In the Goods of Mahammad Bashir (Deceased)

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Court : Kolkata

Decided On : Apr-10-1961

Reported in : AIR1964Cal34

Judge : P.C. Mallick, J.

Acts : Succession Act, 1925 - Sections 263, 278(1), 283 and 283(1); ;Succession Rules - Rules 5 and 9

Appeal No. : Matter No. 2 of 1961

Appellant : In the Goods of Mahammad Bashir (Deceased)

Advocate for Def. : Sachin Choudhury and ;S.C. Ghose, Advs.

Advocate for Pet/Ap. : Santosh K. Basu and ;A.C. Ray, Advs.

Disposition : Application dismissed

Judgement :
ORDER

P.C. Mallick, J.

1. This is an application for revocation of a grant of Letters of Administration to the Estate of Mahammad Bashir deceased. Mahammad Bashir died in March 1960 leaving him surviving his sole widow Md. Nazimunnessa, his only son Md, Riaz --

a boy of four and two daughters by a predeceased wife. Mahammad Bashir was the second son of Haji Din Mohammad who died some years prior to 1940. Haji Din Mohammad had another son Abdul Hakim who died in 1949. The petitioner, Manjoor Abmed, is the only son of Abdul Hakim. The Letters of Administration was granted to the widow by an order of this Court passed on January 20, 1961.

2. It is alleged in the petition that Haji Din Mohammad was a very successful businessman who amassed a fortune. Prior to his death the late Haji made over to his two sons the sum of Rs. 12 lacs, 4000 gold mohurs and 1000 tolas of gold ornaments. The sum of Rs. 12 lacs given by the late Haji to his sons was utilised in purchasing various properties and also part of it was invested in various businesses. The petitioner lost his mother at a very early age and was greatly loved by his uncle Mahammad Bashir. It is alleged that he was reared up by Mahammad Bashir and his two wives as their own son. After the death of Mahammad Bashir however his widow Nazimunnessa came under the evil influence of certain interested parties and became a tool in their hands. Under such evil influence she took steps to defraud the petitioner of his share of the gold ornaments and mohurs and the said sum of Rs. 12 lacs and all properties and businesses acquired with the said sum. With such object of depriving the petitioner the grant was obtained by the widow surreptitiously behind the back of the petitioner.

The petitioner's grievance is that properties and businesses in which the petitioner has interest as the heir of his father and grandfather have been stated to exclusively belong to the estate of Mahammad Bashir. Reference is also made in the petition to a suit instituted in 1956 by one Mahammad Hanif against Mahammad Bashir and Nazimunnessa wherein it was contended that Haji Din Mohammad made a gift of Rs. 8 lacs to Mahammad Bashir out of which Rs. 25000/- was to be paid to the plaintiff in that suit for establishment of a school. It is contended that the suit was caused to be instituted by Mahammad Bashir to create a case of gift of Rs. 8 lacs made by the Haji to Mahammad Bashir. Mr. Santosh Kumar Basu the learned counsel appearing in support of the application submitted that a perusal of the records of the suit will show that the suit was a fraudulent one in its inception, continuance and termination. There was a mock

fight. The proceedings were caused to be initiated by Mahammad Bashir to get a judicial recognition of this gift of Rs. 8 lacs by Haji Din Mohammad in favour of Mahammad Bashir.

3. I need hardly say that the real dispute betweenthe parties cannot be determined and be the subject-matter of enquiry in these proceedings. It will have tobe agitated in a different proceeding that may be instituted by either party. It will, therefore, not be proper for me to express my opinion one way or the other on questions raised in the petition which are outside the scope of this application. This simplifies the matter. In spits of the bulk of the papers placed before me, the points that require adjudication are limited to a very narrow compass. I am not called upon to consider and decide most of the facts raised in the papers as being irrelevant for the purpose of this application.

4. The facts relevant for the purpose of this application and on which arguments have been addressed by learned counsel may be stated as under:

(a) The grantee of the Letters of Administration is the sole widow of Mahammad Bashir and all persons entitled to inherit the estate of Mahammad Bashir either as sharer or as residuaries have been named in the petition for grant. The persons entitled to inherit the estate of Mahammad Bashir on his death are his widow, son and daughters. Their names and the shares to which each one of them are entitled have been fully set out in paragraphs 2 and 3 of the petition.

