
(2007) 07 CAL CK 0016
In the Calcutta High Court
Case No : T. No. 183 of 2007

Bathgate and Company Ltd. and Others APPELLANT
Vs
Reverend Hanok Ghosh and Others RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 22
Succession Act, 1925 — Section 232, 263

Citation : AIR 2008 Cal 165

Hon'ble Judges : Indira Banerjee, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Indira Banerjee, J.—In this application, the petitioners have sought orders for discharge of the respondent No. 1 as Administrator-De-Bonis-Non of the estate of Late Gertrude Violet Chippendale, hereinafter referred to as the Testatrix, cancellation of a sale deed dated 14th August, 2006 executed by the respondent No. 1, in respect of premises No. 62/11, Ballygunge Circular Road. Calcutta-700 019. hereinafter referred to as the said premises, and other consequential reliefs.

2. The petitioner No. 1, a company incorporated under the Companies Act, 1956 and the petitioner No. 2, a school run by one Smt. Shalini Hingorani, are tenants at the said premises. The petitioner Nos. 1 and 2 claim to have been paying rent to the credit of the respondent No. 1. The petitioner No. 3, an indigenous church is an occupant of a portion of the said premises and has filed a suit for declaration of its right of adverse possession of the area occupied by it.

3. At all material times, Premises No. 62/11, Ballygunge Circular Road, Calcutta -700 019 was owned by the testatrix, who died on 7th May, 1969. The respondent Nos. 8 to 19 are all beneficiaries of the Will executed by the Testatrix on 7th September, 1968. The said Will has duly been probated.

4. In terms of the Will, about eight persons and/or organizations, named in the

Will were to be paid the amounts specified in the Will from out of the estate of the testatrix. The residue of the Estate was bequeathed to the Assembly of God Church.

5. The testatrix had appointed Reverend Daniel Mark Buntain, Executor of her Will. After the death of Reverend Daniel Mark Buntain, the respondent No. 1, Reverend Hanok Ghosh was appointed Administrator De-Bonis-Non.

6. It appears that in compliance with the direction contained in the Will of the Testatrix, payments have been made to the Leper Mission, St. Paul's Mission, Oxford Mission Sisters, Blind School, Cheshire Homes, the step son of the Testatrix, his wife and two friends of the Testatrix.

7. The property being Premises No. 62/11, Ballygunge Circular Road, Calcutta-700 019, referred to above, has vested in the Assembly of God Church. By a deed of sale dated 14th August, 2006 the respondent No. 1 has sold the said premises to the respondent Nos. 2 to 7.

8. Mr. Surojit Nath Mitra appearing on behalf of the petitioner submitted that in terms of Will of the Testatrix, Reverend Daniel Mark Buntain had been appointed Executor. The said Reverend Daniel Mark Buntain did not, during his lifetime, take any steps to sell the property for the purpose of distribution of the sale proceeds amongst the legatees mentioned in the Will.

9. Reverend Daniel Mark Buntain had, as Executor, filed a suit for eviction against the petitioner No. 1 in the District Court at Alipore. Against an order passed in the said suit, the petitioner No. 1 had appealed. While the said appeal was pending, Reverend Daniel Mark Buntain died on 30th June, 1990.

10. As there were no other Executors named in the Will and none of the legatees had applied for grant of letter of administration, the learned District Judge, at Alipore passed an order on 16th November, 1990 substituting the Administrator General, Government of West Bengal, as plaintiff in place of Reverend Daniel Mark Buntain.

11. Mr. Mitra argued that the Administrator General, Government of West Bengal, took over the asset of the Testatrix, as administrator and became solely entitled to represent the said property in terms of the Will of the Testatrix.

12. Mr. Mitra submitted that, suppressing the order dated 16th November, 1990, whereby the Administrator General, Government of West Bengal had been appointed Administrator of the Estate of the Testatrix, Assembly of God Church made an application in the Court of the learned District Delegate, Alipore for appointment of its Secretary being the respondent No. 1 as Administrator De-Bonis-Non.

13. By an order dated 23rd May, 1994 the learned District Delegate Alipore granted Letters of Administration De-Bonis-Non to the respondent No. 1.

14. Mr. Mitra submitted that the respondent No. 1 had sold the premises to the

respondent Nos. 2 to 7, although the respondent No. 1 was not entitled to do so. The grant of letters of administration was thus liable to be revoked.

15. Mr. Mitra referred to Section 263 of the Indian Succession Act, extracted hereinbelow for convenience:

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 by concealing from the Court something material 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 has wilfully 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.

16. Mr. Mitra submitted that the grant of Letters of Administration De-Bonis-Non in favour of the respondent No. 1 was obtained in fraudulent suppression of the order dated 16th November, 1990, and as such the grant was liable to be revoked and/or annulled.

17. Mr. Mitra further submitted that Section 232 of the Indian Succession Act, provides for a letter of administration to a universal or a residuary legatee, in case of the death of the named Executor.

18. Mr. Mitra argued that the said Section does not permit appointment of the Secretary of a legatee as administrator. There were individual legatees who might have been appointed administrators. However, it was apparent from the records of the case, that the respondent No. 1 had been appointed administrator, without notice to the other legatees and as such the appointment was bad in law.

