

Amar Deep Singh Vs. the State and ors.

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Court : Delhi

Decided On : Sep-30-2005

Reported in : AIR2006Delhi190; 2005(85)DRJ179

Judge : R.C. Jain, J.

Acts : Indian Succession Act - Sections 70, 213(2) and 277; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 10 - Order 7, Rule 11

Appeal No. : Test Case No. 15/2002

Appellant : Amar Deep Singh

Respondent : The State and ors.

Advocate for Def. : Vinod Shukla, Adv. for Respondent Nos. 1 and 2

Advocate for Pet/Ap. : Kuldeep Pabley, Adv

Judgement :

R.C. Jain, J.

1. The petitioner, above-named, has filed this petition for grant of probate of registered Will dated 8.11.1977 executed by Col.Iqbal Singh, AVSM, MC, M-in-D (Retd.), who is stated to have died at Panchkula, Haryana on 4.11.2000. The estate of the deceased, which is the subject matter of the aforesaid Will,

comprises of the following immoveable properties:

'a) House at D/123, defense Colony, New Delhi.

Half share to my wife (Shrimati Vijai Kumari Bala) and to my only son Kunwar Amar Deep Singh. In the event of death of my wife, during my life time, this whole property is bequeathed to my son Kunwar Amar Deep Singh.

b) Immovable and movable property at BAJWARA.

Half equal share to my wife (Shrimati Vijai Kumari Bala) and to my only son Kunwar Amar Deep Singh. In the event of death of my wife, during my life time, this whole property is bequeathed to my son Kunwar Amar Deep Singh.

c) Plot at Panchkula

Half equal share to my wife (Shrimati Vijai Kumari Bala) and to my only son Kunwar Amar Deep Singh. In the event of death of my wife, during my life time, this property is bequeathed to my son Kunwar Amar Deep Singh.'

2. Petitioner is the son and one of the legatee in the Will and claims to be the sole executor of the Will dated 8.11.1977. Respondents No. 2 & 3 are the sisters of the petitioner and two daughters of the deceased Col.Iqbal Singh. The respondents are opposing the probate petition and have filed objections. One of the objections is that the respondents have already filed a civil suit bearing No. 366/2001 in the court of Civil Judge Senior Division, Panchkula, Haryana seeking a declaration to the effect that they along with the present petitioner are entitled to inherit the estate of their deceased father in equal 1/3rd share, their father having died intestate leaving behind no Will. It is alleged that in view of the pendency of the earlier suit instituted by the answering respondents, the proceedings in the present petition are liable to be stayed in view of the provisions of Section 10 CPC. The existence and validity of the Will is also assailed on several counts. In the rejoinder, the petitioner has controverted the objections and pleas raised in the objections and has reiterated the objections made in the petition. It is not disputed that the suit instituted by respondents No. 2 & 3 is pending in Civil Court, Panchkula, but it is alleged that the pendency of the said suit has no effect on the

proceedings in the present petition as Section 10 CPC is not attracted, the scope of the civil suit and the present proceedings being quite different.

3. In view of the above objection, following preliminary issues were framed on 12.2.2004:

'1. Whether the present probate petition is liable to be stayed under Section 10 of the Code of Civil Procedure, as prayed?

2. Whether the Civil Judge, Panchkula, Haryana, has jurisdiction to decide the validity of the registered Will dated 8th November, 1997, in Civil Suit No. 366/2001 filed by respondents No. 2 and 3 against the petitioner and as such, this Court has no jurisdiction to try this probate petition in view of filing of the aforesaid suit?'

4. This order purposes to dispose of the above issues which are interconnected. Learned counsel representing the answering respondents has submitted that the suit filed by the respondents in the Panchkula Court is an earlier suit filed in the year 2001 while the present probate petition is a later petition filed in 2002 and the subject matter of the suit and the present petition are the properties at defense Colony, New Delhi; Panchkula, Haryana and some agricultural land of Village Bajwara, Distt. Hoshiarpur. It is pointed out that in the suit filed by respondents No. 2 & 3 the petitioner has propounded and relied upon the Will dated 8.11.1977 purportedly executed by Col.Iqbal Singh. Existence and validity of the said Will is, however, denied by the present respondents in the said suit. Consequently, the Court of Civil Judge at Panchkula has framed an issue relating to the fabrication / forgery of the said Will dated 8.11.1977 and, therefore, in the suit and the present proceedings issues are directly and substantially the same and the Civil Court is competent to decide on the existence and validity of the Will. In support of his contention, he has placed reliance on a number of decisions viz. Guro (Smt.) v. Atma Singh, : [1992]2SCR30 ; Major Singh v. Rattan Singh, : AIR 1997 SC1906 ; Bhagwan Kaur v. Kartar Kaur, : (1994)5SCC135 ; Gorantla Thataiah v. Thotakura, : [1968]3SCR473 ; H.Venkatachala v. D.N.thimmajamma, 1959 (Supp 1) SCR 426.

