

RAJASTHAN HIGH COURT

Laxminarayan

Vs.

Ganeshmal

Civil Misc. Appeal No. 200 of 1999

(N.P. Gupta, J.)

11.11.2003

ORDER

N. P. Gupta, J.

1. This appeal has been filed by the appellant, against the order of the learned District Judge, Churu, passed on the application filed on 25-8-1992, under Section 383 of the Indian Succession Act, revoking the Succession Certificate dated 14-7-1992, granted in favor of the present appellant.

2. The facts as appearing from the impugned order are, that late Sri Phoos Das Swami was resident of Sardar Sahar, who had made a Fixed Deposit in the State Bank of *Bikaner* and *Jaipur*, Branch Sardar Sahar, for the sum of Rs. 30,000/- vide Fixed Deposit Receipt 34843, which was to mature on 26-9-1992, the original receipt was given to the present respondent. Likewise, the deceased had one Saving Bank Account No. 5095, having balance of Rs. 3750.16, and he was having original Pass Book. It was also alleged, that the present respondent was the adopted son of Phoos Das, and he is the real son of the elder brother of the deceased and that the wife of Phoos Das and the applicant's (present respondent) mother are real sisters. Continuing the allegations, it was alleged that the present appellant obtained an *ex parte* Succession Certificate without even mentioning the applicant's relation, and forcibly took over the possession of the house, and also instituted a separate proceedings for possession. Inter alia, on these applications it was prayed that the Succession Certificate granted be revoked, and present appellant be prosecuted by taking necessary proceedings under Section 195, Cr. P.C.

3. This application was contested. The parties led evidence, and the learned trial Court, vide impugned judgment dated 12-2-1999, allowed the application, and

revoked the Succession Certificate, and declared the present respondent, to be the heir of the deceased Phoos Das, for the purpose of receiving the amount of Fixed Deposit, and the amount lying in the Saving Bank Account.

4. Appeal against this order was filed in this Court on 22-3-1999, and came up for admission on 30-3-1999, on which date nobody appeared, whereupon the case was adjourned, to be listed after four weeks. However, it was again listed on 9-4-1999, before the same Hon'ble Bench, after permission, and on that date show cause notice was ordered to be issued, and in the meanwhile the operation of the impugned order was ordered to be stayed. Then the matter again came up on 13-5-1999, on which date Mr. Maheshwari appeared for the respondent, and submitted that he had already appeared as caveator, and has not been supplied copy of the memo of appeal, and stay application, therefore, it was directed to be supplied. Then the matter was again listed on 16-1-2001, on which date it was adjourned. Then on two more occasions it was adjourned. Thereafter the matter came up before me on 18-10-2002, on which date application came to be filed, for recalling the order dated 9-4-1999, alleging inter alia, that the present appellant, on 8-3-1999, submitted an application before the learned trial Court, for postponing implementation of the impugned order, on the ground that the appellant had preferred an appeal before this Court, which was scheduled to be heard on 11-3-1999, whereas as per the office record, the appeal was filed on 22-3-1999. It was also stated in the application, that the respondent has already put in appearance by way of caveat, and relying on the facts disclosed in the application, the learned trial Court passed the order, directing the respondent, not to withdraw the amount from the Bank without furnishing undertaking. Certified copy of the order, so also of the application was produced along with the application. Since a perusal of the certified copy of the application, annexed with the application, showed that the application was moved on the basis of the information received by the appellant from Sri Thakur, and Sri Thakur, who was also present in the Court on that day, was served with a copy of the application, and was given time to file reply. Thereafter the matter came up on 15-11-2002, by which time Mr. Thakur had filed reply, controverting the allegations. Perusing the application and the reply, and order was passed, directing the learned District Judge, to enquire into the matter. The precise direction given was as under :-

"Before taking any serious action in the matter, I think it appropriate to direct the learned District Judge, Churu to get the matter investigated threadbare by holding inquiry, or getting investigated through competent police agencies

including interrogation of all litigants and lawyers concerned, and submit a report to this Court as to who are the persons, which according to him, are the authors of the episode."

