

Sh. Rajesh Katial Vs. State

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Court : Delhi

Decided On : May-08-2008

Reported in : 2008(104)DRJ228

Judge : Hima Kohli, J.

Acts : Indian Succession Act - Sections 270 and 276; Hindu Succession Act - Sections 8

Appeal No. : Test. Cas. 23/1992 and is Nos. 10366/1997, 149/2004 and 1175/2007

Appellant : Sh. Rajesh Katial

Respondent : State

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Rajesh Yadav and; Bharti Badesra, Advs

Judgement :

Hima Kohli, J.

1. The petitioner, Rajesh Katial has filed this petition under the provision of Section 276 of the Indian Succession Act (hereinafter referred to as `the Act'), for grant of probate of will dated 9.6.1990, executed by his uncle, (father's first cousin), late

Sh. Murari Lal Katial who died at Delhi on 7.1.1992. Sh. Murari Lal Katial, was a bachelor and was not survived by any Class I heir. The deceased testator is said to have only one relation, whose name is given in Annexure `E' to the petition. The said relation is Smt. Jeevani Bai Sehgal, the aunt (sister of the father) of the deceased testator.

2. The present petition seeking probate of the Will of the deceased testator was filed by the petitioner on 19.5.1992. The petition was registered vide order dated 27.5.1992, when notice was issued to the Chief Revenue Controlling Authority, and the near relatives of the deceased. Citation was also directed to be issued, which came to be published in the daily newspaper `Statesman' in the edition dated 23.7.1992. In response to the notice of the present petition, objection petitions were filed on behalf of two objectors. The first objection petition was filed by Smt. Basanti Devi Bhandula, the step-sister of the father of the deceased testator and the other objection petition was filed by Smt. Jeevani Bai Sehgal, the sister of the father of the deceased testator.

3. Vide order dated 20.9.1993, the following issues were framed:

(i) Whether this Court has territorial jurisdiction to grant the probate?

(ii) Whether the Will dated 9.6.1990 is genuine or not?

(iii) Whether the objector is a legal heir of the deceased, Shri Murari Lal Katial?

(iv) Whether the present petition is liable to be stayed in view of Suit No. 1075/1992 pending in Bombay High Court?

(v) Whether the petitioner is entitled to grant of a probate.

(vi) Relief.

4. Thereafter, the matter was taken to trial. During the pendency of the present proceedings, the objector No. 1, Smt. Jeevani Bai Sehgal expired, pursuant to which the petitioner filed an application to bring on record the LRs of the deceased objector. Though, the LRs were served, no reply was filed by them. The petitioner filed the affidavits by way of evidence of two witnesses out of three witnesses of

the Will, namely, Sh.Premdas Naraindas (PW-1) and Sh.Guruprasad Satsangi (PW-2). The petitioner also submitted his deposition as PW-3. The petitioner, as also the aforesaid PWs 1 and 2, were duly cross-examined by the counsels for the objectors. Thereafter, opportunity was given to the objectors to file their affidavits by way of evidence. However, neither of the objectors did the needful. In view of the failure on the part of the objectors to file their affidavits by way of evidence, the evidence of respondent No. 2 objector was closed on 18.7.2005, while that of the respondent No. 1 objector was closed on 17.8.2005. A perusal of the records reveals that none has appeared on behalf of objector No. 1 after 27.2.2007.

5. Having perused the averments made in the petition, and having examined the evidence placed on record as also the documents filed by the petitioner, this Court proposes to deal with the issues framed in the manner as follows:

Issue No. 1 - Whether this Court has territorial jurisdiction to grant the probate?

The aforesaid issue was framed in view of the objection taken by both the objectors in their objection petitions that the deceased testator was a resident of Mumbai. However, neither of the objectors has chosen to prove their case or to appear in Court to address arguments on the aforesaid issue. Irrespective of their presence, this Court has perused the records so as to examine as to whether this Court has the territorial jurisdiction to entertain the petition.