5. As against the above decisions, the learned counsel for the petitioner has submitted that in view of the special nature of the probate proceedings, the same are excluded from the jurisdiction of the Civil Court because the Indian Succession Act is a complete code of Law of Testamentary succession providing for special forum and special procedures for grant probate of Will and letters of administration annexed with the Will. The jurisdiction of the Civil Court in terms of Section 9 CPC being impliedly barred to decide the claim of any party based on a Will and that the Civil Court has no jurisdiction to decide the validity of a Will.

6. In this connection, he has placed reliance on a Supreme Court decision in the case of T.Venkata Narayana and Ors. v. Smt. Venkata Subbamma (dead) and Ors. : [1996]3SCR1042 . In that case a suit for perpetual injunction was filed restraining the opposite party from alienating the suit property and the opposite party claimed possession over the property on the basis of a Will executed in her favor and sought to adduce secondary evidence to prove the same. The court held that admission of such secondary evidence was not permissible in injunction suit. The reasoning given by the Court was that the mere suit for injunction cannot be converted into a suit for probate of a Will whereat the will is to be proved. If the Will is to be proved according to law, it has to be by way of probate in the Court having competence and jurisdiction and according to the procedure provided under the Indian Succession Act. The Court further held that that procedure cannot be converted in a suit for mere injunction as a probate suit and direct the parties to adduce evidence, be it primary or secondary evidence as the circumstances may warrant.

7. In the case of Ram Shankar v. Balakdas, AIR 1992 MP 224 it was held that in view of the provisions of Sections 213(2), 227 and 70 of the Indian Succession Act, Probate Court alone has the exclusive jurisdiction to decide, in the case of contest between two Wills, if and which one of the two of them, had been 'duly proved' or 'established' as the 'last Will' of the testator. It was further held that a Civil Court in a suit instituted by any party, claiming right, title and interest in any property on the basis of a Will, no issue can be struck to decide if that Will was the 'last and valid Will' and the other Will which is purported to have revoked have been duly and validly revoked by the subsequent Will. Further that jurisdiction of

the Civil Court as per Section 9 CPC is impliedly bared not only to decide such an issue but to take cognizance of such a suit in which the plaintiff himself raises such an issue. In such a case the plaint is to be rejected under Order 7, Rule 11(d) CPC.

8. The legal position which has emerged from the above decisions is that a probate Court seized with a petition for grant of probate of Will or Letters of Administration is not a Civil Court within the meaning of the term under the provisions of the Code of Civil Procedure though the proceedings of the Probate Court in relation to the granting of Probate and Letters of Administration is to be regulated, so far as the circumstances of the case may permit, by the Code of Civil Procedure 1908. Once a probate Court is considering a petition for grant of probate or Letters of Administration in respect of a Will, that Court alone is competent to decide on the question of execution and/or validity or otherwise of the Will in question. In such a situation, it is not open to the Civil Court to go into that question. Besides the exercise of jurisdiction by the two Courts/Forums simultaneously may lead to inconsistent and conflicting findings which has to be avoided. The special procedure laid down for grant of a probate and Letters of Administration which is required to be followed by a Probate Court is not required to be followed by the Civil Court while deciding the question of execution or validity of a Will. In view of this position, it must be held that the present probate petition though filed latter in point of time than the civil suit filed by the respondents in Panchkula Civil Court is not liable to be stayed. Consequently it must follow that these Civil Court at Panchkula has no jurisdiction to decide the validity of the said Will dated 8.11.1997 propounded by the petitioner in the present petition. All those objections which have been raised by the respondents in regard to the execution and/or validity of the aforesaid Will in the said suit filed by them can very well be looked into by this Court which is competent to decide on that question.

9. In the result both the above issues are answered in negative and against the respondents.