

Vikas Vs. All Concerned

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Court : Madhya Pradesh

Decided On : Apr-07-1994

Reported in : AIR1995MP131

Judge : S.K. Dubey, J.

Acts : [Succession Act, 1925](#) - Sections 286 and 287

Appeal No. : Civil Revision No. 92 of 1994

Appellant : Vikas

Respondent : All Concerned

Advocate for Pet/Ap. : R.D. Jain, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.K. Dubey, J.

1. This is a revision petition under Section 115 of the Code of Civil Procedure, against the order dated 13-1-1994, passed by Civil Judge, Class I, Sironj, District Vidisha in Misc. Case No. 4 of 1993, dismissing the application filed by the petitioner under Section 276 of the Indian [Succession Act, 1925](#), for short, the

'Act', for grant of probate.

2. The application for grant of probate was filed by the petitioner in the Court of Civil Judge, Class I, on the basis of the will executed on 29-7-1989 in favour of the petitioner relating to the amount of the fixed deposit receipts valued at Rs. 31,000/-

3. Civil Judge, Class I is appointed as delegate of the District Judge by the High Court under Section 268 of the Act and under Section 10(1) of the M. P. Civil Courts Act, 1958, to grant probates and letters of administration in non-contentious cases within the Local limits of the area, as prescribed. In the petition for grant of probate after issue of citation, no objection was received. The Court after recording of evidence, found that it is not proved that it was the last Will and the deceased was mentally fit to execute the Will and, thus, rejected the application. Hence, this revision.

4. Shri R. D. Jain learned counsel for the petitioner, contended that the District delegate, only in non-contentious cases, has to grant the probate or letters of administration, as the case may be, and where in a non-contentious case, the District delegate is doubtful whether the probate or letters of administration should or should not be granted, or when only question arises in regard to grant of application, in that case, if the district delegate thinks it proper, has to transmit a statement of the matter in question to the District Judge and then the District Judge may direct the district delegate to proceed in the matter of the application according to the instructions issued by the District Judge, as may be necessary or may forbid any proceeding by the district delegate leaving the party in question to make application to the District Judge. Therefore, the District Delegate could not have rejected the application. Learned counsel placed reliance in support of his contention on a decision of this Court in M. A. No. 6 of 1974 (J), dated 4-2-1981, reported in 1981 JLJ SN 56 Hari v. Gullo and a decision of the Calcutta High Court in the case of Kanu Sharma v. Shnamapada Sharma, AIR 1984 Cal 149.

5. In the opinion of this Court, Shri Jain is right in his submission. Ordinarily, under Section 264 of the Act, District Judge exercises the jurisdiction in the matter of grant and revocation of probate etc. Section 265 of the Act gives power to High

Court to appoint judicial officers as it thinks fit to appoint delegates of the District Judge to grant probate and letters of administration only in non-contentious cases which is evident from Section 272, which lays down that in a case where there is no contention and the District Delegate so appointed is satisfied that the petition is verified as provided in the Act, that the testator or intestate, as the case may be, at the time of his death, had a fixed place of abode within the jurisdiction of such Delegate, he may grant the probate or the letters of administration. In a case where the District Delegate is doubtful, has to follow the procedure under Section 287 of the Act which reads thus:

'287. Power to transmit statement to District Judge in doubtful cases where no contention. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.'

6. In cases where there is a contention or District Delegate thinks probate or letters of administration should be refused in his court, the District Delegate has to follow the procedure prescribed under Section 288 of the Act which reads thus:

'288. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court,- In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition with any documents which may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do; and, in that case, the

same shall be sent by him to the District Judge'.

7. On reading the two provisions contained in Sections 287 and 288, it is amply clear that the District Delegate cannot reject the application for grant of probate if he is not satisfied that the applicant has made out the case for grant of probate. In such a situation, the District Delegate should return the application for grant of probate alongwith the documents for the purpose of presentation before the District Judge who, then, shall follow the procedure to proceed with the hearing on merit in the matter of grant or refusal of probate.

8. Therefore, District Delegate, the Civil Judge, Class I, in the opinion of this Court, when he was doubtful in the matter of grant of probate, acted illegally and without jurisdiction in rejecting the application.

9. In the result, the revision is allowed. The order of the District Delegate is set aside and he is directed to adopt the procedure as laid down in Section 287 of the Act.

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