(b) The names of the brother of Mahammad Bashir and his descendants have not been given in the petition. It is admitted they are distant heirs of Mahammad Bashir under the Muhammadan Law though in the present set up they are not entitled to any share in the estate of the deceased.

(c) Trial Mahammad Bashir loved his nephew the petitioner and Bashir's wives reared the petitioner up as their own son. The petitioner Mansur Ahmed lost his mother at a very early age and naturally the aunts reared him up and had affection for the boy.

(d) There is a substantial dispute between the parties, as to the title to the Rs. 12 lacs belonging originally to Haji Din Mohamed and gifted to his sons. With the said sums, it is alleged, properties have teen purchased and shares acquired. These properties including the shares in companies are alleged to be set out in the list of properties as belonging exclusively to the estate of Mahammad Bashir and sought to be administered under the grant made by this Court. The petitioner claims that he had an equal share in them.

5. The grounds on which a grant is liable to be revoked have been set out in Section 263 of the Indian Succession Act. The just cause on which I am invited to revoke the grant in the Instant case is:

(a) that the proceeding is defective in substance for non-citation of the present applicant Mansur Ahmed the nephew of the deceased, and

(b) that there is a fraudulent concealment of a material fact to wit that the other relations, namely, nephews and nieces have not been mentioned in the application for grant.

Reference may be made to paragraph 30 of the petition which is the only material paragraph in the petition which reads as follows:

30. 'Your petitioner submits that all properties and assets in the name of Md. Bashir were purchased out of the said sum of Rs. 12 lacs and as such your petitioner along with other legal heirs of Abdul Hakim are entitled to half share of the same. The said Nazmunnessa Begum under the evil influence of persons interested in swallowing the said property quite illegally and wrongfully obtained the said Letters of Administration by practising fraud upon the Court by the concealment of facts material to the case and by the deliberate omission of the names of your petitioner and other heirs of Abdul Hakim as next of kin in the said petition for Letters of Administration in which your petitioner and other heirs of the said Abdul Hakim ought to have been cited.'

6. The first point to be considered is whether the petitioner Mansur Ahmed, the nephew, is entitled to be cited. If in law he is entitled as of right to be cited, the

non-citation of the nephew in the petition for grant would make the petition defective in substance amounting to a just cause for revocation of the grant.

7. Mr. Santosh Kumar Basu appearing in support of the application contends that the nephew has an 'interest' in the estate of the uncle. It was incumbent to cite him in the proceedings for grant. His interest might be very remote but he is an 'heir' though distant entitled to inherit the estate of his uncle under the Muhammadan Law. In Muhammadan Law there are three classes of heirs, namely, sharers, residiraries and distant kindreds. Nephew is not a sharer but he is one of the residuaries. The niece is at least a distant kindred, if not, a residuary. It is conceded that having regard to the existence of the widow, son and daughter of Mahammad Bashir, neither the nephew nor the nieces are entitled to inherit in the instant case though they would have been entitled to a share had there been no lineal descendant of Mahammad Bashir. It is submitted that what gives a right to citation is not actual inheritance of a share in the estate of the deceased but even the possibility of inheriting a share. The law requires that all persons entitled to inherit under the Mahommedan Law, namely sharers, residuaries or distant kindreds should be named in the petition and cited, whether they actually inherit or not.

8. Section 283 of the Indian Succession Act vests the District Judge with full discretion as to whom citation is to be issued. The persons to be cited are 'persons claiming to have interest in the estate of the deceased' (see Section 283(1)(c) of the Indian Succession Act). A person claiming to be distant relation and remote heir under the Muhammadan Law may not have an interest in present in the estate of the deceased. But he will have an interest in case of death of the nearer relations who have inherited the estate. Mr. Basu contends that in that sense it can be said that a person who is not an immediate heir though not entitled at present to the estate have nevertheless an interest in the estate of the deceased. The fallacy of this argument is that after the estate has been inherited by the immediate heirs there is nothing to be inherited by the distant heirs. When the immediate heirs who have Inherited dies, his share does not revert back to the estate of the person from whom he has inherited the property. Hence there cannot be any question of distant heirs inheriting the property. After the property has been

inherited by an heir, it ceases to be the estate of the deceased and becomes the property of the immediate heir and all subsequent title must be derived from the immediate heir who has inherited and not from the previous owner. Mr. Basu cited a number of decisions in support of his contention that persons having no immediate interest in the estate of the deceased may nevertheless have sufficient Interest in the estate to be entitled to citation. These are all cases of Hindu revarsioners who claimed to have interest in the estate which has devolved on a female Hindu. In law the reversioners have nothing more than bare chance of inheritance but nevertheless it has been held that they have sufficient interest to be present in the probate proceedings. In the Case of Haripada Sana v. Ghanasyam Saha, decided by a Division Bench of this Court and reported in 49 Cal WN 713, Bijon Mukherjee J. in delivering judgment observed:

'It is well settled that any interest, however slight and even the bare possibility of interest is sufficient to entitle a person to enter caveat in a probate proceedings.'

