

In Re: N. Narasimhan and anr.

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Court : Chennai

Decided On : Jan-06-1975

Reported in : AIR1975Mad330

Judge : Veeraswami, C.J. and ;Natarajan, J.

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

Appeal No. : Original Petn. No. 40 of 1973

Appellant : In Re: N. Narasimhan and anr.

Advocate for Def. : M.S. Sethia, Adv.

Advocate for Pet/Ap. : S. Raghavan, Adv.

Judgement :

1. Mohan J., having found a conflict between Komalangihammal v. Sowbagiammal, 59 Mad LJ 529 = (AIR 1931 Mad 37) decided by a Division Bench and Jayakumar v. Ramarathnam, , of a single

Judge, has referred the particular question, whether in a petition for probate a caveator can properly claim title in himself in conflict with that of the testator or testatrix.

2. The scope of a probate petition is confined to an enquiry as to the disposing state of the mind of the testator or testatrix and the disposition of his or her

property by will. Any caveat entered into will also be confined to the scope of the petition. A person who claims interest in the estate of the testatrix will have the locus standi to maintain the caveat, the scope of caveat enquiry being no more than what it is in that of the probate proceedings themselves. This proposition, which is elementary, is long since established, both on principle and by practice, of this Court on the probate side. Section 283 of the Indian Succession Act, which concerns itself with the powers of the probate Court provides that it may 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". The next section dealing with caveat provides that a caveat shall be made as nearly as circumstances admit in the form set forth in Schedule V. That Schedule is merely that 'Let nothing be done in the matter of the estate of A, B., late of deceased, who died on the day of at without notice to C. D. of'. Reading these two provisions, it is explicit that citation is permissible in respect of a person claiming to have any interest in the estate of the deceased, the object of the notice being to let him have an opportunity to come and see the proceedings before the grant of probate or letters of administration. Once caveat is entered, no further steps should be taken without notice to the caveator. Our attention has been invited to Sections 220, 222, 232, and certain other provisions dealing with probate and letters of administration. But we do not think that except that they contain general provisions, they have any direct decisive application in deciding the question before us. The answer to the question will depend upon the interpretation to be placed on the words 'any interest in the estate of the deceased' in Clause (c) and Section 283(1). From *Sowbagiammal v. Komalangi*, 54 Mad LJ 382 = (AIR 1928 Mad 803) which was decided by Venkatasubba Rao J., and which was affirmed by *Komalangi v. Sowbagiammal* 59 Mad LJ 529 = (AIR 1931 Mad 37), the law has always been that in a probate proceeding a 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 Section 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 the picture by citation claims to be vested in himself. In other words, title of the testator or testatrix to the whole or any part of

the property which is the subject-matter of disposition is entirely and necessarily outside the scope of probate proceedings and that question will have to be settled by a regular trial. That was what was pointed out to be the principle and practice of this Court by Venkatasubba Rao J. in 54 Mad LJ 382 = (AIR 1928 Mad 803). That was a fully considered judgment in which all the relative decided cases including Hanumantha RAO v. Latchamma 51 Mad LJ 563 = (AIR 1926 Mad 1193) were noticed and the learned Judge summed up the test for purposes of Section 283(1)(c), as being that a person disputing the right of a testator to deal with property as his own, cannot be properly regarded as having an Interest in the estate of the deceased. This view of the statutory provision was accepted to be the right view by two learned Judges in 59 Mad LJ 529 = (AIR 1931 Mad 37) who had occasion to consider 51 Mad LJ 563 = (AIR 1926 Mad 1193). That being so, Maharajan J. in was bound by 59 Mad LJ 529 = (AIR 1931 Mad 37) and was not free to follow 51 Mad LJ 563 = (AIR 1926 Mad 1193), Though the question was not directly posed and answered in Iswardeo Narain Singh v. Kamla Devi. , the observation below is of some utility in the present context-

"The Court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court."

The practice on the probate side of the Original Side of this Court was really based on that of the English Probate Court. There is a clear cut distinction between the various types of the Probate Court and as pointed out in 16 Halsbury's Laws of England, 3rd Edn, Lord Simonds Edition, page 160 "the person cited to see proceedings is neither a plaintiff nor a defendant in the action, but he is brought before the Court in order that his interests may be bound." A caveator is in no better position and by mere entry of caveat, a proceeding for probate cannot be and should not be allowed to be converted into a suit for resolving disputed title.

3. That the above is the true position in law could not and has not been disputed by Mr. M. S. Sethu on the other side. But what he says is that an application has

been taken out to discharge the defendant even when he put the caveat and that though the disputed question of title to the property would be outside the purview of the probate proceedings, there were other questions well within those proceedings and therefore he should not be discharged. We have no doubt that the learned Judge sitting on the probate side would consider such questions, but not the question of disputed title.

4. We answer the reference accordingly and remit the matter of probate for a decision by the learned Judge, sitting on the probate side.

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