applicants is concerned, there are sufficient provisions in the Indian Succession Act making the executor liable for his actions of misfeasance of the estate with which he has been entrusted. It is also not as if this is an uncontested case. As aforesaid, the sisters of the husband of the deceased are also contesting TEST.CAS.No.64/2016 Page 3 of 7 the grant of probate and I am sure their counsel would have taken appropriate measures to safeguard the interest and to prevent the petitioner from dissipating the same.

9. The counsel for the applicants has drawn attention to dicta of the Division Bench of this Court in *Indian Associates vs. Shivendra Bahadur Singh & Ors.*, 2003 SCC Online Del 180 particularly to paragraphs 22 and 29 thereof in support of this application.

10. As far as para 22 is concerned, the same merely refers to earlier judgments in *Smt. Annapurna Kumar v. Subodh Chandra Kumar* AIR1970 Calcutta 433, *Sima Rani v. Puspa Rani*, AIR1978 Calcutta 140 and *Dimmiti Pullaya v. Abdebolu*, AIR 1962 AP140(FB) laying down that any interest, howsoever slight and even the bare possibility of an interest is sufficient to entitle a party to oppose a testamentary paper.

11. The same cannot be read as entitling all beneficiaries of document, of which probate is sought, to be a party to the proceedings. Rather, as the language suggests, the same entitles only those to be a party who are interested in opposing a testamentary paper. As per the application of the counsel for the applicants, they are not opposing but supporting the testamentary paper.

12. Para 29 of the judgment, on which also reliance is placed, uses the words as soon as it is established that a person or a legal entity has an interest in the estate, it would be permissible to the said party to apply to the concerned court, for being permitted to intervene or being impleaded as a party even in the testamentary proceedings since the judgment of the court in probate proceedings is a judgment in rem and not a judgment in personam. The use of the words interest in the estate have to take their colour from TEST.CAS.No.64/2016 Page 4 of 7 what has been observed in para 22 of the judgment, i.e., the interest in the estate if there was no testamentary paper or there was another testamentary paper other than testamentary paper of which probate is sought. Thus, the said judgment is found to be against, rather than in favour of the applicants.

13. As far back as in *Ismail Abdul Latif Vs. Haji Ibrahim Haji Jan Mahomed Karachivala* AIR1935 Bom 178 it was held that an executor represents the estate of the deceased and as a general rule, in the absence of special circumstances, it is not necessary or proper to join beneficiaries as parties in an action. This Court also in *Tribhuvan Nath Puri Vs. State* 2008 (104) DRJ233 held that Section 278 of

the Indian Succession Act, 1925 does not require the beneficiaries under the Will to be impleaded as parties in the probate proceedings. Reference may also be made to Krishna Kumar Birla Vs. Rajendra Singh Lodha (2008) 4 SCC300 where the entitlement to file caveat to oppose grant of probate i.e. caveatable interest was for adjudication. It was held, (i) to sustain a caveat, a caveatable interest must be shown; (ii) the test required to be applied is: does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right?.; (iii) it is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed i.e. any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein. The High Court of Bombay also in Pradeep Manek Shahani Vs. Rajendra Kumar Shahani AIR2013 Bom 157 and in Pravina Vs. Vinayak 2014 TEST.CAS.No.64/2016 Page 5 of 7 SCC OnLine Bom 1373 held beneficiaries under a Will to be not necessary or proper parties to a proceeding seeking probate of the Will.

14. The last argument of the counsel for the applicants is, that the counsel for the petitioner has given no objection to impleadment.

15. Merely because the petitioner has given no objection, would not require the Court to, without applying its mind, mechanically allow impleadment, specially when it is found that such impleadment would be against the interest of expeditious disposal.

16. In any case, the counsel for the objectors states that he is opposing the application.

17. No case for impleadment is thus made out.

18. Dismissed. IA No.220/2019(u/O.VI Rule 16 CPC of the plaintiff) 19. The counsel for the petitioner seeks expungement of the averments made in the application for impleadment.

20. With the dismissal of the application for impleadment vide above order, this application has become infructuous and is disposed of. TEST.CAS. 64/2016 21. Counsel for the applicants whose application for impleadment has been dismissed, states that liberty be granted to the counsel for the applicants to watch the proceedings in this testamentary case on each and every date of hearing when this case is listed, whether before this Court or before the Joint Registrar or before the commission if any issued for recording of evidence.

22. All the said hearings are in open court and it is always open, not only to the counsel for the applicants but to all his associates, to watch the same and no liberty is required therefor. TEST.CAS.No.64/2016 Page 6 of 7 23. The counsel for the applicants states that liberty be also granted to assist the counsel for petitioner.

24. No such general liberty can be granted, which has potential of delay. However, if on any date of hearing, anything worthwhile is pointed out, the same will be considered.

25. List before the Joint Registrar on 7th March, 2019, for scheduling further dates of trial. FEBRUARY14 2019 ak RAJIV SAHAI ENDLAW, J TEST.CAS.No.64/2016 Page 7 of 7

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