

Smt. Rukmani Devi and Others

Vs

Narendra Lal Gupta

Civil Appeal No. 2307 of 1979

(D. A. Desai, M. P. Madon JJ)

13.09.1984

JUDGMENT

DESAI, J. -

1 One Chaudhary Prasad Gupta died leaving behind him his wife Ram Dulari, two sons, Kaloo Lal and Narendra Lal and one daughter Smt. Kamla Devi. Kaloo Lal died in 1957 leaving behind him appellant 1 Rukmani Devi and his sons and daughters who are the co-appellants. Ram Dulari had filed a suit for partition and separate possession of her share in the property against Kaloo Lal in his lifetime which ended in a consent decree. Ram Dulari died on March 6, 1970 at Mesra where she was staying with the respondent Narendra Lal for over 20 years. Before her death, Ram Dulari made the last will and testament of her properties on February 7, 1970 bequeathing the same to her son respondent Narendra Lal. The respondent on the strength of the will proceeded to execute the consent decree. Under the decree, amongst other things, he was entitled to recover Rs. 40,000 from the present appellants as well as partition and possession of land at Katni. The appellants challenged the validity of the will of late Smt. Ram Dulari and further contended that unless the will is probated, the respondent was not entitled to execute the decree. The executing court upheld the contention and stayed the proceedings till such time as the will was admitted to probate. The respondent preferred Civil Revision Petition No. 222 of 1971 in the High Court of Madhya Pradesh. The High Court by its judgment and order dated August 2, 1971 held that in view of the provision contained in Section 213(2) of the Indian Succession Act, 1925 a will made by a Hindu in the State of Madhya Pradesh need not be probated and that Section 214 of the Indian Succession Act is not attracted because the consent decree did not provide for recovering any debt. The High Court accordingly set aside the order of the executing court and remitted the matter to the executing court to take evidence pertaining to the question of the validity of the will. The appellants approached this Court by a special leave petition and on the special leave to appeal being granted preferred Civil Appeal No. 2952 of 1971. During the pendency of the appeal before this Court, the respondent moved a petition in the Court of Fifth Additional Judicial Commissioner, Chhota Nagpur at Ranchi for obtaining the probate of the will of late Ram Dulari. The jurisdiction of the Court was invoked on the will of late Ram Dulari. The jurisdiction of the Court was invoked on the allegation that late Ram Dulari was staying with Narendra Lal at Mesra for a period of over 20 years before her death. The learned Fifth Additional Judicial Commissioner, Chhota Nagpur at Ranchi as per his order dated July 8, 1977 granted the probate of the will. Consequently the appeal pending before this Court was dismissed on February 21, 1978. Thereafter the respondent approached the executing court to proceed further with the execution application. The appellants, in the mean time, filed a suit questioning the validity, legality and genuineness of the will of Smt. Ram Dulari. When the executing court proceeded with the execution application, the appellants appeared and moved an application under Order 21 Rule 29 of the Civil Procedure Code with a request to stay further

proceedings of the execution application on the ground : (i) that the will in favor of Narendra Lal was a forged one; (2) that the Fifth Additional Judicial Commissioner, Chhota Nagpur at Ranchi had no jurisdiction to grant probate since the property covered by the decree was of the value of more than Rs. 1 lac and the same was situated beyond the Court's original jurisdiction; (iii) that the probate could not be operative in the State of Madhya Pradesh and (iv) that the civil suit challenging the validity of the will is pending. The executing court held that the Fifth Additional Judicial Commissioner, Chhota Nagpur at Ranchi had no jurisdiction to grant the probate of the will in respect of the property exceeding Rs. 10,000 in value situated in another State and therefore the grant was not valid. Consequently it was held that the respondent must establish the genuineness of the will before the executing court. Aggrieved by this order the respondent and the appellants moved two revision petitions in the High Court of Madhya Pradesh being Civil Revision Nos. 284/79 and 325/79. A learned Single Judge of the High Court by a common order disposed of both the petitions, dismissing the civil revision petition preferred by the appellants and allowed the civil revision petition preferred by the respondent. In sum, the learned Judge held that the decision of the probate court being a judgment in rem, the action of the probate court in admitting the will to probate, so long as the order remains in force, is conclusive as to the due execution and validity of the will and a party to the probate proceedings cannot be permitted to contest the will unless the grant of probate is revoked. Accordingly the High Court set aside the order directing the respondent to lead evidence to establish the genuineness of the will and directed the executing court to proceed further with the execution proceedings. Hence this appeal by special leave.

