

Elizabeth Antony

Vs

Michel Charles John Chown Lengera

Special Leave Petition (Civil) No. 8896 of 1985

(S. R. Pandian, K. Jayachandra Reddy J)

12.04.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. We have heard both the sides and the matter is being disposed off at the admission stage.
2. This petition is directed against the order of a learned Single Judge of the Madras High Court confirming the order passed by the Subordinate Judge, Nilgiris. The matter arises under the Indian Succession Act, 1925 ('Act' for short) and the facts that gave rise to the petition are as follows :

The testatrix Mary Aline Browne was the wife of Herbet Evander Browne who was the eldest son of one John Browne. The testatrix had a daughter of the name of Zoe Enid Browne and she died on October 8, 1977. The respondent claiming to be the beneficiary to the estate of Mary Aline Browne who died on March 28, 1972 under the terms of a will said to have been executed by her on March 12, 1962 filed an application for letters of administration with a copy of the will annexed in the Sub-Court, Nilgiris. The same is numbered as O.P. No. 23 of 1980. Along with the application the respondent also filed an affidavit of an attester of the will. In that proceeding, the petitioner and her deceased husband lodged a caveat on the ground that the said Mary Aline Browne did not execute any will and the will propounded by the respondent was a fictitious and forged one, intended to disentitle Zoe Enid Browne, daughter of the testatrix from claiming interest in the estate of her mother. The petitioner also claimed that Zoe Enid Browne executed a will dated June 23, 1975 in favour of the petitioner and that she also executed gift deed in her favour. The petitioner also claimed that she was trustee of John Browne Trust that therefore, the petitioner has caveatable interest. Thus they opposed the probate of the will. Before the Sub-Court, several documents were filed. The respondent herein contested the caveat stating that the petitioner herein has no interest in the estate. The learned Subordinate Judge held that the petitioner is not in any manner related either to Mary Aline Browne or Zoe Enid Browne. The learned Single Judge of the High Court in an elaborate order having considered the rival contentions dismissed the civil revision petition holding that the petitioner cannot claim to be a person who has a caveatable interest in the estate of the deceased testatrix Mary Aline Browne. We are told that the will has subsequently been probated and the letters of administration have been granted.

3. The learned counsel for the petitioner contended that both the courts below have erred in holding

that the petitioner has no caveatable interest. It is submitted that the petitioner is executor and legatee of the will dated June 23, 1975 executed by Miss Zoe Enid Browne daughter of Mrs. Mary Aline Browne and that Miss Zoe has also executed a registered gift deed dated March 29, 1974 in respect of the second item of the estate and that the petitioner was also appointed a trustee of John Browne Trust of June 11, 1975 and therefore, in law the petitioner has an interest in the property which is the subject matter of the will and thus has caveatable interest.

4. Under Section 283 of the Act, the District Judge or District Delegate may, if he think proper, 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. Section 284 provides for lodging caveat against grant of probate or administration. Section 285 lays down that no proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered until the notice has been given to the caveator. Section 286 deals with the power of a district Delegate and lays down that he shall not grant probate or letter of administration in any case in which there is "contention" as to the grant, or in which it otherwise appears to him that probate or letters of administration, ought not to be granted in this Court. Under Section 288 where there is contention or where the District Delegate thinks that probate or letters of administration should be refused, the documents shall be returned to the applicant. In the instant case the Sub-Judge comes within the meaning of the District Delegate and the necessary powers were conferred on him by a notification which is not in dispute. According to the learned counsel the petitioner duly lodged a caveat against the grant of probate and that both the courts below have not properly appreciated the effect of such a contention and erred in striking off the petitioner's caveat.

5. In *Nabin Chandra Guha v. Nibaran Chandra Biswas* (AIR 1932 Cal 734 : 36 CWN 635) the Division Bench held that a person who has a real interest in the estate which is or is likely to be prejudicially affected or adversely affected by the will can oppose the grant of probate or letter of administration. In *Gourishankar Chattoraj v. Satyabati Debi* (AIR 1931 Cal 470 : 133 IC 212), it is held that the petitioner therein who was related to the deceased through a common ancestor, can be said to have interest in opposing the application for probate. In *Shanti Devi Agarwalla v. Kusum Kumari Sarkar* (AIR 1972 Ori 178 : (1971) 2 Cut WR 704), Justice Ranganath Misra, as he then was, held that the vendor legatee is entitled to enter caveat and the purchaser having stepped into the shoes of vendor is also entitled to enter the caveat. In *Narayan Sah v. Devaki* (AIR 1978 Pat 220 : 1978 BLJR 787), considering the locus standi of a person to oppose grant, it is held that any interest, however, slight and even a bare possibility of an interest is sufficient to entitle a person to enter caveat in a probate proceeding.

