

Shri Basudeo Dalmia and anr. Vs. the State and ors.

Shri Basudeo Dalmia and anr. Vs. the State and ors.

SooperKanoon Citation : sooperkanoon.com/848844

Court : Delhi

Decided On : May-24-2010

Judge : Hima Kohli, J.

Acts : Code of Civil Procedure (CPC) - Section 151

Appeal No. : C.R.P. 65/2010 and C.M. No. 6085/2010

Appellant : Shri Basudeo Dalmia and anr.

Respondent : The State and ors.

Advocate for Def. : B. Shekhar, Adv. for R-2 to 10

Advocate for Pet/Ap. : B.B. Singh, Adv.

Judgement :

Hima Kohli, J.

1. Pursuant to the order dated 12.4.2010, appearance is entered on behalf of the respondents No. 2 to 10. Though respondent No. 1 is duly served, both by ordinary process as also dasti, none is present on its behalf. It is therefore assumed that the said respondent No. 1 does not wish to contest the present petition. Counsel for the respondents No. 2 to 10 also states that he does not oppose the prayer made in the present petition.

2. The present petition is directed against an order dated 21.12.2009 passed by the Additional District Judge, dismissing an application filed by the petitioners for issuance of letters of administration with respect to some articles found in the locker of the deceased, Smt. Indramani Mandelia, after the original petition for grant of letters of administration, was allotted and disposed of on 14.12.2006.

3. Briefly stated, the facts of the case are that two separate Wills were executed by Mr. Durga Prasad Mandelia (testator) and his wife, Smt. Indramani Mandelia (testatrix) on the same date, i.e., on 8.2.2003. The testator, Mr. Durga Prasad Mandelia bequeathed all his movable and immovable properties in favour of his wife, i.e., Smt. Indramani Mandelia (testatrix) and appointed the petitioners as joint executors and trustees under his Will. Similarly, the testatrix, Smt. Indramani Mandelia executed a separate Will and also appointed the petitioners as joint executors and trustees under her Will and named all her legal heirs as the beneficiaries under the Will. The testator, Shri Durga Prasad Mandelia expired on 30.5.2005 and the testatrix, Smt. Indramani Mandelia expired on 16.1.2006. On 19.5.2006, the petitioners, being the executors of the two Wills, filed a probate petition for grant of letters of administration/probate of the Wills of the testator and the testatrix, registered as Probate Case No. 455/2006. Respondents No. 2 to 12 were impleaded in the said petition as legal heirs. No objections were filed to the said petition.

4. Vide order 14.12.2006, letters of administration/probate was issued in favour of the petitioners, subject to their filing a valuation report and court fees and upon execution of administration and surety bond by them. Vide order dated 11.12.2007, the trial court waived the requirement of furnishing the administration and surety bond. Upon the requisite court fee of Rs. 13,00,050/- being deposited in the Court, letters of administration/probate was granted to the petitioners in respect of the properties mentioned in the Will, on 7.2.2008.

5. It is stated by the petitioners that before an inventory of the items/goods left by the deceased in the Court, was filed in the court, the petitioners discovered that the testatrix, Smt. Indramani Mandelia also had a locker in her name in Bharat Overseas Bank, Mumbai (now known as Indian Overseas Bank) which was neither

mentioned in the list of properties annexed to the Will, nor did the executors have any knowledge about its existence at the time of filing of the probate petition. As a result, an application was preferred by the petitioners before the trial court on 16.8.2008, in the same Probate Case No. 455/2006, praying inter alia for issuance of directions to the bank to open the said locker and for permission to take over charge of the properties contained therein. Further, a prayer was made by the petitioners to permit them to file additional court fee after ascertaining the value of the property contained in the said locker, upon the same been opened.

6. Vide order dated 24.1.2009, the trial court considered the request of the petitioners and issued directions to the Manager of the aforesaid bank to open the locker in the presence of the executors, prepare an inventory of the goods kept in the locker, get the articles valued from a registered valuer, seal the locker with the seal of the Bank Manager and send the inventory along with the valuation report, to the court. It is submitted that in March 2009, when the petitioners approached the Bank along with a copy of the aforesaid order dated 24.1.2009, the Manager of the Bank refused to execute the court orders and insisted that the said orders be forwarded to him directly through court. Consequently, another application was filed by the petitioners on 15.4.2009 seeking directions to the concerned Bank Manager, to execute the orders dated 24.1.2009.

