

Kanta Vs. State and anr.

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Court : Delhi

Decided On : Apr-22-1985

Reported in : AIR1985Delhi453; 1985RLR71

Judge : G.R. Luthra, J.

Acts : [Succession Act, 1925](#) - Sections 270

Appeal No. : Probate Case No. 12(LA) of 1983

Appellant : Kanta

Respondent : State and anr.

Advocate for Pet/Ap. : F.C. Bedi,; P.N. Sethi,; Shabnam,;

Judgement :

G.R. Luthra, J.

(1) The present petition filed under sections 276 and 278 of the Indian Succession Act. 1925 (hereinafter referred to as the Act) is for grant of letters of administration with the Will annexed. The petitioner, Smt. Kanta claims to be widow of Sukhdev Singh Sandhu alias S. Sukhdev who died at Delhi on or about first day of March 1979. According to the petitioner, Sukhdev Singh Sandhu left her as his widow, a daughter Ms. Shabnam and mother Smt. Harnam Kaur.

(2) Further, as alleged by the petitioner, the deceased left a Will dated 22nd February 1979 in favor of the former and by virtue of that Will, she is entitled to the entire property of the deceased.

(3) The petition was filed in February 1983 which was about four years after the death of Sukhdev Singli Sandhu. The Explanationn for delayed filing of the petition, as given in the petition, is that Smt. Shaminder G. Bathra, a sister of the deceased, had been litigating with the petitioner at Ludhiana and Bombay in connection with the property of the deceased.

(4) A notice of the petition was issued to Ms. Shabnam the Chief Revenue Controlling Authority and to the general public by way of publication of notice in Hindustan Times. No objection were filed except by Mrs. Shaminder G. Bathra, a sister of the deceased, who even filed a caveat No. 6 of 1983. She (Smt. Shaminder G. Bathra) contested the grant of letters of Administration to the petitioner. She denied that there was any execution of the Will in favor of the petitioner. She also denied that the petitioner is the widow of Sukhdev Singh Sandhu. She states that the petitioner was married to Prem Chand Son of Shri Roop Chand and that out of that wedlock one daughter Nisha was born who is still alive.

(5) The case of Smt. Shaminder G. Bathra, objector, is that at the time of death of Sukhdev Singh Sandhu, his mother Smt. Harnam Kaur was the only heir, that Smt. Harnam Kaur executed a Will on 20th May 1980 in her (Smt. Shaminder G. Bathra) favor and that, therefore, after the death of Hafnam Kaur, she became the owner of the entire property left by Sukhdev Singh Sandhu.

(6) She also pleaded that the courts at Delhi had no Jurisdiction to entertain and decide the petition because Sukhdev Singh Sandhu had permanent abode at Bombay and did not have such an abode in the union territory of Delhi.

(7) Following preliminary issues were framed by H. C. Goel, J. on 30th August 1984.

1. Whether the courts at Delhi have got jurisdiction to entertain the petition and grant the relief as prayed for.

2. Whether in view of the provisions of section 271 and 273 of the Indian Succession Act, the petition, should be heard and decided by this court.

Issue NO. 1.

(8) The relevant provision regarding territorial jurisdiction is section 270 of the Indian Succession Act which reads as under

'270. When probate or administration may be granted by District Judge.- Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or interested as the case may be, at the time of his decease had a fixed place of abode, or any property, moveable or immovable, within the jurisdiction of the Judge'

It is, therefore, clear that in order that a court may have territorial jurisdiction, the deceased should have either a fixed place of abode or moveable or immovable property within its jurisdiction. In the present case it is common ground between the parties that the fixed place of abode of the deceased Sukhdev D Singh was Bombay. However Schedule No. 1 attached to the petition given the particulars of the property movable as well as immovable left by the deceased. The only property as per that schedule in the union territory of Delhi is a deposit in the amount of Rs. 956.63 p. in account No. 35 59317 in the State Bank of India, Parliament Street, New Delhi. There is no doubt that this deposit is moveable property and as such existence of this moveable property confers jurisdiction on Delhi Court in view of section 270 of the Act.

