

RAJASTHAN HIGH COURT

Ram Gopal

Vs.

Naraini Bai

Civil Misc. Appeal No. 834 of 1995

(J.R. Goyal, J.)

04.05.2005

JUDGEMENT

J. R. Goyal, J.

1. This appeal is directed against the order dated 3-8-1995 passed by District Judge, Saran in Civil Misc. Case No. 5/1993 whereby the probate granted in favor of the appellant Ram Gopal in Misc. Petition No. 14/1992 on 30-10-1992 has been revoked.
2. Brief facts of the case are that Smt. Naraini Bai respondent-applicant submitted an application before the District Judge, Baran for revocation of the probate granted in favor of the appellant Ram Gopal on 30-10-1992 with the averments that she being the daughter of late Sh. Dhuli Lal became co- owner of the disputed house situated at Talapada, Baran along with her brother Bhanwar Lal on the death of their father in the year 1965 and thereafter she became the sole owner after the death of her brother Bhanwar Lal and his wife Onkari Bai respectively in the year 1988 and 1990, but suppressing all these material facts and deliberately without imp leading her as a party in the probate petition, Ram Gopal fraudulently obtained the probate on the basis of forged Will said to be executed by Smt. Onkari Bai.
3. Ram Gopal controverted the allegations leveled in the application filed for revocation of the probate.
4. After recording the evidence, learned District Judge had revoked the probate as stated hereinabove. Hence, this appeal.
5. It has been contended on behalf of the appellant Ram Gopal that he did not suppress

any material fact in the probate petition, he is adopted son of deceased Bhanwar Lal and Smt. Onkari Bai and after the death of Bhanwar Lal, Smt. Onkari Bai in her lifetime made a last testament on 25-1-1990 with her free will; that after adopting due procedure and having satisfied that the testament is genuine and executed by Smt. Onkari Bai in the sound state of mind, the letter of probate was granted by learned District Judge. It has also been contended that in the probate proceedings only general citations calling upon all persons claiming to have any interest in the estate of the deceased are required and not special citations as provided under Section 293 of the Indian Succession Act, 1925 (in short the Act, 1925). Reliance has been placed upon *Chandra Kanta Medhi v. Lakheswar Nath*,¹ wherein it was held that for granting a succession certificate the law provides for issuing both special and general citations but in case of probate proceedings, Section 283 does not provide for issuing special citations, hence it was not necessary for the appellant to specifically impale Smt. Naraini Bai as a party in the probate proceedings. It has also been contended that under Section 263 of the Act, 1925 the proceedings of revocation of Probate are of summary in nature wherein the questions of title, ownership or possession are not to be decided and it is to be seen only whether sufficient grounds exist for revocation as enumerated in Section 263 of the Act, 1925 but learned District Judge on the application of revocation of probate re-appreciated the evidence and against the material available on record and without jurisdiction, decided the rights of the parties over the disputed property which is against the spirit of law.

6. Learned counsel appearing for the respondent submitted that Smt. Naraini Bai is daughter of Late Sh. Dhuli Lal and after the death of Dhuli Lal, she became co-owner of the property left by her father. It was also contended that Bhanwar Lal and Onkari Bai died issueless; they never adopted Ram Gopal in their lifetime and only to grab the property, Ram Gopal fraudulently obtained the probate upon a forged Will. It has also been contended that respondent Naraini Bai served a notice to Ram Gopal mentioning her sole rights over the disputed property but he did not send any reply and suppressing the important facts, submitted the application for probate and after obtaining the probate ex parte, a reply was sent through his advocate on 13-1-1993. It has also been contended that Ram Gopal sold the property for a sum of rupees about one lakh while he assessed the value of the said property worth Rs. 10,000/- in the probate petition and thus, after considering all these facts learned District Judge rightly revoked the probate certificate.

7. I have considered the rival contentions and perused the material available on record, it is settled proposition of law that the probate granted on the basis of Will can only be revoked by the District Judge on the grounds enumerated in Section 263 of the Act, 1925 which reads as under :-

263. Revocation or annulment for just cause.- The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. - Just cause shall be deemed to exist where -

- (a) The proceedings to obtain the grant were defective in substance; or
- (b) The grant was obtained fraudulently by making a false suggestion, or suggestion, or by concealing from the Court something to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) The grant has become useless and inoperative through circumstances; or
- (e) The person to whom the grant was made willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

After the explanation, there are eight illustrations of the grounds on which a grant of probate may be revoked and the relevant illustrations in the instant case are as under:

- "(i) The Court by which the grant was made had no jurisdiction.
- (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."

