

SUNIL GUPTA
v.
KIRAN GIRHOTRA AND ORS.

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OCTOBER 9, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

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Succession Act, 1925—ss. 263 and 283—Probate proceedings—Impleadment of purchaser of property belonging to testator as a necessary party—Entitlement of—Held: Transferee of property during pendency of proceedings is not a necessary party—Citation are necessary to be made to only of those who, claim through or under the Will or deny or dispute execution thereof—On facts, purchaser and/or his predecessor, of the property forming subject matter of Will, took risk of the result of the probate proceedings before purchasing properties, as such is not a necessary party—Thus, purchaser not entitled to be impleaded in the probate proceedings.

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HB executed a Will on 09.09.1997. Respondent-HB's daughters filed application for grant of probate. Sons of HB filed objections thereto. Son RK submitted another Will of HB, allegedly executed on 30.10.1997. RK executed sale deeds in favour of AP with regard to the properties forming subject matter of grant under the Will. Neither probate nor objection from other legal heirs was obtained in respect of Will dated 30.10.1997. AP entered into sale agreement in respect of the properties. Appellant, successor of AP filed application for impleadment in the probate proceedings. Application was allowed. However, High Court set aside the order. Hence the present appeal.

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Dismissing the appeal, the Court

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HELD: 1 A transferee of a property during the pendency of a proceeding is not a necessary party. Citations are necessary to be made to only of those who, *inter alia*, claim through or under the Will

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A or deny or dispute the execution thereof. Citation should be conspicuously displayed on a notice board. Even otherwise ordinarily a transferee pendent lite without leave of the court cannot be impleaded as a party. Further, plaintiff in the suit is the dominus litis. If he intends to take a calculated risk in the matter, the court may
 B not exercise its discretionary jurisdiction.

[Paras 13, 17, 20 and 21] [832-G; 833-C; 834-C-D]

2.1. Sons of late HB had entered Caveats. Their objections would be considered in the probate proceedings. RK is not only opposing grant of probate in favour of the respondents in respect of
 C the Will dated 09.09.1997; but he himself is said to be claiming under a Will executed by late HB on 30.10.1997. RK evidently was aware of the proceedings. If a proceeding had been initiated for grant of probate, appellant and/or his predecessor, AP would be deemed to have notice thereof. Before purchasing the properties, AP and
 D consequently the appellant had taken a calculated risk. In a situation of this nature, he is not a necessary party. He took the risk of the result of the probate proceedings. His apprehensions that RK may not take any interest in the litigation cannot by itself be a ground for interfering with the impugned judgment. It is speculative in nature.
 E More so, the appellants are only the speculators who had purchased litigated properties.

[Paras 12, 14, 16 and 17] [832-E-F; 833-B, C, D; 833-A]

2.2. High Court in its impugned judgment has noticed that the
 F attesting witnesses of the Will had already been examined. If the appellant is impleaded as a party, the clock would be put back.

[Paras 14] [832-H]

Banwarilal Shrinivas v. Kumari Kusum Bai and Ors., AIR (1973) MP 69; *Seth Beni Chand (since Dead) Now by L.Rs. v. Smt. Kamla Kunwar and Ors.*, [1976] 4 SCC 554; *Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Anr.*, [2004] 1 SCC 191; *Kasturi v. Iyyamperumal and Ors.*, [2005] 6 SCC 733; *Dhannalal v. Kalawatibai and Ors.*, [2002] 6 SCC 1 and *Indian Associates v. Shivendra bahadur Singh & Ors.*, 104 (2003) DLT 820, referred to.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4729 of 2007. A

From the Judgment and final Order dated 31.08.2006 & 13.11.2006 of the High Court of Delhi at New Delhi in Civil Misc. (Main) No. 285 of 2006 & Review Petition No. 393 of 2006 respectively. B

WITH

Contempt Petition (C) No. 270/2007.

Raju Ramachandran and Meenakshi Arora for the Appellant.

