

Mrs. Revathamma Vs. Hamsa and ors.

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Court : Andhra Pradesh

Decided On : Feb-01-1960

Reported in : AIR1961AP13

Judge : Munikanniah, J.

Acts : [Succession Act, 1925](#) - Sections 256, 257 and 283(1); Hyderabad High Court Rules - Rule 46

Appeal No. : Civil Revn. Petn. No. 118 of 1957

Appellant : Mrs. Revathamma

Respondent : Hamsa and ors.

Advocate for Pet/Ap. : V.V.L. Narasimha Rao, Adv. for D. Hanumantharao, Adv., ;E.V. Venugopalacharya and ;P.R. Raman, Adv.

Judgement :

Munikanniah, J.

1. This revision petition is directed against the order of the learned District Judge, Secun-derabad, who considered that Rule 46 of the Rules framed by the Hyderabad High Court under the Indian Succession Act (Act XXXIX of 1925) in respect of applications for probate, letters of administration and succession certificates has become applicable, and that therefore the petitioner herein having

failed to enter a caveat should be discharged and the petition for the issue of letters of administration should be proceeded with irrespective of the objections raised by the petitioner herein by filing a counter.

2. Briefly, the facts leading to this petition are these: The five daughters of C. G. Srinivasulu Naidu filed O. P. No. 76/2/56 for the grant of letters of administration under Section 218 of the Indian Succession Act in the Court of the District Judge, Secunderabad for the property of Mrs. Radhahai their mother. These petitioners in O. P. No. 76/2/56 impleaded Mrs. Revathamma their step sister being the daughter of C. G. Srinivasulu Naidu, by his first wife. In the schedule annexed to this petition, two houses standing in the name of the father of these petitioners and of the respondent have been shown as items 1 and 2. The only other item concerns the jewels of the value of Rs. 500/- which belonged to the deceased Mrs. Radhahai. This petition was filed on 22-6-56 and the respondent entered appearance on 18-7-58 in response to the notice issued by the Court.

The respondent filed a counter on 10-8-1956 denying the title of the deceased Mrs. Radhabai to the two houses and alleging that they belong to her father late C. G. Srinivasulu Naidu, thereby denying any interest for the late Mrs. Radhabai in those houses. The respondent therein therefore prayed for the dismissal of the petition for letters of administration. But the petitioners contended that Mrs. Ravathamma is bound to enter a caveat and file her objections supported by an affidavit within fourteen days of the caveat being lodged. This objection is contested by Revathamma by pointing out that the petition filed for the issue of letters of administration and notice issued by the Court were not according to law and the forms prescribed, that as she was impleaded as a party and given notice she could neither file a caveat nor a further affidavit, that inasmuch as she was not admitting the title of the deceased Radhabai to the houses admittedly in the name of her father and that allegations of the type of benami nature while applying for letters of administration are not to be entertained by the Court, the procedure adopted by her is the only proper course to be taken in the circumstances of the case. She took up the stand that though she is not bound to enter a caveat, she should be heard or discharged thereby making it clear that the proceedings of the District Court should have no adverse effect on any future proceedings she might

choose to take. The learned District Judge in a brief order contented himself by merely stating that Rules 43 and 44 do not admit of the interpretation that a respondent who does not admit the property to be that of the deceased is under no duty to conform to the procedure prescribing for entering a caveat. The present revision petition is against this order. It will be convenient to refer hereafter to Ravethamma as the petitioner and the other five daughters of C. G. Srinivasulu Naidu as the respondents.

3. Mr. V. V. L. Narasihma Rao appearing for the petitioner places reliance upon the language of Rules 22 and 31 of the Hyderabad High Court pertaining to the Letters of Administration under the Indian Succession Act in regard to the notice to next-of-kin and citation respectively and referred to Form No. 192 wherein it has been mentioned that the citation is issued calling only upon the person who should claim to have any interest in the estate to come and see the proceedings before the grant of probate (or Letters of Administration). The point raised by the learned advocate is that the adding of a party to a petition for letters of administration and giving notice to that respondent separately does not alter the situation and make it obligatory for the named respondent to file a caveat even though the respondent disclaims the interest of the deceased in the properties to which Letters of Administration have been prayed for.

It is further urged that the entering of a caveat, having regard to the form in which it has been made, would, in essence, make it appear that the objector is acquiescing in the alleged interests of the deceased in the property. The objector, having been added as a party, comes in only to state that the properties in respect of which the Letters of Administration have been asked for are not the properties of the deceased. In support of these contentions, reference is made to the caveat prescribed in Form No. 202 which is in the following terms:

'Let nothing be done in the matter of the estate of the abovenamed deceased, who died at on or about the -- day of 19 without due notice to the abovenamed caveator'.

It is pointed out that what a caveator by entering the caveat desires is that the proceedings should be in his presence and therefore the entering of a caveat

cannot mean that the title to the property of the deceased is questioned. It is thus contended that any person who opposes administration need not lodge a caveat. But inasmuch as when a person is added as a party to the petition for letters of administration, without his choosing to be a caveator, the person so added has a right thereafter to make his position clear by filing his objections to his being made a party thereto.