This is a case in which a reversioner claimed to have an interest in the property held by a Hindu female under Hindu Womens Right and the observation made must be read in that context. Their Lordships do not purport to lay down the broad proposition that a distant heir who would have inherited had there been no nearer heir has some interest in the property inherited by a nearer heir in absolute title. Mr. Basu frankly confessed that he has not been able to find any authority other than the case of Hindu reversioners. It is not to be forgotten that the property inherited by a Hindu female under the Hindu Law still continues to be the estate of the last male holder so that when succession opens on the death of the Hindu female, persons who inherit is the heir of the last male holder. This shows that even after the property has been inherited by a female Hindu the estate of the last male holder is not extinguished and his distant heirs have some interest in the estate. The reversioners in Hindu Law are entitled and interested in seeing that the corpus is not wasted. Though he has a bare possibility of inheritance he has the right to institute a suit to prevent the Hindu female from wasting the property. In the case of reversioners there-tore the Courts have held that they have some interest though very slight but nevertheless real to entitle them to be present in the probate proceedings. Where, however, the estate has been inherited by heirs

having absolute interest in the inherited estate the remote heirs of the deceased do not get any interest in the estate either in present or in future. They are out altogether and the principle laid down in the case of Hindu reversioners cannot be applied in such cases.

9. A title paramount has been set up by the petitioner in the properties alleged to belong to the deceased in the proceedings for grant. A person disputing the title of the deceased in the properties and claiming them as his own has no such interest in the estate of the deceased as would entitle him to enter caveat or to be cited in the proceedings for the grant of administration. His title and interest in the property has got to be established in other proceedings. Title in the estate of the deceased that will entitle a person to citation must not be a paramount title, that is, 3 title not derived through the deceased but independently of the deceased. (See Abhiram Dass v. Gopal Dass, ILR 17 Cal 43; Thillainayagi Ammal v. Saradambal AIR 1955 Mad 575.

10. It has been contended by Mr. Basu that the phrase 'interest in the estate of the deceased' ought to be liberally construed. The policy of law is to allow all to witness the probate proceeding. The judgment of the Court in probate proceedings being a judgment in rem and binding on all, anybody having the slightest interest in the estate of the deceased is entitled to enter caveat and be cited. Even a judgment-creditor of the heir in intestacy is entitled to be present in the probate proceedings of a Will whereby the heir is totally disinherited. A decision of a Division Bench of this Court in the Case of Kishen Dei v. Satyendranath Dutt, reported In ILR 28 Cal 441 has been cited in support of the above contention. It was held in that case that a judgment-creditor who but for the Will would have been entitled to proceed against the property of the deceased has a locus standi in opposing the grant if his case is that the object of making the will was to defraud the creditor. This case was considered by the Appeal Court recently in the Case of Southern Bank Ltd. v. K. Ganeriwalla, reported in : AIR1958 Cal377 . The Appeal Court disapproved of the decision in Kissen Dei's Case and held that the creditor of the heir of the testatrix had no interest in the estate of the testatrix and was not entitled to be served with citation to see the probate proceedings. The probate could not be revoked on the ground of omission to serve citation on such a

creditor. We are not, however, called upon in the instant case to decide whether a judgment-creditor of an heir has an interest within the meaning of Section 283(1)(c) of the Indian Succession Act. In my judgment the petitioner not being an heir and having no interest in the estate of the deceased has no right under the Indian Succession Act to be cited and non-citation of the petitioner does not amount to sufficient cause which makes I the grant liable to be revoked.