(9) According to section 300 of the Act, High Court shall have concurrent Jurisdiction with the District Judge in the exercise of all powers which are conferred by the Act on the District Judge. The aforesaid jurisdiction of High Court is subject to sub-section (2) which reads as under :

'300.(1) (2) Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta. Madras and Bombay, shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jains or an exempted person, receive applications for probate or letters of administration until the State Government has by a notification in the Official Gazette, authorised it so to do.'

But this sub-section (2) does not apply where section 57 of the Act applies. This is clear from the very starting words. According to clause (c) of Section 57, the said provision is applicable to all Hindus, Buddhists, Sikhs and Jains after first January 1927. That means that the restriction contained in sub-section (2) of section 300 of the Act applies only to Muhammadans and exempted persons, it appears that in the present case the deceased S. Sukhdev Single Sandhu was Sikh. thereforee, sub-section (2) of Section 300 of the act does not apply and High Court has same jurisdiction as a District Judge. 10. The net result is that subject to the provisions of Sec- 271 of the Act, which are being discussed while dealing with issue No. 2, this court has jurisdiction to entertain this petition. While dealing with issue No. 2 the provisions of Section 273 of the Act are also being discussed. Notwithstanding concurrent jurisdiction of District Judge and High Court provisions of Section 273 do not keep them at par. These provisions make the probate or letters of administration issued by the High Court conclusive in. respect of property situated throughout India but they limit in operation such conclusiveness in respect of probates or letters of administration issued by,. District Judge. With above observation the issue is, thereforee, decided in favor of the petitioner. Issue NO. 2. 1. Section 271 of the Act reads as under :

'271.Disposal of application made to judge of district in which deceased had no fixed abode.-When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

It is clear from a bare reading of the aforesaid provision that when the deceased at the time of his death did not have any fixed abode within the jurisdiction of the court, it shall be in the discretion of the court to refuse the application if in the judgment of the court it could be disposed of more justly or conveniently at another place. thereforea, in the present case, the said discretion is to be exercised even though in view of section 270 of the Act' this court had territorial jurisdiction to entertain the petition. In this way the field of section 270 of the Act is limited by the provisions of Section 271 of the Act.

(12) It will be apparent from a perusal of Schedule No. I that moveable property of a very trifling value is situated in the union territory of Delhi. As against that substantial property both movable and immovable is situated in the State of Punjab and State of Maharashtra. As already men' tioned, the property which is situated in the union territory of Delhi is of the value of Rs. 956.63. That property is deposited in State Bank of India. As against that, immovable' property of the value of Rs. 1,36,000.00 is situated in the State of Punjab and both moveable and immovable property of the value of Rs. 6,82,035.63 is situated in the State of Maharashtra. Further, it is common ground that all the parties including the petitioner are residing at Bombay. Sukhdev Singh Sandhu, deceased, at the time of his death had his fixed abode at Bombay. Hence there can be no manner of doubt that Bombay is the best place where this petition should have been filed In any case, Delhi is most ill suited for the said purpose.

(13) The learned counsel for the petitioner, however, contended that the Will in favor of the petitioner was executed at Delhi that the attesting witnesses are residing in the Union territory of Delhi and that thereforee it will be more convenient for the petitioner to produce the evidence ai Delhi in support of the Will. The learned counsel added that even though the objector will have to come to Delhi from Bombay in connection with the conduct of the case, yet there is no ground for exercising the discretion in her favor because the petitioner will also have to undertake journey from Bombay to Delhi for the conduct of her case.

(14) The mere fact that the witnesses of the Will arc rending at Delhi cannot be a good ground for exercising discretion in favor of the petitioner. The witnesses can

be summoned and they can appear in the court at Bombay as well as Punjab. The entire property in the State of Punjab is situated in the District Ludhiana which is quite near to Delhi. Bombay is connected by air with Delhi and, therefore, witnesses to the Will can be summoned and produced at Bombay by way of paying their air fare.

(15) Under the above circumstances this court should exercise discretion by refusing this application.