Counsel for the petitioner draws the attention of this Court to Section 270 of the Act, to state that the probate of the Will of the estate of a deceased person may be granted by a Court in favor of a person applying for the same and stating that the testator at the time of his death had a fixed place of abode, or any property, whether moveable or immovable, within the jurisdiction of such Court. In the present case, as per Exhibit PW3/5 (Colly Annexure C-1) at page 14A of the paper book, the details of moveable and immovable properties of the deceased testator are given. The same reflects that the testator had a savings account in his name and a fixed deposit account jointly held with the petitioner herein in Canara Bank, New Delhi Branch. The petitioner also draws the attention of this Court to the death certificate of the deceased testator dated 5.2.1992, (Ex.PW-3/1), which shows that he expired at Delhi and at the relevant time, was residing at premises

bearing No. R-3, Greater Kailash, Part-II, New Delhi. Counsel for the petitioner submits that the testator also owned a locker at Canara Bank, New Delhi. Ex.PW-3/2, which is a letter dated 9.6.1990, addressed by the testator to the Manager, Canara Bank, Lajpat Nagar, New Delhi refers to the locker No. 569, held jointly by him with his brother, Sh. Shanti Lal Katial (father of the petitioner) requesting the bank to add the name of the petitioner and permit him to operate the locker along with the testator and Sh. Shanti Lal Katial. Counsel for the petitioner further submits that the deceased testator was maintaining the Delhi address that finds mention in the death certificate, as his permanent address in relation to all his correspondence, including those pertaining to sale and purchase of shares, issuance of share certificates, FD receipts etc, collectively marked as Ex.PW-3/4. He submits that a perusal of the aforesaid documents shows that the fixed place of abode of the deceased testator was at Delhi and hence this Court has the territorial jurisdiction to grant probate in respect of the Will dated 9.6.1990. In support of his contention that the meaning attached to the term 'fixed place of abode' as finds mention in Section 270 of the Act, is not ownership or permanency of a structure, but it is the living of the person and his intention to live that is the deciding factor, reliance was placed on the judgment entitled Vishanji D. Futani v. Mohanlal Futani alias Mohanlal D. Futani and Anr. reported as 1995 (1) All I H L R 70.

The aforesaid submission of the petitioner is fortified by the unrebutted testimony of the two other witnesses to the Will of the deceased, PW-1 & PW-2, both of whom stated that the deceased was residing at Delhi. In view of the aforesaid documents and the evidence on the record, the issue No. 1 is decided in favor of the petitioner by holding that this Court has the territorial jurisdiction to grant a probate of the Will dated 9.6.1990.

6. Issue No. 2 - Whether the Will dated 9.6.1990 is genuine or not?

The Will dated 9.6.1990 (Ex.PW1/3) of which probate is sought by the petitioner is shown to have been attested by the three witnesses, namely, Sh. Premdas Naraindas, Sh. Guruprasad Satsangi and Dr. P.B. Vyas. Out of the aforesaid three witnesses, two witnesses, namely, Sh. Premdas Naraindas (PW-1) and

Sh.Guruprasad Satsangi (PW-2) filed their affidavits by way of evidence and deposed that the deceased testator, Sh.Murari Lal Katial had executed his Will dated 9.6.1990 in their presence and in the presence of another attesting witness, Dr. P.B. Vyas, and that they had all signed in the presence of the testator who signed the Will in their presence. The said witnesses have further deposed that the deceased testator Sh. M.L. Katial was quite alert and of sound mind at the time of executing the aforesaid Will. Both the witnesses have identified each other's signatures and the signatures of the third attesting witness, Dr.P.B. Vyas on the Will, apart from identifying the signatures of the deceased testator, Sh.Murari Lal Katial. The petitioner has also filed his own affidavit by way of evidence and has reiterated in his deposition as PW-3 that the averments contained in the petition are correct. The petitioner has proved the death certificate of late Sh.Murari Lal Katial as document Ex.PW-3/1. The evidence produced by the petitioner on the record to prove the Will in question has remained unrebutted and there is no reason to doubt the same. Accordingly, issue No. 2 is decided in favor of the petitioner by holding that the Will dated 9.6.1990, executed by the deceased testator, Sh.Murari Lal Katial, is genuine.

