

(1949) 10 AHC CK 0021
In the Allahabad High Court
Case No : L.P.A. No. 19 of 1948

Benares Hindu University

APPELLANT

Vs

Gauri Dutt Joshi

RESPONDENT

Date of Decision : 07-10-1949

Acts Referred:

Succession Act, 1925 — Section 232, 236

Citation : AIR 1950 All 196

Hon'ble Judges : Malik, C.J.; Walli Ullah, J

Bench : Division Bench

Advocate : Gopinath Kunzru and B.L. Dave, for the Appellant; Shripat Narain Singh, for the Respondent

Final Decision : Allowed

Judgement

Malik, C.J.—This appeal was filed under S. 10 of the Letters Patent against an order of a learned single Judge dismissing an application u/s 276 of Act, XXXIX [39] of 1925. One Ram Dutt Joshi died on 11th of March 1943, leaving a will dated 14th January 1943. The application by the Benares Hindu University asked for a grant of letters of administration in the right of its being a universal legatee. The application was contested by Gauri Dutt Joshi, father of the testator, who claimed that the will was not validly executed and, further, that the applicant, the Benares Hindu University, is an association of individuals and is not entitled to get letters of administration.

2. The learned single Judge held on the facts in favour of the applicant but dismissed the application as he came to the conclusion that the Benares Hindu University was an association of individuals and letters of administration could not, therefore, be granted in its favour. The applicant has filed this appeal and has urged that the finding on this point is erroneous and that the Benares Hindu University is not an association of individuals but is a statutory body. On behalf of the respondent it has been urged that the will was executed by the testator under the undue influence of the two attesting witnesses, Mr. R.L. Pandey and Dr.

D. Pant and is not a valid will.

3. We have considered the evidence of these witnesses and the facts and we have no reason to differ from the conclusions arrived at by the learned single Judge. Ram Dutt Joshi originally belonged to village Jheekar, district Almora. He was a jeweller and was carrying on business as such in Lucknow. In 1942 he fell ill and on some date in January he left Lucknow for a sanatorium in the Nainital district. Before he left Lucknow he executed this will. The will is written by Dr. D. Pant, who is a Reader in the University at Lucknow, and was an intimate friend of the testator and is attested by Dr. D. Pant and Mr. R.L. Pandey, who was Poultry Development Officer under the United Provinces Government.

4. The signature of the testator on the will is not denied. What is said is that the testator, who was living with his father, the objector, and some other relations, would not have kept it back from them if he had really wanted to execute the will and that Dr. D. Pant, who was not well-disposed towards the objector, influenced the testator's decision and made him execute the will. It is in evidence that the father and son were not on very good terms. But, in any case, if the testator wanted to leave his property to an educational institution and thus deprive his next of kin of that property, he would naturally not like to mention it to them and make his last days unhappy by their objections or their annoyance. He had no wife or child and being an educated man it was not unlikely that he wanted to leave a part of his property to an educational institution. It is in evidence that his friends, the two attesting witnesses, advised him to leave the immovable property to the family, and the will relates only to cash and movables worth about Rs. 15,000/-. We have no reason to differ from the conclusions of the learned single Judge and we are satisfied that the will was duly executed, that the testator was of a sound disposing mind and that the will was executed by him without any undue influence.

5. The application for letters of administration was dismissed by the learned single Judge on the ground that the Benares Hindu University was an association of individuals and Section 236, Succession Act, therefore, was a bar to the grant of letters of administration to the Benares Hindu University. The learned Judge was also of the opinion that letters of administration could be granted only to a human being.

6. These are the two main points for decision in this appeal. The Benares Hindu University is the universal legatee and would, therefore, be entitled to a grant of letters of administration u/s 232, Succession Act, unless debarred by Section 386 of the Act.

7. Section 236 of the Act is as follows : "Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by the Provincial Government in this behalf." The words "nor to any association of individuals" were substituted by Act XVII [17] of

1931. Neither the word "person," nor the words "association of individuals," nor the word "company" have been defined in the Indian Succession Act. The word "administrator" has been defined to mean a person appointed by competent authority to administer the estate and the word "executor" to mean a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided.

8. The Benares Hindu University was established and incorporated under Act XVI [16] of 1915 (The Benares Hindu University Act, 1915). Section 3 of the Act is as follows :

(1) The First Chancellor, Pro-Chancellor and Vice-Chancellor who shall be the persons specified in this behalf by a notification of the Central Government in the Official Gazette and the persons indicated in Schedule as members of the Court and the Senate, and all persons who may hereafter become, or be appointed as, such officers or members, so long as they continue to hold such office or membership, shall be constituted a body corporate by the name of the Benares Hindu University. .

(2) The University shall have perpetual "succession and a common Seal, and shall sue, and be sued, by the name first aforesaid.