(16) Learned counsel for the objector went a step further and urged that not only that this court should refuse to exercise discretion in favor of the petitioner under section 271 of the Act, the provisions of section 273 of the Act bar the jurisdiction of this court in this case. The relevant portion of section 273 of the Act reads as under:

'273. Conclusiveness of probate or letters of administration. - Probate or letters of administration shall have effect over all the property and estate' moveable or immovable, of the deceased, throughout the State in which the same is or are granted and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belongs to him, and shall afford indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or administration have been granted: Provided that probates and letters of administration granted-

(A) by a High Court, or

(B) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees, shall unless otherwise directed by the court, have like effect throughout the other States.'

(17) The learned counsel contended that it was apparent from a bare reading of the aforesaid provision that the jurisdiction of the High Court or a District Judge was confined to property worth Rs. 10,000.00 only if, the property happened to be

in another State and that as in the present case the property in the State of Maharashtra and State of Punjab valued more than Rs. 10,000.00 , neither High Court of Delhi nor the District Judge at Delhi had the jurisdiction to entertain any application for grant of letters of administration.

(18) But I do not agree with the learned counsel for the objector. In my opinion the interpretation he has put forth is wrong. The limit of Rs. 10,000.00 as to the value of the property situated in another State is only with respect to the court of District Judge while the jurisdiction of the High Court is unlimited. It is apparent from a plain reading that the main body of the section makes the probate or letters of administration issued by the High Court or District Judge binding and conclusive throughout the State in which the High Court or the District Judge is working. The proviso to section 273 of the Act provides binding force of the probate or letters of administration with respect to any property which is situated even in another State. But that proviso places a limit of value of Rs. 10,000 in respect of binding force of the probate or letters of administration issued by the District Judge while no such limit has been placed as far as High Court is concerned. The words limiting Jurisdiction are only with the word. District Judge' and not with the High Court. As far as High Court is concerned, there are words reading, 'shall unless otherwise directed by the grant, have like effect throughout the other States'. As far as the High Court is concerned, the proviso reads as under :

'PROVIDED that probates and letters of administration granted- (a) by a High Court shall, unless otherwise directed by the grant, have like effect throughout the other States.'

That means that the probate and letters of administration issued by High Court have a binding force even in respect of property in a State other than the one in which the High Court is located. therefore, section 273 of the Act does not in any way debar the High Court from exercising the jurisdiction but as already held, the discretion under section 271 must be exercised against the petitioner.

(19) The learned counsel for the petitioner contended that Section 273 of the Act helped the petitioner. He explains that that section gave unlimited jurisdiction to every High Court in India to grant letters of administration or prelate in respect of

any property situated at any place in India.

(20) But the aforesaid contention has obviously no force. Section 273 of the Act does not deal with the jurisdiction of the High Court or the District Judge to entertain and decide a petition for grant of letters of administration or probate. That provision only deals with the effect and binding force of grant of letters of administration or probate by the High Court or the District Judge. It has nothing to do with the territorial Jurisdiction. The territorial jurisdiction is dealt with by sections 270, 271, and 300 of the Act which have been referred to already. Had the intention of the legislature been that section 273 of the Act, would deal with the territorial jurisdiction also, there was hardly any necessity of enacting sections 270, 271 and 300 of the Act. thereforee, on harmonious construction of sections 270, 271, 273 and 300 of the Act it is clear that section 273 has nothing to do with the territorial jurisdiction and it only deals with the binding force or effect of the letters of administration and probate issued by a High Court or District Judge.

(21) When a court has no jurisdiction, the appropriate order is to return the petition or the plaint for presentation to the court of competent jurisdiction. Howevr, in this case I have held that the court has jurisdiction but it is declining to exercise the same under section 271 of the Act. That provision (section 271 of the Act) clearly specifies that when discretion is exercised against an applicant, the application is to be refused. That means that the application is not to be returned for presentation to the proper court. Under these circumstances I refuse the application. The further proceedings are stopped. The applicant will, however, not be debarred from making appropriate application in the State of Maharashtra or the State of Punjab.

(22) In this way this application stands disposed of. Petition disposed of.