In other words, the position taken up by the learned advocate is that a respondent to a petition of letters of administration made without a volition of the respondent himself cannot be brought on record as a party and still make him shut his mouth without explaining his own position, especially when he denies that the deceased has no interest in the properties for which letters of administration are prayed for. This contention, apart from its being justified upon the principle that a party to a proceeding should not be shut out from having the say (*vide* *Mustafa Badsha v. Madras Motor Insurance Co. Ltd.*, : AIR1957 Mad779) has support in a decision of the Punjab Chief Court in *Khazan Das v. Ram Saran Das*, 6 Ind Cas 650.

There it has been pointed out that the court has no jurisdiction to decide what properties belonged to the estate of the deceased in proceedings relating to the grant of letters of administration and that therefore a person can oppose the application for granting probate or letters of administration without his lodging the caveat as required by Ss. 70 and 72 of Probate and Administration Act (V of 1881). Stress is laid on yet another decision under the same Probate and Administration Act (V of 1881) of the Bombay High Court in *Pirojshah Bbikaji v. Pestonji Morwanji*, ILR 34 Bom 459 which lends support that a caveator should have no dispute whatever as to the title of the deceased to the estate.

It may not be inapt to have to refer to the case in *Abhiram Dass v. Gopal Dass*, ILR 17 Cal. 48 where a divisional bench has been considering the order of a District Judge admitting the respondent as a caveator under Section 69 of the Probate and Administration Act (V of 1881). Therein, it is found at p. 52.

'A person disputing the right of a deceased testator to deal with certain property as his own cannot be properly regarded as having an interest in the estate of the deceased. His action is rather that of one claiming to have an adverse interest.'

Interpreting the words 'to issue citations calling upon all persons claiming to have any interest in the estate of the deceased' occurring in Section 69 of that statute, the divisional bench stated: 'The term used does not necessarily refer to any particular property, but to the claim of any person to succeed by inheritance or otherwise to any portion of the estate of the deceased by reason of an interest, not as an adverse title to the testator to any particular property, but in the estate itself, whatever that may consist of. The form of the caveat, too, would seem to show that the person who enters a caveat admits that the particular property forms a portion of the estate of the testator. but objects either to the execution of the will or to the proposed manner of dealing with any portion of the estate.'

In a recent decision of the Madras High Court in *In the matter of the will of R. Santhana Mudaly*, (S) AIR 1955 Mad 576, Hamaswami, J. observes as follows;

'The interest in the estate of the deceased which would make it proper to issue citations on the objector must be an interest under the deceased and not one paramount to that of the deceased'.

It is also of importance to note that this decision has been rendered under the Indian Succession Act concerning a case falling under Section 283(1)(c). Further if it is remembered that Sections 70, 72 and 81 of Act V of 1881 find their counterparts in Sections 251, 253, 259 of Indian Succession Act No. X of 1865 and Sections. 284, 285 and 294 of the Indian Succession Act XXXIX of 1925, the applicability of the ratio of the decisions referred to above in deciding the question that arises for consideration in this case is easily, discernible.

4. The filtered position in regard to the question whether a respondent to a petition for letters of administration, who does not perhaps at all enter a caveat, is precluded from raising his objections in a counter is that a respondent cannot and need not enter a caveat; but that respondent should not be denied any opportunity not only to assert his adverse interest but deny the title of the deceased to the properties in regard to which Letters of Administration are prayed for, but also pray for the dismissal of the petition for letters of administration on the ground that the title to the properties is in question, and that has to be necessarily determined in separate proceedings.

This view, I should consider, is further supported by the absence of any provision in the Indian Succession Act denying opportunity for the respondent who has been added as a party to raise a dispute. All the provisions of the Indian Succession Act 1925 are there for the purpose of enabling a person who wants to be present at the proceedings relating to the letters of administration to enter a caveat in order that nothing can be disposed thereafter without him and such a caveator is permitted to file his objections within 14 days of entering the caveat. Any provision therefore in regard to a caveator in the Indian Succession Act cannot be taken as restricting or negating the rights of a respondent who has been called to have his say who has not chosen to be a caveator.

5. There remains the question: What then should have been the order which the learned District Judge could have passed. A reference to Section 256 provides for the granting of letters of administration 'subject to exception'. It is further exemplified in the language of Section 257 by the mention that the 'grant with exception ofLetters of Administration' will pertain to the remainder of the deceased's estate, to which an objection has not been raised. It is thus clear that the grant of letters of administration in respect of part of the effects shown in the petition for letters of administration is not prohibited and therefore it must have been open in a case of this kind for the District Court to have considered the aspects of the case and come to the conclusion that the objector is not a caveator and that therefore his objections cannot be made to conform to those of a caveator. It follows that the respondent Revathamma who has been implicated by the petitioners has a right to file her objections, and that in such circumstances as this there could be only grant of letters of administration in regard to the third item viz., the jewels mentioned therein.

6. In the result, this petition is allowed in respect of items 1 and 2, viz., the houses which even according to the petitioners admittedly stand in the name of their father. O. P. No. 76/2/56 stands dismissed in respect of the first two items and the further proceedings ordered by the District Court will be proceeded only with respect to item 3 viz. the jewels. As no one appears for the respondents, there will be no order as to costs.