11. Mr. Basu next contended that even if the petitioner was not entitled as of right to be served with citation, it was the duty of the applicant for grant to state the name of the present petitioner as a member of the family of the deceased, so that the Court may exercise its discretion as to whether citation should be served on the petitioner. Having regard to the facts of this case, the petitioner should have stated that the deceased left him surviving not only the widows and the descendants who are the present heirs but also the nephew and nieces who are also heirs under the Muhammadan Law, though distant and not entitled to inherit when there are widow and descendants to inherit. This amounts to suppression of a material fact which entitles the excluded heirs to claim revocation of grant. Section 278 of the Succession Act lays down the contents of the petition for grant. It provides inter alia that the application shall state 'the family or other relatives of the deceased and their respective residences.' In Mr. Basu's submission the section requires that not merely the 'family' but the 'relatives' of the deceased should be named in the petition. If the word 'or' is to be read as 'and' then obviously the persons to be named are far wider and the 'nephew' in any event is a relative in contemplation of the section. Mr. Sachin Chaudhury the learned counsel for the respondent however contended that the word 'or' is used as disjunctive and the persons required to be mentioned are the members of the family and failing them 'the relatives'. It is to be noted that the words used in the section is not 'heirs' but 'family' or 'relatives'. The word 'family' or 'relatives' have not been defined in the Act. Mr. Basu's argument is that if the Legislature intended that the only persons to be named in the petition are the 'heirs' who inherit the property and which has a clear connotation in law, the Legislature would have used the word 'heir' and not family or relatives. Instead the word 'family' or relatives have been used meaning thereby that the Legislature contemplated that persons other than heirs should also be named. This argument undoubtedly has

some force. Apart from heirs, other persons may have some claim in the estate of the deceased by the personal law by which the deceased was governed. For example, under the Hindu Law, a widow of a predeceased son is not an heir but has a claim on the estate. Such persons though not heirs were intended to be mentioned in the petition, so that the Court may decide whether citation should be served on them. I therefore agree with Mr. Basu that the Statute requires that not only the heirs of the deceased but other people who have some claim in the estate under the personal law, were intended to be mentioned in the petition. I am however unable to agree with Mr. Basu that all the relations which include the distant heirs are to be mentioned even though they have no stake or interest in the estate. Letters granted are for the administration of the estate of the deceased and the persons required to be named must be shown to have some interest in the estate of the deceased. Section 283(1)(c) makes it clear that the persons to whom citation' should be served are persons 'claiming an interest in the estate.' If the object of mentioning the names of the ''family' or relatives is to enable the Court to exercise its discretion in determining to whom the citation is to be served and if citation should only be served on persons having interest, then it must be held that the Legislature intended that such members of the family or relations as have an interest in the estate of the deceased should be named in the petition. As stated before, the words 'family or relatives' have been nowhere defined. The expressions have very extended or restricted connotation. In the wider sense the word 'family' includes a large class, certainly a nephew or a niece. In the restricted sense family means wife and dependent children, perhaps, dependent parents as well. The word 'relative' has still a wider meaning. In the view that I have taken, it is not necessary for me to decide whether the word 'or' in Section 278(1)(b) is used in conjunctive or disjunctive sense or what is the exact meaning of the words 'family or relatives' used in the section. I hold that the Statute requires the names of such members of the family or relations to be mentioned as have an interest in the estate of the deceased and a nephew who has no share or interest in the estate of the deceased uncle, need not be mentioned in the petition for grant inasmuch as he has no interest in the estate. Reference may also be made to Rule 5(a) and Rule 9 of Chapter XXXV of the Rules of this Court. Rule 5(a) directs that 'the names of the members of the family or other relations upon whom the

estate would devolve on intestacy' should be cited in the petition for grant of probate or Letters of Administration with a copy of the Will annexed. Rule 9 directs that in an application for the grant of Letters of Administration the persons to be named are persons having equal or superior right to the estate. When the Court decides an application for probate and/or for Letters of Administration with a copy of the Will annexed, the Court decides two questions : (i) title to the estate and (ii) the right to administration. The will displaces the title of the intestate heirs. Hence the names of the intestate heirs, whoso inheritance is sought to be displaced by the Will, must be stated, so that the Court may direct citations to be issued in order that the question of title may be adjudicated in their presence. In the case of an application for Letters of Administration simpliciter, the Court is not called upon to decide any question of title to property. The only question to be considered is not any question of title to the estate but only the right to administration. This can only be determined in the presence of the parties having equal or superior right to administration than the applicant. Hence Rule 9 requires that only those having superior or equal right to administration should be named. These rules are consistent with he view I have expressed as to the meaning of Section 278(1)(b). Mr. Basu has pointed out that the rules for testamentary and intestate succession framed by this Court in Chapter XXXV of the Rules are not rules framed under the Indian Succession Act, but framed under the rule-making power of the Letters Patent. Even so, they are as good and effective as a rule framed under the Indian Succession Act. The rules framed by this Court, in my judgment, make explicit what is implicit in the sections of the Indian Succession Act. In any event, it is the duty of the Court to reconcile the rules with the provisions of the Indian Succession Act, whether the rules are framed under the Indian Succession Act or under the rule-making power of the Letters Patent. There is no difference in law on that score.

