

Shanti Devi Vs. Anil Kumar Singh

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SooperKanoon Citation : sooperkanoon.com/128381

Court : Patna

Decided On : Feb-02-2007

Judge : Barin Ghosh and Sheema Ali Khan, JJ.

Appellant : Shanti Devi

Respondent : Anil Kumar Singh

Judgement :

1. According to Anil Kumar Singh, son of late Janardan Sinha, his grand-father Ram Binod Singh died testate on 23rd May, 1967. In 1983 almost 16 years after the death of the testator, Anil Kumar Singh filed an application for grant of letters of administration annexed with the Will. At the time when the application was filed one of the sons of Ram Binod Singh, namely, Dr. Surendra Sinha was alive. He was accordingly cited but, admittedly, he did not enter a caveat. One of the daughters of Ram Binod Singh, namely, Sharda Mandal, on being cited, filed a caveat and thereupon filed an affidavit-in-support of the caveat and, as a result, in 1987 the application for grant was treated as a suit in between Anil Kumar Singh, plaintiff and Sharda Mandal, defendant.

2. In the meantime on 30th October, 1986. Dr. Surendra Sinha died intestate and, as a result, his wife Brij Shanti Mani, being the appellant above named, in her own capacity, acquired some interest in the estate of Ram Binod Singh, testator. In 1995 appellant filed a caveat. Prior thereto the defendant in the suit prayed for a direction for issuance of a citation upon the appellant. That having been rejected,

the matter came up before this Court, when this Court observed that the thing, as was being sought for by the defendant in the suit, is unheard of. According to the appellant, subsequent thereto over telephone, the defendant in the suit informed the appellant about the pendency of the suit and accordingly the appellant in 1995 filed the caveat.

3. The caveat so filed has been discharged by the order under appeal principally on the ground that the appellant had no interest in the estate of the testator and that there is unexplained delay in approaching the Court to file caveat.

4. In terms of the provisions contained in the Indian Succession Act, 1925, before a grant is accorded, special citations are required to be issued upon all persons claiming to have any interest in the estate of the deceased to come and see the proceeding before the grant is accorded. At the best, a person who has acquired any interest in the estate of the deceased at or immediately before issuance of citations may be cited. A person, who has acquired some interest subsequent thereto, cannot be cited. As on the date of issuance of citation in the instant case, the appellant having had no interest in the estate of the deceased could not be cited and, in fact, she had not been cited. The question is whether because she was not cited and her predecessor-in-inter-est having been cited but refused to file a caveat, despite having interest in the estate of the testator and whether the right to file a caveat to contest a grant is a substantive right?

5. It goes without saying that right to con-test a grant is a substantive right inasmuch as the grant will deprive the contestant of the part of the estate inherited by him or her. Since such contest can be made by lodging a caveat and thereupon by filing an affidavit in support thereof, the right to file a caveat is a substantive right of any person who has any interest in the estate of the testator.

6. Although citations are to be issued to all persons claiming to have any interest in the estate of the testator and though only a person having some interest in the estate of the testator can file a caveat, but the law governing the field does not for a second suggests that only those who have been cited are entitled to lodge caveat. The logical conclusion, therefore, would be that the person claiming to have interest in the estate of the deceased must have such interest as on the date

of lodgment of the caveat.

7. In 1995, no grant was accorded. The suit was still pending. In 1995, admittedly, the appellant had some interest in the estate of the testator. As on the date of lodgment of the caveat, she had, therefore, the basic right to lodge a caveat. No doubt, there is unexplained delay in lodgment of the caveat. As aforesaid, in 1986 itself she acquired interest, but the caveat was lodged in 1995. Her predecessor-in-interest was cited and, accordingly, for all practical purposes, it must be deemed that she had knowledge of the proceeding right from the date of such citation. She did not take prompt action on acquiring interest in the estate to lodge caveat, that seems to be an admitted position,

8. The question is - for such delay, can a substantive right to file a caveat be defeated? The Act nowhere prescribes a time frame within which a caveat has to be lodged. The rules framed by this Court in relation thereto do not suggest any time during which the caveat has to be lodged. The logical conclusion, therefore, would be that such caveat can be lodged any time before the grant is accorded. In the absence of a time fixed for doing a particular thing, there is no question of depriving a substantive right on the ground of delay.

9. The right, therefore, to lodge a caveat remains open until such time the grant is accorded. Once the grant is accorded, the matter stands finally concluded by a judgment in rem and, at that stage, nothing can be done. The right to lodge a caveat by a person having some interests in the estate of the testator comes to an end at that stage.

10. As aforesaid, in the instant case, as yet, grant has not been accorded. It is true that the suit has proceeded to some extent. No doubt, by reason of lodgment of the caveat by the appellant, the conclusion of the suit would be delayed to some extent certainly, but for that, apart from the delay aspect, the plaintiff and the defendant in the suit will not suffer, but if caveat is not allowed to be filed despite the suit being pending, the appellant will stay away from the Court without any right to participate in the suit, where her fate pertaining to her interest in the estate of the testator will be decided.

11. The learned Court while rendering the judgment under appeal has placed reliance upon a few judgments, which do not answer the issue raised in the instant case. Those judgments deal with the situation where after grant, a person having interest in the estate of the deceased, sought to reopen the grant and the Courts held that the same is not permissible principally on the ground that while a grant is accorded, the same is accorded by rendering a judgment in rem. The learned Court also relied upon a judgment of a learned single Judge of this Court whereby and under it was held that unreasonable delay in lodging a caveat is a death-knell to exercise the right to lodge a caveat. While doing so, the learned Judge did not take note of the fact that neither the Act, nor the Rules made by this Court prescribe any time limit for filing a caveat.

12. In those circumstances, we declare that right to contest a grant by filing a caveat by a person having some interest in the estate of the testator cannot be defeated only on the ground of delay and, particularly when, the legislature and the law-makers have not prescribed any time limit to initiate such contest by lodgment of a caveat.

13. For the reasons as above, we have no other option but to interfere with the judgment and order under appeal and accordingly the same is set aside, and the caveat filed by the appellant is accepted. The appeal accordingly stands disposed of.