O.P. Khadaria (for Mitter & Co.) for the Respondents and Indra, Respondent No. 4, In-Person. C

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted. D

2. The question as to whether a purchaser of a property belonging to the deceased testator should be impleaded as a party in a probate proceedings is the question involved in this appeal which arises out of judgments and orders dated 31.08.2006 in C.M. (Main) No. 285 of 2005 and 13.11.2006 passed in Review Petition No. 393 of 2006 by a learned Single Judge of the Delhi High Court. E

3. The property in question admittedly belonged to one Har Bhagwan. He died on 03.11.1997. He was survived by his wife, four daughters and two sons. Respondents herein are daughters of the said Har Bhagwan. One of the sons of Har Bhagwan was Raj Kumar. Wife of Har Bhagwan has passed away. Allegedly, another son of Har Bhagwan was given in adoption. F

4. Har Bhagwan executed a Will on 09.09.1997. Respondents herein are the beneficiaries thereof. They filed an application for grant of probate in the year 2000. Both the sons of Har Bhagwan filed objections thereto. Raj Kumar propounded another Will of the said Har Bhagwan which was allegedly executed on 30.10.1997. Indisputably, Raj Kumar executed two deeds of sale dated 20.06.2003 and 27.06.2003 in favour of one Amit Pahwa. The properties purported to have been transferred by reason of H

- A the said deeds of sale forming subject-matter of the grant under the Will. No probate was obtained in respect of the said Will dated 30.10.1997. Even no objection from other legal heirs of the late Har Bhagwan was obtained. Immediately after execution of the said deeds, the said Amit Pahwa entered into an agreement to sell dated 25.07.2003 in respect of
- B one of the properties. In furtherance thereto, a purported deed of sale is said to have been executed in respect of the other property on 29.08.2003.

5. Appellant herein filed an application for his impleadment in the said probate proceedings. It was allowed by an order dated 24.12.2004.
- C By reason of the impugned judgment, the High Court has reversed the said judgment and order on an application filed under Article 227 of the Constitution of India by the respondents herein.

6. Mr. Raju Ramachandran, learned Senior Counsel appearing on
- D behalf of the appellant, in support of the appeal, would submit that the High Court committed a serious error insofar as it failed to take into consideration that in a proceeding under the Indian Succession Act, 1925, (for short, 'the Act') the court should always make an endeavour to avoid multiplicity of proceedings. It was contended that the court's power to
- E implead a party, who, *strito sensu*, may not be a necessary party is wide. Strong reliance in this behalf has been placed on a decision in *Banwarilal Shrinivas v. Kumari Kusum Bai and Ors.*, AIR (1973) MP 69 as also in *Seth Beni Chand (since Dead) Now by L.Rs. v. Smt. Kamla Kunwar and Ors.*, [1976] 4 SCC 554].

- F 7. Mr. O.P. Khadaria, learned counsel appearing on behalf of Respondent Nos. 1 to 3 and Respondent No. 4, who appeared in person, on the other hand, submitted that the appellant is not a necessary party to the proceeding and, thus, the impugned judgment should not be interfered with.

- G 8. Chapter I of Part IX of the Act provides for grant of Probate and/or Letters of Administration. A probate can be granted only to an executor appointed by the Will. Chapter III of the Act provides for revocation or annulment for just cause. Illustration appended to Section
- H 263 of the Act reads as under :

"Illustration

- (i) The Court by which the grant was made had no jurisdiction. A
- (ii) The grant was made without citing parties who ought to have been cited.
- (iii) The will of which probate was obtained was forged or revoked. B
- (iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him. C
- (v) A has been taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (vi) Since probate was granted, a latter will has been discovered.
- (vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will. D
- (viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind." E

9. Illustration (ii) provides for revocation of grant if made without citing parties who ought to have been cited.

10. Section 283 of the Act provides for the powers of the District Judge to grant probate, which is in the following terms :

"283. Power of District Judge.- (1) In all cases the District judge or District Delegate may, if he thinks proper, - F

- (a) examine the petitioner in person, upon oath;
- (b) require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be; G
- (c) 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 H

A administration.

(2) The citation shall be fixed up in some conspicuous part of the court-house, and also the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

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(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.”