7. Issue No. 3- Whether the objector is a legal heir of the deceased, Shri Murari Lal Katial

As noted above, the objector No. 1, Smt. Basanti Devi Bhandula has not taken any steps to file an affidavit by way of evidence in support of the objections, nor has anyone appeared on her behalf after 27.2.2007. Her right to adduce evidence was closed, vide order dated 17.8.2005. Counsel for the petitioner submits that the aforesaid objector No. 1 Smt. Basanti Devi Bhandula, is the step sister of the deceased testator and thus cannot lay a claim to the estate of the deceased as she does not fall under Class I or Class II heirs of the Schedule mentioned in Section 8 of the Hindu Succession Act, which lays down the general rules of succession in the case of males. He, therefore, submits that even on merits, her objections are liable to be rejected. Considering the fact that none has been appearing on behalf of the objector and in view of failure on the part of the aforesaid objector to file her affidavit by way of evidence, her evidence was closed on 17.8.2005, this Court has no option but to reject the objections and decide the

said issue, framed on the basis of the objections raised by objector No. 1, in favor of the petitioner.

8. Issue No. 4 -Whether the present petition is liable to be stayed in view of Suit No. 1075/1992 pending in Bombay High Court?

The aforesaid issue was framed in view of the objections raised by the objector No. 1 Smt. Basanti Devi Bhandula, and the objector No. 2. Smt. Jeevani Bai Sehgal. As noted above, after filing the objections neither of the objectors chose to file their affidavits by way of evidence and their right to file evidence was closed. The objector No. 2 expired during the pendency of the present proceedings and though her LRs were brought on record, they have not participated in the proceedings. Counsel for the petitioner submits that in any case, the proceedings filed in the Bombay High Court are collateral in nature and that while the judgment passed in a probate petition is a judgment in rem, the judgment of the Civil Court is one in personam as it binds only the parties to the lis. There is merit in the submission of the counsel for the petitioner. Pendency of the proceedings in the Bombay High Court cannot be a ground to stay the present proceedings. Reliance in this regard can be placed on the recent judgment rendered by the Supreme Court in the case of Krishna Kumar Birla v. Rajendra Singh Lodha reported as : (2008)4SCC300 relevant extract of which is reproduced hereunder:

Para 67. In the recent judgment of Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon this Court inter alias relying upon Chiranjilal Shrilal Goenka v. Jasjit Singh and upon referring to a catena of decisions of the High Court and this Court, held that the Probate Court does not decide any question of title or of the existence of the property itself.

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Para 100. We are not oblivious of the fact that a judgment rendered in a probate proceeding is a judgment in rem. But, its application is limited. A judgment rendered in a probate proceeding would not be determinative of the question of title....

Even otherwise, the aforesaid objections were required to be proved by the objectors, who have chosen not to do so. In these circumstances, the aforesaid issue is decided against the objectors and in favor of the petitioner.

9. Issue No. 5 - Whether the petitioner is entitled to grant of a probate.

In view of the unrebutted testimony on the record, it stands proved that the Will of which probate is sought by the petitioner is the last and genuine Will of the deceased testator and the said Will was validly executed by the testator while he was alert and of sound mind. Though, the petitioner, his sister and his father, Sh.Shanti Lal Katial, were the beneficiaries of the Will of the deceased testator, during the pendency of the present proceedings, the father of the petitioner, Sh.Shanti Lal Katial expired, thus leaving the petitioner and his sister as the beneficiaries of the Will. The petitioner has also been appointed as the executor of the Will by the deceased testator.

In view of the above discussion and having regard to the facts and circumstances of the case, it is ordered that probate of the Will (Ex.PW-1/3) be granted in favor of the petitioner on his depositing the requisite court fee and on his furnishing the administration bond for due administration of the estate of the deceased in accordance with the wishes of the deceased. The original Will (Ex.PW-1/3) shall be kept in safe custody. The petition stands disposed of along with pending applications.

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