7. Vide order dated 20.7.2009, court notice was issued to the Manager of the aforesaid Bank, who appeared before the court on 2.9.2009 and gave an undertaking to execute the court orders at the earliest. On 9.9.2009, the locker was opened in the presence of the bank officials and the petitioners and the articles contained therein were valued. On 6.10.2009, the valuation report of the articles contained in the locker was submitted in the court and the petitioners were allowed to complete the formalities of filing of court fee, etc. On 18.12.2009, the petitioners filed court fee of Rs. 1,41,000/- in the court. After all the formalities were finally completed and the application was listed on 21.12.2009, for submission of the report by the Ahlmad, the learned Additional District Judge declined the request of the petitioners for issuance of letters of administration in respect to the articles found in the locker, maintained by the testatrix in the Bharat Overseas Bank, Mumbai on the ground that the said locker did not find mention in

Schedules A and B of the movable and immovable properties of the deceased at the time of passing of the order dated 14.12.2006. Aggrieved by the aforesaid dismissal order dated 21.12.2009, the petitioners have filed the present petition.

8. Counsel for the petitioners states that the impugned order is erroneous inasmuch as the learned Additional District Judge failed to appreciate the fact that the petitioners were constrained to file an additional application only for the reason that the locker in question did not find mention in Schedules A and B, annexed to the probate petition. It is further stated that after passing a series of orders on an application preferred by the petitioners on 16.8.2008, not only calling upon the Manager of the Bharat Overseas Bank, Mumbai to open the locker in the presence of the petitioners, but also directing preparation of an inventory of the goods kept in the locker, having the articles valued from a registered valuer, directing sealing of the locker with his seal and sending the inventory along with the valuation report, to the court, the learned ADJ ought to have brought the matter to a logical conclusion by directing that letters of administration be issued in respect of the said articles as well. Further, the court had issued notice to the Bank Manager for compliance of its order and it was upon the directions of the Court, that the petitioners deposited court fee of Rs. 1,41,000/- on the basis of the valuation report filed in court in respect of articles lying in the locker. It is stated that having been called upon to deposit the court fee, the trial court ought not to have declined the requests of the petitioners merely on the ground that the articles found in the locker did not find mention in Schedule A & B annexed to the probate petition.

9. The counsel for the petitioners has been heard and the documents placed on the record have been carefully perused.

10. From a perusal of the order dated 24.1.2009, it appears that the order passed on the application filed by the petitioners under Section 151 CPC, of issuing directions to the officers of the Bharat Overseas Bank, Mumbai to open the locker and allow the petitioners/executors to inventorize the properties contained therein, submit a valuation report and file additional court fee, was virtually a precursor to the application being formally allowed after completion of all formalities. Notably, the order dated 24.1.2009 commences by stating that the said order would

dispose of the application filed by the petitioners under Section 151 CPC.

11. After taking notice of the explanation offered by the petitioners expressing their inability to include the complete properties of the deceased Smt. Indramani Mandelia in view of they being unaware of the existence of the contents in the locker maintained by the deceased in Bharat Overseas Bank, Mumbai, the learned Additional District Judge issued directions to the Bank Manager to open the locker in the presence of the executors, prepare an inventory of the goods kept in the locker, get the articles valued from a registered valuer and place them back in the locker. The Bank Manager was further directed to seal the locker thereafter and forward the inventory along with the valuation report to the court. The other orders passed after 24.1.2009, were only to complete necessary formalities as already spelt out in first order. Completion of the said formalities took time upto December, 2009. In the order dated 18.12.2009, the statement of the counsel for the petitioners was recorded that court fee had been filed and other formalities were all complete. The matter was renotified for 21.12.2009 only for the Ahlmad to submit his report in this regard. On 21.12.2009, instead of considering the report of the Ahlmad, the court proceeded to decline the request of the petitioners for issuance of letters of administration in respect of the articles contained in the locker.