5. Pursuant to this order, the learned District Judge purportedly enquired into the matter. Recorded the statement of four witnesses, being that of Sri Anand Balan, the counsel for the present appellant in the Court below, Sri Anant Ram Soni, who was the counsel for the present respondent in the Court below, the present appellant, and Sri K. L. Thakur, and submitted the report to the effect, that the appellant is responsible for making false averments in the application dated 8-3-1999, and sent the report. For this purpose, the learned District Judge believed the statement of Sri K. L. Thakur.

6. After receipt of the report, the case was listed in the Court on 3-1-2003, on which date, learned counsel for the parties prayed for time to study the matter, and argue the matter. Then on 6-3-2003, the appellant sought time to file objection against the report. Then on 7-4-2003, Mr. Acharya again sought time to argue the matter, so far as the report of the District Judge is concerned. Thereafter the matter went on being adjourned, for amicable settlement between the parties outside the Court.

7. In the meantime, an application has been filed on 1-5-2003 by the appellant, tendering unconditional apology, and contending, that due to misunderstanding, and misconception on the behalf of his colleague, he gave a statement before the Court, and he will not repeat the mistake in future. This apology was supported by the affidavit of the appellant. Simultaneously the appellant also filed yet another application, giving out, that the appellant does not want to press the appeal, and praying the same to be dismissed.

8. It is in this sequence, that ultimately on 3-11-2003, when it finally transpired, that for one reason or the other, the amicable settlement between the parties, outside the Court, could not be arrived at, the matter was argued, and during the arguments, so far the appellant is concerned, all that was submitted was, that he has already moved the application for dismissing the appeal as not pressed, and therefore, the same be dismissed as not pressed, while the learned counsel for the respondent submitted, that pressing, or not pressing of the appeal is the choice of the appellant, but then as found by the learned District Judge, the appellant is responsible for making a wrong statement before the learned trial Court, and obtaining the interim order on that basis, vide application dated 8-3-1999, and for that the appellant is required to be adequately punished.

9. In that view of the matter, since the appellant does not press the appeal, the same is, therefore, dismissed as not pressed.

10. Now, I am to concentrate on the request of the learned counsel for the respondent, as to how the appellant is required to be dealt with, for having moved the application dated 8-3-1999, before the learned Trial Court, giving false facts.

11. At the out-set it may be observed, that filing of the application dated 8-3-1999, passing of the order thereupon by the learned trial Court, postponing the implementation of the impugned order, so also the date of the filing of the present appeal, are not in dispute. In that view of the matter, so also in view of the application of the appellant dated 1-5-2003, it is no more in dispute that, the application came to be filed before the learned trial Court on 8-3-1999, giving wrong facts, and the order was obtained on that basis, from the learned trial Court.

12. But then, still more important question, that remains is, as to whether the appellant is to be held guilty for it, and if so what consequences are to ensue.

13. In this regard a perusal of the application dated 8-3-1999, shows, that it was alleged therein, that on that morning he had talked to his Advocate Sri K. L. Thakur on telephone at Jodhpur, and learnt that the appeal is fixed for hearing on 11-3-1999, and the respondent has entered caveat. According to the statement of Anand Balan, recorded during enquiry, the appellant came to him on 8-3-1999, and delivered him the application, and gave out that he had delivered the papers to his counsel earlier for filing appeal, who has informed him that appeal has been filed and fixed for hearing on 11-3-1999. Likewise the appellant has also deposed, that on 8-3-1999 he appeared in the Court of District Judge, Churu, and filed the application, and in the morning he talked to advocate Sri K. L. Thakur on telephone No. 32358, who informed that appeal has been filed, and fixed for hearing on 11-3-1999, and respondent has entered caveat, while Sri K. L. Thakur had deposed, that on 8-3-1999 he never gave any such information to the appellant on Telephone No. 32358, and that he never had any dialogue with the appellant, and he even does not know him, and has never seen him at all.