2. The facts which are not in dispute are that in the petition moved by the respondent for obtaining the probate of the will he had cited the appellants and Smt. Kamla Devi as near relations. The citation of the application was issued to the appellants and it is conceded that the appellants did not choose to appear and contest the petition for grant of probate. If the appellants did not contest the proceedings for grant of probate, can they now be permitted to question the validity of the will by a collateral attack in different proceedings. It is well-settled that the decision of the probate court is a judgment in rem. The High Court rightly held that till the order granting probate remains in force it is conclusive as to the execution and validity of the will till the grant of probate is revoked. Apart from the fact that a decision of the probate court would be a judgment in rem not only binding on the parties to the probate proceedings but it will be binding on the whole world. Therefore, a solemn duty is cast on the probate court. Section 41 of the Indian Evidence Act, 1872 provides that a final judgment or order of a competent court in the exercise of probate jurisdiction is conclusive proof of what is decided therein that is about the genuineness of the will. To be precise, a probate granted by a competent court is conclusive of the validity of such will until it is revoked and no evidence can be admitted to impeach it except in a proceeding taken for revoking the probate. Apart from anything else, the citation having been issued to the appellants and having been served upon them, their failure to enter a caveat to contest the proceedings would preclude them from contesting the validity of the will in other proceedings. In *Surinder Kumar v. Gian Chand* (1958 SCR 548 : AIR 1957 SC 875 : 1958 SCJ 159) this Court allowed an application for admission of additional evidence to place the probate of the will on record. The Court after allowing the application held that since will has been admitted to probate any infirmity in the matter of probate of the will due to the want of proper attestation of the will as required by Section 63(1)(c) of the Indian Succession Act would be removed because the order admitting the will to the probate will operate as a judgment in rem. Therefore the High Court was perfectly justified in reversing the decision of the executing Court directing the respondent to lead evidence to prove the genuineness of the will.

3. Mr T. S. Krishnamurthy Iyer, learned counsel, who appeared for the appellants contended that the learned Fifth Additional Judicial Commissioner at Ranchi had no jurisdiction to entertain the

petition for grant of probate. Developing this contention, he first pointed that Section 270 of the Indian Succession Act confers jurisdiction on the District Judge to grant probate upon a petition moved before him if at the time of his death, the testator had a fixed place of abode or any property, moveable or immovable, within the jurisdiction of the court. He conceded that deceased Ram Dulari was staying at Mesra as found by the High Court for over 20 years. Therefore Section 270 would be attracted and an application could be made to the court which granted the probate for admitting the will of the deceased to probate. He then referred to the proviso to Section 273 and urged that where the property of the deceased is situated in more than one State, the District Judge in whose jurisdiction the deceased had a fixed place of abode would be entitled to grant probate provided he certifies that the value of the property and estate affected beyond the limits of the State does not exceed Rs 10,000. It was then pointed out that in this case the probate is granted by the court at Ranchi in the State of Bihar while the property in respect of which execution is taken out is situated at Katni in the State of Madhya Pradesh and its value exceeds Rs. 10,000 and therefore the Court of the Fifth Additional Judicial Commissioner at Ranchi had no jurisdiction to grant the probate. It was urged that even if the appellants did not enter a caveat and did not contest the proceedings for grant of probate yet the same having been granted by a court having no jurisdiction, the grant would be invalid and would confer no title on the respondent. Proceeding along it was submitted that if the grant of probate is ab initio void it would be open to the appellants to contest the genuineness of the will when the same is set up in the execution proceedings.

4. There is no merit in either of the two submissions. Deceased Ram Dulari was staying with her son, the respondent at Mesra, a place within the jurisdiction of the Court of the Fifth Additional Judicial Commissioner for over 20 years before her death, and therefore the Court had jurisdiction to entertain the application as provided by Section 270 of the Indian Succession Act. Now the question is whether the property situated at Katni exceeds Rs. 10,000 in value. The jurisdiction would depend upon the value of the property in a State other than the State in which the deceased died. If the jurisdiction depends upon a disputed question of fact such as value of the property, it was necessary for the appellants to enter caveat and contest the jurisdiction of the Court urging that the Court had no jurisdiction because the grant would affect a property in another State exceeding Rs. 10,000 in value. That having not been done it is not open to the appellants to raise the controversy in the present proceedings. Once the grant is made, Section 273 provides that the grant shall have effect over all the property and estate, moveable or immovable of the deceased throughout the State and unless otherwise directed the grant has like effect throughout the other States provided the two contingencies set out in the proviso are satisfied. In this case, the court granting the probate was satisfied in the absence of contest that the value of the property affected by the grant and situated beyond the limits of the State does not exceed Rs. 10,000 in value. The point is therefore concluded against the appellants and they cannot be permitted to re-agitate the same.

5. Having examined both the limbs of the contention raised by Mr Krishnamurthy Iyer, learned counsel for the appellants, we find not merit in any of them and both of them are rejected. That was the only point involved in this appeal and as there is no substance in it, the appeal fails and is dismissed with costs.

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