In the instant case, all persons interested in the estate of the deceased having equal right with the widow have been named in the petition. The present petitioner has no interest in the estate and no right to administer the estate. in my judgment, he is not required to be named in the petition. There is, therefore, no suppression of fact as alleged in the petition.

12. It has been argued that in the instant case the deceased loved the petitioner, his nephew, very much and the nephew was, in fact, reared up as a member of the uncle's family. The nephew, even though he may have been reared as a member of the uncle's family, does not acquire any status in the uncle's family as a son nor does he acquire any interest in the estate left by the uncle. Adoption is unknown in Mahomedan Law. Nobody can acquire a status in a Mahomedan family as a son or nephew by adoption in the family. Nor does he acquire any interest in the family as an adopted son. In consequence, the nephew, though very much loved by the uncle and reared up and maintained as a member of the family, is not entitled either to be named in the petition for grant or cited in the proceedings for grant.

13. Assuming that it was necessary for the applicant for the Letters of Administration to mention that the deceased left him surviving his nephew, over and above his heirs who have been named in the petition, can it be said that failure to name the nephew as a member of the family in the petition for grant makes the proceedings for grant so defective in substance as would make the grant liable to be revoked at the instance of the nephew not named in the petition? There are authorities for the proposition that absence of citation to persons who are directed by law to be cited makes the proceedings for grant defective in substance. Where, however, citation is not compulsory but only discretionary, non-citation is not enough to revoke the grant. (See Digambar v. Narayan, 13 Bom LR 38; Harrisson v. Spencer, 35 Bom LR 708: (AIR 1933 Bom 370).) It has, however, been held by this Court in the case of Rebells v. Rebells, reported in 2 Cal W N 100, that a grant is liable to be revoked not only in those cases where citation is compulsory but also in cases where it is discretionary. If the Court in the proceedings for revocation holds that in its opinion a person who should have been cited has net been cited, the grant is liable to be revoked on that ground, even though service of citation is not compulsory in his case, it has also been held by this Court in the case of Syama Charan v. Prafulla Sundari, reported in 19 Cal WN 882: (AIR 1916 Cal 623), that a grant is liable to be revoked, if in the petition for grant the names of some near relations are omitted, who are entitled to intervene in the probate proceedings, thereby preventing citation to be served on them. See also Charubala v. Menaka Sundari, reported in : AIR1933 Cal74 . On

the basis of the above Calcutta authorities, I will be bound to revoke the grant, if I hold that if the name of the nephew had been mentioned in the petition, the Court !n its discretion would have directed citation to be issued to the nephew. But in the instant case I have held that in the proper exercise of discretion the nephew could not and should not have been cited, inasmuch as he had no interest to administer the estate. A person having no interest in the estate need not and cannot be cited in an application by the heir for the grant of Letters of Administration. In my judgment, therefore, failure to mention in the petition for grant the name of the petitioner, a nephew, who has no right to administer is not a just cause within the meaning of Section 263 of the Indian Succession Act.

14. The question can be looked at from another point of view. Supposing the grant is revoked and the petition is heard and the nephew being cited objects to the grant. The petitioner's grounds for objection would be the same as stated in his present petition for revocation. As stated before, the grievances In the petition are not questions that can be canvassed in a proceeding for grant of Letters of Administration. The petitioner's title to the estate sought to be administered, if any, is not affected by this grant. Under the Rules of this Court, the grantee has to furnish security and in the instant case security has been furnished by the widow to the full ex-lent of the volute of the estate to be administered. By reason of the grant of administration to the widow, the nephew applicant is not being prejudiced in any way whatsoever. In spite of the opposition of the nephew, the grant would have to be made to the widow. Order for revocation would therefore be made only to issue it to the same widow, only after citation to the nephew. It would, therefore, be useless to make an order for revocation of the grant.

15. For reasons given above, the application failsand is dismissed. The administrator will be entitled toretain her costs as between attorney and client out ofthe estate. Certified for two Counsel. The applicant willpay his own costs.