14. In this background, a look at the record of this appeal shows, that the affidavit filed in support of the stay application is sworn in at Jodhpur on 8-3-1999, and the Court-fees Stamp for the appeal are purchased on 9-3-1999, and the appeal has been filed on 22-3-1999. The Vakalatnama filed along with the appeal, bears the rubber stamp mentioning the names of two lawyers, being Kanti Lal Thakur and S. G. Ojha,

as the lawyers, having been engaged, and the Vakalatnama is signed by Sri Sarvan Ojha only. In these circumstances, it is absolutely clear, that on 8-3-1999 the appellant was not at Jodhpur, to swear in the affidavit filed in support of the stay application, and as deposed by him, during enquiry, that he had earlier delivered the papers to the Advocate, which version is consistent with the sequence of events.

15. It is comprehending these circumstances, that while passing the order dated 15-11-2002, it was perceived, that may be that, Mr. Thakur may not have passed on the information as contained in the application, but then since the affidavit was sworn in, in support of the stay application on 8-3-1999, while the appellant himself had filed the application before the learned trial Court on 8-3-1999, obviously the appellant had handed over the papers for filing the appeal prior to that, and there was no occasion for the appellant to dream, that the appeal has been filed, and is fixed for hearing on 11-3-1999, and the respondent has entered caveat. Obviously, therefore, this information must have been conveyed to the appellant, may be by Sri Sarvan Ojha, the Advocate who is representing the appellant in appeal, or may be by any other inmate of the office of the lawyers at Jodhpur, which might have been perceived by the appellant to be conveyed by his counsel, whom he took to be K. L. Thakur, and therefore, while ordering enquiry, it was expressly directed ".....to get the matter investigated threadbare by holding inquiry, or getting investigated through competent police agencies including interrogation of all litigants and lawyers concerned, and submit a report to this Court as to who are the persons, which according to him, are the authors of the episode. Notwithstanding detailed, express and positive direction, the learned District Judge has casually, simply purported to complete the formalities of the enquiry, by recording the statements of the two counsels for the either side, appearing in the learned trial Court, that of the appellant, and that of Sri K. L. Thakur, and has simply reported, by believing the statement of Sri Thakur, that the appellant is guilty of the act, which on the face of above sequence of events, cannot at all be accepted. Since the learned District Judge has not investigated the matter thoroughly, to find out as to how the appellant received the information, I am at a loss to identify the person, and fix the liability in that regard.

16. In that view of the matter, I do not feel inclined to make any direction against the appellant, in the matter of his filing the application before the learned trial Court on 8-3-1999, and getting order thereon.

17. There is yet another aspect of the matter, which also requires to be considered, at this stage itself, viz. that the caveat or had entered appearance in this Court, by filing

caveat, and after passing of the order dated 9-4-1999, on 13-5-1999 the learned counsel Mr. Maheshwari had appeared, and asked for being supplied the copy of the memo of appeal etc. Thereafter the matter came up before the Court on number of occasions, till before filing of the application dated 18-10-2002, and significantly the certified copies, filed along with the application dated 18-10-2002, show that, they have been obtained way back on 5-5-1999, itself. Notwithstanding this, the respondent also kept silent over the matter, practically for more than three years.

18. It is well-nigh possible, that since by order dated 9-4-1999 only show cause notice had been issued, and thereafter, for one reason or the other, the matter was not heard for admission, the respondent might be feeling aggrieved of the interim stay order, and chose to resort to filing the application dated 18-10-2002, but then in the application, the title given was "Application for recalling the order dated 9-4-1999", and it is also alleged in the application, that the appellant got managed interim order, and significantly has not supplied copy of the memo of appeal deliberately, which conduct of the appellant is the game of hide and seek. With this pleading, it was prayed that the order dated 9-4-1999 be recalled, and the appellant be suitably punished. Thus basically, the application was for recalling the order dated 9-4-1999, and as such also, I do not feel it to be expedient in the interest of justice, to carry the matter any more against the appellant.

19. The sequence of events, of the entire episode, however, does not leave a good taste; rather leave a bitter taste in the mouth.

20. As a result of the aforesaid discussion, the appeal stands dismissed as not pressed pursuant to the application of the appellant. And no further action is required to be taken against the appellant for his having filed application before the learned trial Court on 8-3-1999 and having obtained interim order thereon.

Appeal dismissed.