6. Relying on these decisions the learned counsel urged that the petitioner in the instant case has substantial interest in the estate. The learned counsel for the respondent did not dispute the legal position. He, however, contented that there was absolutely no material before the court below to substantiate the alleged interest of the petitioner in the estate. It is submitted that the so-called will said to have been executed by Miss Zoe Enid Browne, daughter of Mrs. Mary Aline Browne has not been filed. Likewise, the gift deed also was not filed. Coming to the trust of John Browne it is submitted that the trust does not exist and got extinguished. The learned counsel for the respondent further submitted that except mentioning these three aspects in a bare manner no other material was placed before the court. Having gone through both the orders we are inclined to agree with the learned counsel for the respondent that the petitioner did not establish her caveatable interest. We have perused the entire order of the trial court in the context. Admittedly neither the original nor a copy of the will said to have been executed by Zoe Enid Browne, was filed. Now coming to the

trust, it is in the evidence of PW 1 that John Browne Trust has come to an end in March 1972 and the same was not in existence. The trial court has considered both the documentary and oral evidence in this regard and has rightly held that the petitioner has no existing benefit from the trust. Likewise the registered gift deed or a copy of it has not been filed. Before the learned Single Judge of the High Court also same contentions were put forward. The learned Judge observed that from the objections filed by the caveator she desires the court in the probate proceedings to uphold her title on the strength of a gift deed and trust deed. It is observed :

"Equally, the petitioner has not placed before the court the will dated June 23, 1975 stated to have been executed by Zoe Enid Browne to establish that under the will dated March 12, 1962 stated to have been executed by Mary Aline Browne some interest given to the petitioner under the will dated June 23, 1975 of Zoe Enid Browne, is liable to be in any manner affected or otherwise displaced, by the grant of letters of administration in respect of the will dated March 12, 1962 sated to have been executed by Mary Aline Browne."

Accordingly the learned Judge held that the petitioner has not established that she has a caveatable interest justifying her opposition to the probate proceedings for grant of letters of administration. In this state of affairs, we are unable to agree with the learned counsel that the petitioner has caveatable interest.

7. Learned counsel, however, submitted that the will executed by Zoe Enid Browne on June 23, 1975 in favour of the petitioner though not filed but was subsequently probated in the year 1989 and the fact that probate is granted can be taken into consideration by this Court as a subsequent happening, as the appeal before this Court, is only a rehearing or the continuation of the matter. Reliance is Placed on Section 227 of the Act which reads thus :

"227. Effect of Probate - Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such."

It is submitted that since the will executed by Zoe Enid Browne in favour of the petitioner is probated it must be deemed that it was existing since the death of the testatrix namely Miss Zoe Enid Browne and that validates all intermediary acts. According to the learned counsel, the effect of such a probate is that the petitioner's interest in the estate gets established even on the date of entering caveat. We are unable to see any force in this submission. The said probate, admittedly, took place in a court in the Madras city. We do not know whether the citations were issued to all the persons interested. This probate also admittedly was granted when the special leave petition was pending in this Court yet the respondent had no notice about this probate proceeding. Under these circumstances, exercising our jurisdiction under Article 136 we do not see that it is expedient to acknowledge this probate proceeding and reopen the matter.

8. Lastly an attempt was made to show that the Sub-Court has no jurisdiction but we find that there is a necessary notification issued by the High court conferring power on the Sub-Court. We see no force in any one of these submissions.

9. The learned counsel, however, lastly submitted that the petitioner in spite of having substantial interest in the estate is losing her right, to prove that the alleged will by Miss Zoe Enid Browne is not a genuine one and that it is a fictitious one. We must point out that by granting a probate, the court is not deciding the disputes to the title. Even with regard to a probate granted, it can be

revoked as provided under Section 263 of the Act in any one of the cases mentioned therein. But the learned counsel for the petitioner submits that the findings of the sub-Court and the High Court regarding the caveatable interest will come in the petitioner's way in seeking revocation of the grant of probate. It is needless to say that the findings regarding the caveatable interest of the petitioner have a limited effect and are relevant only to the extent of granting of probate. But they cannot deprive his right, if he has any, to invoke Section 263 of the Act and it is up to the petitioner to satisfy the court.

10. With these observations, the special leave petition is dismissed.

</html