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11. Section 307(1) of the Act provides for power of the Executor or Administrator to dispose of property in the following terms :

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“307. Power of executor or administrator to dispose of property.-

(1) Subject to the provisions of sub-section (2), an executor or administrator has power to dispose of the property of the deceased, vested in him under section 211, either wholly or in part, in such manner as he may think fit.”

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12. Sons of late Har Bhagwan had entered Caveats. Their objections would be considered in the probate proceedings. Raj Kumar is not only opposing grant of probate in favour of the respondents herein in respect of the Will date 09.09.1997; but he himself is said to be claiming under a Will executed by Late Har Bhagwan on 30.10.1997.

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13. A transferee of a property during the pendency of a proceeding is not a necessary party. Citations are necessary to be made to only of those who, *inter alia*, claim through or under the Will or deny or dispute the execution thereof.

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14. The High Court in its impugned judgment has noticed that the attesting witnesses of the Will had already been examined. If the appellant herein is impleaded as a party, the clock would be put back. Before the High Court as also before us, arguments have been advanced in regard

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to conduct of the appellant as also the fact that they are only speculators who had purchased litigated properties. But we may not go thereinto. A

15. In *Banwarilal Shrinivas* (supra) whereupon Mr. Ramachandran has placed reliance, the High Court was considering the case of a purchaser in a proceeding under Section 263 of the Act. B

16. Raj Kumar evidently was aware of the proceedings. If a proceeding had been initiated for grant of probate, the appellant and/or his predecessor, Shri Amit Pahwa would be deemed to have notice thereof.

17. Citation, as is well-known, should be conspicuously displayed on a notice board. Before purchasing the properties, Amit Pahwa and consequently the appellant had taken a calculated risk. In a situation of this nature, he is not a necessary party. He took the risk of the result of the probate proceedings. His apprehension that Raj Kumar may not take any interest in the litigation cannot by itself a ground for interfering with the impugned judgment. It is speculative in nature. C D

18. In *Seth Beni Chand* (supra), whereupon reliance has been placed by Mr. Ramachandran, this Court was considering an argument as to whether alienees of properties are entitled to citation in probate proceedings. This Court proceeded on the assumption that *Banwarilal Shrinivas* (supra) lays down the correct law. But even therein a distinction was made stating that the alienee was a transferee *pendent lite*. The said decision, therefore, is an authority for the proposition that no citation need be issued to any person who had no right to the property prior to the commencement of the probate proceedings. This Court in no uncertain term opined that the alienees had no right to be heard in the appeal. The said decision, therefore, runs counter to the submission of Mr. Ramachandran. E F

19. We may notice that a Division Bench of the Delhi High Court in *Indian Associates v. Shivendra Bahadur Singh & Ors.*, [104 (2003) DLT 820], opined that the court must be satisfied in regard to the execution of the Will. It is not concerned with any other arrangement. It was held : G

“26. The respondent on the other hand have tried to distinguish H

A the cases relied upon by the appellant by contending that all those were cases where, certain persons were allowed to intervene or were impleaded but all were cases of family members and as such as the appellant-herein, could apply to be made a party in probate proceedings.

B 27. During the hearing of the matter, we drew the attention of both the parties to the provisions of Section 307 of the Succession Act, which made the permission of the court to be mandatory for purposes of transfer of property by an administrator. Both the parties were heard on this aspect.”

C 20. Even otherwise ordinarily a transferee pendent lite without leave of the court cannot be impleaded as a party. [See *Bibi Zubaida Khatoon v. Nabi Hassan Saheb and Anr.*, [2004] 1 SCC 191].

D 21. Furthermore, the plaintiff in the suit is the dominus litis. If he intends to take a calculated risk in the matter, the court may not exercise its discretionary jurisdiction. [See *Kasturi v. Iyyamerumal and Ors.*, [2005] 6 SCC 733 – Para 18 and *Dhannalal v. Kalawatibai & Ors.*, [2002] 6 SCC 16, Para 23]

E 22. For the reasons aforementioned, we do not find any merit in this appeal, which is dismissed accordingly with costs. Counsel’s fee assessed at Rs. 10,000/-.

F 23. In view of the aforementioned judgment and order, no orders are necessary to be passed in the contempt petition.

N.J.

Appeal dismissed.