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8. A bare perusal of the illustration No. (ii) makes it clear that grant may be revoked on the ground that citation has not been issued to a person who should have been apprised of the probate proceedings as it has been enumerated as a just cause for revocation. The Hon'ble Apex Court in the case of *Anil Behari Ghosh v. Smt. Latika Bala Dassi*,² observed that the omission to issue citation to a person who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant. In the instant case, it transpires from the record that respondent Naraini Bai served a notice Ex. 2 through her counsel on 8-1- 1992 to the appellant Gopal, son of Khema (Ram Gopal) and so called purchaser of that house

Ghasi Lal stating that being only daughter and heir, she is the owner of the house of her father Dhuli Lal, that house situated near 'Kolio Ki Hatai' was in her possession but both Gopal Lal and Ghasi Lal had broken the lock and stolen the articles from the house and fraudulently Gopal Lal sold the house for a consideration of rupees one lakh wrongly showing it to be his own house. This notice was received by the appellant Ram Gopal on 11-1-1992 but not replied till 13-1-1993. It is also evident that after the notice of Naraini Bai Ex. 2, Ram Gopal filed the petition under Section 276 of the Act, 1925 on 11-3-1992 before the District Judge, Baran for grant of probate. It is also evident from para 7 of the probate petition that the petitioner Ram Gopal showed himself as the sole surviving heir of the deceased Onkari Bai while it is not disputed that Naraini Bai is the real sister of deceased Bhanwar Lal and sister-in-law of Onkari Bai who died issueless. Thus, despite being the nearest relative of the deceased Bhanwar Lal and Onkari Bai, neither she was made a party nor any reference was made in this regard in the probate petition and reply of notice Ex. 2 was given on 13-1-1993 (i.e. only after obtaining probate certificate which was granted on 3-11-1992. Thus, in my opinion, Naraini Bai was a necessary party to whom special citation should have been issued but knowingly and even after the receipt of the notice, appellant Ram Gopal did not impale her as a party nor informed her even by sending a reply of the notice that there is a testament in his favor created by deceased Onkari Bai. As such, in my considered view, *prima facie* reasons exist to believe that it is necessary to have the Will proved afresh in the presence of interested parties.

9. It is significant to note here that learned District Judge while revoking the probate also evaluated the evidence in the context of proof of Will and rights of the parties which is not sustainable because proceedings under Section 263 of the Act, 1925 for revocation of the probate are of summary nature and thus in a miscellaneous application, neither the rights of the parties are to be decided nor strict proof of Will is evaluated but it is only to be seen that any ground exist as enumerated in Section 263 of the Act, 1925 for revocation of the probate. The Hon'ble Supreme Court in the case of *Mrs. Nalini Navin Bhagwati v. Chandravadan M. Mehta*, reported ³ in observed in para 7 as follows :

"But when the grant of probate or letter of administration is sought to be revoked, it is not clear to what nomenclature would be ascribed to it and what procedure would be adopted for its disposal. Take for instance a situation when the suit is decreed *ex parte*. Order 9, Rule 13 provides for making of an

application to set aside the decree on proof of certain grounds *ex parte* decree get set aside. Similarly, when the suit was dismissed for default, under Order 9 Rule 9 an application would be filed and on proof of the circumstances for absence, the order would be set aside and suit would get restored. Similarly, when probate or letter of administration is granted and it is sought to be revoked, Section 263 provides for the grounds on the basis of which it would be revoked. When the grounds are sought to be proved, the question is whether such an application would be treated to be a suit? We are of the considered view that an application to revoke probate or letter of administration would be treated as miscellaneous application and may be disposed of on the fact situation in an appropriate case either summarily or after recording evidence. The application to revoke the probate or letter of administration that may be disposed of by the District Judge either summarily or in a given situation where it requires proof of the facts by adduction of evidence by the parties by recording such evidence as is adduced by the parties. The burden will be on the applicant to prove the facts to revoke the probate or letter of administration and the respondent who obtained probate or letter of administration has to disprove the contentions of the applicant. In that situation based upon the given facts situation, it will be for the Court to dispose it of either summarily or giving opportunity to both the parties to adduce evidence and consideration thereof. Under these circumstances, it is not necessary that the application for revocation of the probate or letter of administration would be treated as a suit as contemplated under Section 295 of the Act. If the contention of Shri Puri merits acceptance, then any proceedings under the application to revoke the probate or letter of administration should be treated as a suit the applicant cannot prove the Will and at the same time cannot contend that the Will was not validly executed. Therefore, it would be self contradictory to adopt such a procedure. Accordingly, we are of the view that the procedure required under Section 295 need not be adopted for disposal of the application filed under Section 263 for revocation of the probate or the letter of administration. It would be treated as miscellaneous application and disposed of as indicated earlier according to the given fact situation."

10. Thus, in view of the above discussion, it is found to be a fit case to revoke the probate on the ground of non-citation of Naraini Bai who appears to be a necessary party in the probate proceedings.

11. Consequently, the order of the learned District Judge for revocation of the probate on the ground of non-citation of Naraini Bai is confirmed and the matter is remitted back to the District Judge to decide the probate application afresh after giving the opportunity to the parties including objector to lead their evidence.
Order accordingly.

Cases Referred.

1. AIR 1976 Gau 94
2. AIR 1955 SC 566
3. AIR 1997 SC 1055