12. It is pertinent to note that all the orders that are on the record after the first order dated 24.1.2009, have been passed by the same Judicial Officer. While passing the said orders, he was well aware of the background of the case and the circumstances which compelled the petitioners to file such an application, as detailed in the order dated 24.1.2009. Once the matter was proceeded under the directions of the court, and a number of steps were taken by the petitioners to complete all requisite formalities for issuance of letters of administration in respect of the remaining articles lying in the locker of the deceased Smt. Indramani Mandelia, it is incomprehensible as to why at the eleventh hour, such a request of the petitioners could have been declined by the court on the ground that the articles in question found in the locker, did not find mention in Schedules A & B, annexed to the probate petition.

13. The learned Additional District Judge overlooked the fact that the very purpose of filing of such an application after grant of the probate petition was to include the articles of the locker, which were not to the knowledge of the petitioners, as part of the letters of administration, to enable them to administer them as well in accordance with the terms and conditions of the Will. It is trite that an application for grant of probate is a proceeding in rem. A probate when granted, not only binds all the parties before the Court, but also binds all the persons in all proceedings arising out of the Will or claims under/or connected therewith. (Refer: Basanti Devi v. Raviprakash Ramprasad Jaiswal : AIR 2008 SC 295). As held in the case of Chiranjilal Shrilal Goenka v. Jasjit Singh and Ors. reported as : (1993) 2 SCR 454, the grant of probate gives the executor the right to represent the estate of the deceased.

14. The petitioners herein being the nominated expressly as executors of the Will, the probate/letters of administration granted in their favour shall have a bearing over all the property and estate, both movable and immovable property of the deceased and same shall be conclusive as to their representative title against all debtors of the deceased, and all persons holding property which belongs to him/her. The grant of letters of administration shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted. In the absence of a specific mention of the articles lying in the locker of the deceased, Smt. Indramani Mandelia, in the letters of administration issued by the Probate Court, the executors would not have the authority to approach the bank to take over the articles lying in the locker and nor would they be in a position to completely discharge their duty as administrators of the estate of the deceased.

15. There is force in the contention of the counsel for the petitioners that two Wills in question, in respect of which probate/letters of administration was granted, contained a mandate entitling the petitioners in their capacity as executors to take a joint decision on all matters not only covered under the Wills, but also to remove all ambiguities to ensure that the last desire of the deceased was duly given effect to in letter and spirit. Furthermore, after having called upon the petitioners to submit a valuation report of the inventorized articles lying in the locker and

directed them to deposit the court fee payable on the articles lying in the locker, which order was duly complied with, there was no justification for the trial court to have rejected the application.

16. The petitioners are well entitled to claim as executors of the Will of the deceased, that it is their bounden duty to ensure that all the properties of the deceased are taken control of by them and administered in accordance with the last wish of the deceased. The Probate Court ought to have promoted such an endeavour. Merely because the articles lying in the locker did not find mention in Schedules A & B annexed to the probate petition, cannot be treated as a ground to preclude the court from taking notice of the said articles at a later stage, particularly, when the petitioners had themselves approached the court with a request to take them into consideration and include them in the letters of administration already granted in their favour. The explanation offered by the petitioners for the non-inclusion of the articles in the original probate petition appear to be genuine and bona fide. There are no malafides alleged against the petitioners. The respondents No. 2 to 12 have also not opposed the prayer made in the application by the petitioners.

17. Accordingly, the present petition is allowed. The articles contained in the locker of the deceased, Smt. Indramani Mandelia, maintained in Bharat Overseas Bank, Mumbai (now known as Indian Overseas Bank) and as inventorized in the list of the articles submitted to the court, are directed to be included in the Letters of Administration granted in favour of the petitioners. It is stated that the court fee of Rs. 1,41,000/- has already been deposited in the Probate Court. Deficiency, if any, in the court fee or any remaining procedural formality shall be completed by the petitioners upon they being so intimated by the concerned court.

18. The letters of administration/probate already granted in favour of the petitioners to administer the estate of the deceased, Smt. Indramani Mandelia and her husband, Mr. Durga Prasad Mandelia, in terms of the order dated 14.12.2006, stands modified to the extent that the articles lying in the locker as above and duly inventorized, shall form a part and parcel thereof. Formal orders, if any, in this regard shall be passed by the Probate Court under intimation to the petitioners.

19. The petition is disposed of along with the pending application.

20. A copy of this order shall be forwarded by the Registry forthwith to the learned ADJ, for perusal and compliance.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com