

Smt. Parvati @ Kaushalya Vs. Chhitarmal

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Court : Rajasthan

Decided On : Feb-26-1985

Reported in : AIR1986Raj24

Judge : D.L. Mehta, J.

Acts : [Succession Act, 1925](#) - Sections 283(1)

Appeal No. : Civil Revn. Petn. No. 673 of 1984

Appellant : Smt. Parvati @ Kaushalya

Respondent : Chhitarmal

Advocate for Def. : M.I. Khan, Adv.

Advocate for Pet/Ap. : N.M. Lodha, Adv.

Judgement :

ORDER

D.L. Mehta, J.

1. This is a revision petition filed by the petitioner against the order dated 1st September, 1984, passed by the District Judge, Alwar, in a petition for grant of probate filed by non-petitioner, Chhitarmal.

2. I have heard the learned counsel for the parties and perused the order dated 1st September, 1984.

3. It is alleged that the deceased, Smt. Kishan Pyari executed a will on 2nd September, 1978, in favour of the non-petitioner, Chhitarmal. Chhitarmal applied for the grant of probate. Smt. Kaushlya caveator raised an objection under Section 283(1)(c) of the Indian Succession Act that she may be allowed to contest the grant of probate on the ground that a part of the property did not belong to the testatrix. It was submitted by the caveator that the disputed part of the property was of the ownership of her father and after the death of her father she became the sole owner. An objection was raised by the counsel for Chhitarmal, non-petitioner, that Smt. Parvati is having no locus standi and she cannot raise objection which she is raising in the probate proceedings.

4. Mr. R.M. Lodha with all fairness cited before me two cases of the Madras High Court. The Madras High Court in G. Jayakumar v. R. Ramaratnam, AIR 1972 Mad 212, in which it has been held that such objection can be raised by the caveator. However, subsequently in the case of In re N. Narasimhan, AIR 1975 Mad 330, it was held after considering the various authorities as under : --

'In a probate proceeding caveator will not be entitled to raise title in himself to the whole or any part of the estate of the deceased. The interest in the estate of the deceased mentioned in Sec. 283 is but that interest which by citation a person called upon may claim to have in the estate of the deceased and not the interest which the deceased did not own, but the claimant coming into picture by citation claims to be vested in himself. The test for purposes of Section 283(1)(c) is that a person disputing the right of a testator to deal with the property as his own, cannot be properly regarded as having an interest in the estate of the deceased. A caveator is neither a plaintiff nor a defendant and cannot by mere citation be allowed to convert a probate proceeding into a suit for resolving disputed title.'

5. Thus, the Madras High Court held that a caveator is neither plaintiff nor defendant and cannot by mere citation be allowed to convert a probate proceeding into a suit for resolving disputed title.

6. Mr. M.I. Khan, counsel for the opposite party, has cited before us the case of *Madho Singh v. Jagdambalal*, AIR 1960 Raj 237, in which this Court has held as under : --

'In probate proceedings, there is no necessity for an enquiry whether the person who makes a will had any title to the property which he bequeathed. All that the Court is concerned, is to find out whether the document set up as a will was properly executed by the person when he was in a sound mind and knew the consequence of his act.'

7. In *I.M. Madhavi v. Sree Rama Varma*, AIR 1969 Ker 256, it was held that caveat sought to be sustained on the ground that testator had no disposing power over items in annexure, caveator not being one interested in personal assets of deceased was not entitled to oppose grant of Letters of Administration.

8. Mr. Khan has cited the case of *D.S. Sriramiah*, AIR 1971 Mys 148, in which it has been held as under : --

'Person claiming the property by paramount title or adversely to the testator or disputing testator's right to deal with the property sought to be disposed of by the will in respect of which probate or letters of administration with the will annexed is asked for has no locus standi to enter a caveat.

9. Mr. Khan has also cited the case of *Smt. Panna Banerjee v. Kali Kinkor*, AIR 1974 Cal 126, in which it was held that a probate is conclusive on the question of the valid execution of the will. But the Probate Court has no power to go into the question of title of the testator.

10. Mr. Khan has cited before us the case of *Rao and Sons v. Chandramoni Dei*, AIR 1971 Orissa 95, in which it was held that caveator cannot challenge title of testator to the disputed property, in probate proceedings.

Section 283(1)(c) reads as under : --

'issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or

letters of administration.'

11. The provisions are very clear. The, Probate Court is only concerned with the question as to whether the document forwarded as last will of the deceased person was duly executed and attested in accordance with law and whether at the time of such execution, the testator had sound mind. The other question cannot be agitated in probate proceedings. I do not find any force in the submission made by the learned counsel for the petitioner and, held that the caveator cannot challenge the title of testator or testatrix to the disputed property in the probate proceedings. However, it is clarified that in a regular suit before the court of competent jurisdiction the caveator can raise the question about the title qua the deceased. The probate generally does not come in the way in the matter of decision of title between the disputed parties.

12. Looking to the nature of the case the parties shall bear their own costs of this revision petition.

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