

SUPREME COURT OF INDIA

Yash Vardhan Mall

Vs.

Tejash Doshi

C.A.No.19635-19636 of 2017

(Arun Mishra and L.Nageswara Rao,JJ.,)

13.11.2017

JUDGMENT

L. Nageswara Rao,J.

SLP(Civil)No.28643-28644 of 2017

1. Leave granted.

2. A Will was executed by Smt. Shrutika Doshi on 01.03.2013 by which she appointed her husband, the sole Respondent herein, as the executor and trustee. Her minor daughters were made the beneficiaries. It was mentioned in the Will that in case the Respondent is unable to carry out or act as the sole executor by giving effect to the Will and testament, the Appellant shall become the sole executor. The Will dated 01.03.2013 was registered with the Sub-Registrar of Assurance at Calcutta on 25.05.2013. Smt. Shrutika Doshi died on 26.05.2013. Another Will executed by Smt. Shrutika Doshi on 22.04.2013 surfaced wherein the Respondent was appointed as the sole executor and in case he is unable to act as the sole executor his father would replace him. As the Respondent did not apply for grant of probate of the Will dated 01.03.2013 for two and half years, the Appellant applied for a probate of the Will. Thereafter, the Respondent filed P.L.A. No.123 of 2016 for grant of probate of the Will dated 22.04.2013 before the High Court at Calcutta. The Appellant filed a caveat on 15.06.2016 and on receipt of a notice of the filing of the P.L.A. No.123 of 2016, the Appellant filed an affidavit in support of the caveat on 10.01.2017. The Respondent filed an application G.A. No.888 of 2017 in P.L.A. No.123 of 2016 for discharge of the Appellant's caveat.

3. The petition filed by the Appellant for grant of probate of the Will dated 01.03.2013 was dismissed by the District Judge, Alipore on 17.04.2017. An appeal has been filed against the said order which is pending in the High Court at Calcutta.

4. A learned Single Judge of the High Court at Calcutta heard G.A. No.888 of 2017 in P.L.A. No.123 of 2016 for discharge of caveat. By an order dated 28.06.2017, the learned

Single Judge allowed the application filed by the Respondent and discharged the caveat. The appeal filed against the said order dated 28.06.2017 was disposed of by a Division Bench of the High Court holding that there was no reason to interfere with the order of the learned Single Judge, though the Appellant had a caveatable interest. Aggrieved thereby the Appellant has approached this Court.

5. The learned Single Judge referred to Chapter XXXV of the The Rules of The High Court At Calcutta (Original Side), 1914 (hereinafter referred to as the 'Rules') to hold that the affidavit filed in accordance with Rule 26 thereof did not disclose legal grounds of objection to the grant of probate. The learned Single Judge further held that the Appellant did not have caveatable interest and discharged the caveat. The Division Bench held that an executor of a previous Will cannot be denied a right to lodge a caveat in respect of a subsequent Will of the same testator. Even if the executor is not a legatee under the Will, his obligation is to obtain a probate of the Will and to administer the estate in accordance with the terms of the Will. As the execution of the Will dated 01.03.2013 was not disputed by the Respondent, the Division Bench held that the Appellant has sufficient interest in the estate and was entitled to lodge a caveat by virtue of his position as a trustee in respect of the trust created by the first Will. Having held that the Appellant has a right to object to the grant of probate of the Will dated 22.04.2017, the Division Bench refused to interfere with the order of the learned Single Judge for the reason that the affidavit filed in support of the caveat did not disclose any ground to doubt the due execution of the Will dated 22.04.2013.

6. The Rules relevant for the purpose of adjudication of the dispute in this case are as follows:

"24. Caveat. - Any person intending to oppose the issuing of a grant of probate or letters of administration must either personally or by his Advocate acting on the Original Side file a caveat in the Registry in Form No.12. Notice of the filing of the caveat shall be given by the Registrar to the petitioner or his Advocate acting on the Original Side. (Form No.13).

"25. Affidavit in support of caveat.—Where a caveat is entered after an application has been made for a grant of probate or letters of administration with or without the will annexed, the affidavit or affidavits in support shall be filed within eight days of the caveat being lodged, notwithstanding the long vacation. Such affidavit shall state the right and interest of caveator, and the grounds of the objections to the application."

"30. Trial of preliminary issue.—The Court may, on the application of the petitioner by summons to the caveator before making the order mentioned in Rule 28, direct the trial of an issue as to the caveator's interest. Whereupon the trial of such issue, if it appears that the caveator has no interest, the Court shall order the caveat to be discharged, and may order the issue of probate or letters of administration, as the case may be."

7. An affidavit filed in support of the caveat according to Rule 25 shall state the right and interest of the caveator and the grounds of the objections to the application. The affidavit filed in support of the caveat by the Appellant mentions that Smt. Shrutika Doshi executed her last Will and testament on 01.03.2013 which was registered on 22.05.2013. There is a reference to the Will dated 22.04.2013 alleged to have been executed by Smt. Shrutika Doshi as her last Will and testament. It was further mentioned in the affidavit that the Will dated 01.03.2013 being registered on 22.05.2013 has to be treated as the last Will and testament of Smt. Shrutika Doshi. The Appellant did not doubt the execution of the Will dated 22.04.2013, but asserted that the Will dated 01.03.2013 which was registered on 22.05.2013 was her last Will.

8. After holding that the Appellant has a caveatable interest to object to the grant of probate of the Will dated 22.04.2013, the High Court refused to interfere with the order of the learned Single Judge on the basis that the affidavit filed in support of the caveat did not doubt the execution of the Will. As per Rule 25, the right and interest of the caveator and the grounds for objection to the application have to be mentioned in the affidavit filed in support of the caveat. The right and interest of the caveator as the executor of rival Will dated 01.03.2013 have been mentioned in the affidavit filed in support of the caveat and the High Court rightly upheld the contention on behalf of the Appellant that he has a caveatable interest. The grounds for objection to the application for grant of probate have also been mentioned in the affidavit. On a detailed scrutiny of the affidavit filed in support of the caveat, we are satisfied that the Division Bench went wrong in not permitting the Appellant to contest the proceeding of probate of the Will dated 22.04.2013, especially after holding that he has a caveatable interest. It is relevant to mention that the petition filed by the Appellant for grant of probate of the Will dated 01.03.2013 was rejected by the District Judge, Alipore on the ground that the application for probate of the Will dated 22.04.2013 was pending and that the Appellant had lodged a caveat in that proceeding. It was further held in the said order passed by the District Judge on 17.04.2017 that the Appellant will have sufficient opportunity to prove his allegations against the Respondent in the said proceeding.

9. This Court in *Krishna Kumar Birla v. Rajendra Singh Lodha and Ors*¹, considered the point of caveatable interest in a detailed manner and held that no hard and fast rule can be laid down. The existence of a caveatable interest would depend upon the fact situation of each case. In the instant case, the High Court found that the Appellant has a caveatable interest, but the caveat filed by the Appellant was discharged on the ground that the affidavit filed in support thereof was bereft of an averment doubting the due execution of the Will dated 22.04.2013. For the reasons stated supra, we are satisfied that the affidavit filed in support of the caveat fulfils the condition of Rule 25.

9. The appeals are allowed and the judgment passed by the Division Bench of the High Court is set aside. No order as to costs.

Judgment Referred.

¹(2008) 4 SCC p.300