19. Mr. Mitra submitted that, in any case, at the material time when the respondent No. 1 was appointed Administrator De-Bonis-Non, he was the Secretary of Assembly of God Church. The respondent No. 1 had been appointed Administrator De Bonis Non, in his capacity as Secretary of the Church. Mr. Mitra argued that the respondent No. 1 had ceased to be the Secretary of the Church, and thus no longer entitled to act as administrator or to sell the premises in question.

20. Mr. Mitra cited the judgment of the Division Bench of this Court in Sm.

Annapurna Kumar Vs. Subodh Chandra Kumar, where the Division Bench had held that any interest, however, slight or even the mere possibility of an interest was sufficient to entitle a party to oppose the grant of Letter of Administration and/or probate.

21. Mr. Mitra argued that two of the legatees had supported his client's application by filing affidavits. There was no counter affidavit on record, denying the allegation in the petition, that the order of appointment of the respondent No. 1 was obtained suppressing the order dated 16th November, 1990 in Title Appeal No. 318 of 1989. It was, thus, the duty of this Court to set aside the order which had been obtained by suppressing material facts and thereby perpetrating fraud on a Court of Law.

22. Mr. Samit Talukdar appearing on behalf of the respondent No. 1 submitted that the petitioners being tenants and/or occupants of different portions had no locus standi to question the appointment of the respondent No. 1 as Administrator De-Bonis-Non.

23. Mr. Talukdar argued that the Administrator General was only substitute of Reverend Daniel Mark Buntain as respondent in the Appeal filed by the petitioner No. 1, against the decree of eviction. The substitution was u/s 22 of the Code of Civil Procedure, and for the limited purpose of defending the appeal.

24. Mr. Talukdar referred to money, receipts evidencing payments to Cheshire Home India and Calcutta Blind School in terms of the Will.

25. Mr. Abhrajit Mitra appearing on behalf of the respondent Nos. 2 to 7 also submitted that there was no conflict between the substitution of the Administrator General in Title Appeal No. 381 of 1989 and the appointment of respondent No. 1 as Administrator De-Bonis-Non.

26. Mr. Abhrajit Mitra submitted that the appointment of Administrator De-Bonis-Non was of a permanent nature u/s 232 of the Indian Succession Act, whereas the substitution of the Administrator General was for the limited purpose of defending the Title Appeal No. 381 of 1989.

27. Mr. Abhrajit Mitra submitted that it was settled law that only a person whose rights were adversely affected by the probate of a Will could intervene in the probate proceedings.

28. Mr. Mitra cited the Division Bench judgment of this Court in the case of Malatibala Devi v. Dhanapati Dutta reported in ILR 1967 Cal 684, where the Division Bench held that the Will of a Testatrix, whatever be its nature, could not affect a tenancy created by her and thus a tenant had no right to enter a caveat in a probate proceeding.

20. Mr. Abrajit Mitra submitted that the petitioner, being a tenant, whose rights were in no way affected by demise of the estate of the Testatrix, had no locus standi to intervene in the testamentary proceedings, or to question the

appointment of Administrator De-Bonts-Non.

30. There can be no doubt that any interest in the estate would entitle a party to intervene in probate proceedings and/or oppose the probate of the Will. The Interest would, however, have to be related to a right of inheritance of the estate or any portion thereof. The legatees under a Will, irrespective of the proportion of the bequest, having regard to the total value of the estate, might intervene. A legatee under an earlier Will, who might have inherited but for the subsequent Will might intervene, no matter how small the bequest might have been. A person who might have inherited but for the Will as natural heir might also intervene.

31. A tenant and/or licensee and/or occupant of a property owned by the Testatrix has no right of inheritance. It is immaterial that any person may claim a right of adverse possession. A right of adverse possession may be set up against the heirs and legatees and even transferees of the property in question.

32. I hold that the petitioners have no locus standi to question the appointment of the respondent No. 1 as administrator. There is no dispute that the major portion of the estate of the Testatrix has been bequeathed to Assembly of God Church. Even though the respondent No. 1 may not be Secretary any longer, the Church has not objected to his continuing as Administrator De-Bonis-Non under the Indian Succession Act.

33. There is no provision of the Indian Succession Act whereunder it can be contended that only the Secretary of the Church could become Administrator De-Bonis-Non when the legatee was a Church.

34. No legatee has questioned the appointment of the respondent No. 1 as Administrator De-Bonis-Non. This application for revocation of grant at the instance of a person who has no interest in the estate, that accrues from a right of inheritance, not being maintainable, it is immaterial that some legatees might have chosen to oppose the application. The legatees would themselves have to come forward. It would, however, be different if a person claiming a right of inheritance were supported by other legatees.

35. The two legatees who have allegedly filed affidavits supporting the case of the petitioners have duly received payment in terms of the Will, and, therefore, have no subsisting interest in the estate.

36. As rightly submitted on behalf of the respondents the substitution under Order 22 of the CPC of the Administrator General as a party to an appeal makes no difference to the power of the probate Court to appoint Administrator De-Bonis-Non.

37. The instant application is thoroughly misconceived and is dismissed with costs assessed at 600 G. Ms. of which 300 G. Ms. shall be paid to the Assembly of God Church and 300 G. Ms. to the Calcutta High Court Legal Services Committee.

Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.