(3) The University shall be deemed to have been incorporated for the purposes, among others, of making provision for imparting education, literary, artistic and scientific, as well as agricultural, technical, commercial and professional, of furthering the prosecution of original research, and of giving instruction in Hindu theology and religion, and of promoting the study of literature, art, philosophy, history, medicine and science, and of imparting physical and moral training."

There can be no doubt that the Benares Hindu University is, therefore, a corporation. It is a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itself. It is a legal persona distinct and separate from the individual members of the corporation. It can hold property, enter into obligations, can sue and be sued, and has the rights and obligations conferred on it by statute. It cannot be said, therefore, that the Hindu University is merely an association of individuals. An association in the United States is a body of persons organized, for the prosecution of some purpose, without a Charter, but having the general form and mode of procedure of a corporation, but is not, in fact, a corporation. The word "association" implies the result of an agreement giving rise to rights and obligations one against the other.

9. James L.J. in *Smith v. Anderson* (1880) 15 Ch. Div. 247 : 50 LJ Ch 39 has observed as follows :

"Now there are three words there, "company, association, or partnership." I

cannot understand what the difference is between a company and an association. The word association, in the sense in which it is now commonly used, is etymologically inaccurate, for "association" does not properly describe the thing formed, but properly and etymologically describes the act of associating together, from which act of associating there is formed a company or partnership."

And again

"A company or association (which I take to be synonymous terms) is the result of an arrangement by which parties intend to form a partnership which is constantly changing."

He laid stress on the fact that an association creates mutual rights and obligations between the persons associating and observed as follows!

"Persons who have no mutual rights and obligations do not, according to my view, constitute an association because they happen to have a common interest or several interests in something which is to be divided between them."

We do not think it is possible to call the Benares Hindu University an "association of individuals" in the sense defined above. What is significant is that Section 236 of the Act itself provides that an association of individuals cannot get letters of administration unless it is a company which satisfies the conditions prescribed by rules to be made by the Provincial Government in this behalf. This shows the word "association of individuals" was used in the same sense as a company, as mentioned by Brett L. J. in the above case. A corporation having a separate entity, quite distinct and separate from that of its members, cannot, in that sense, be called a mere association of individuals. What is a "corporation" has been discussed at length in Halsbury's Laws of England, Hailsham Edition, vol. 8 at pages 3 to 5, and in Bagchi's Principles of the Law of Corporation, Tagore Law Lectures, 1914, pages 253 to 259. What is a corporation and the fact that it has a distinct and separate personality from that of the members composing it is now so well settled that we do not wish to multiply authorities on the point. We are, therefore, of the opinion that the Benares Hindu University is not an association of individuals.

10. The next point for consideration is whether it is a person. The learned single Judge was of the opinion that a person in Section 236, Succession Act means a human being. We do not see why that should be so. The word "person" has been defined in the General Clauses Act (X [10] of 1897) as including any company or association or body of individuals, whether incorporated or not. It is true that the definitions in the General Clauses Act apply only when the context so permits, but there is nothing in the context which would compel us to hold that probate or letters of administration can be granted only to a human being and the word "person" in Sections 222 and 232, Succession Act has been used in a different sense than the one given to it in the General Clauses Act. It cannot be doubted that the Benares Hindu University can be a legatee. The word "person", therefore, in Sections 142, 172 and 174 etc., Succession Act would include a

corporation or a body like the Hindu University. There is no reason why, if probate can be granted to the Benares Hindu University, letters of administration should be refused. In the Benares Hindu University v. Sri Kishen Das 56 IC 835 : AIR 1920 Oudh 124 the point was considered whether probate could be granted to the Hindu University and it was held that probate could be granted, Reliance was placed by the learned Judges on Williams on Executors, tenth Edn., vol. 1, pages 168 and 159 and on a decision of the Calcutta High Court in Jitendra Nath v. Lokendra Nath 34 I. C. 657 : AIR 1916 Cal. 295.

11. In England a corporation sole could be appointed executor. In the case of a corporation aggregate it could be appointed executor, but the Court in such a case granted letters of administration with the will annexed to a syndic or nominee duly appointed by the corporation. This was necessary as prior to 1925 the executor or administrator had to take oath of office and the difficulty used to arise in the case of a corporation aggregate as to who was to take the oath. The position has, however, since 1925 been altered and there is no longer, therefore, any difficulty in granting letters of administration to a corporation aggregate. In India an executor or administrator was never required to take oath and in the absence of any prohibition in the Act itself, it is difficult to see why letters of administration cannot be granted to a corporation. Section 236 provides that a company which satisfies the conditions prescribed by rules to be made by the Provincial Government can be granted letters of administration. If such a company can get letters of administration, there appears to be no reason why a corporation aggregate, which is the creation of statute and is a person according to law and is entitled to hold property as a legatee, cannot be granted letters of administration.

12. We are, therefore, of the opinion that the Benares Hindu University as the universal legatee was entitled to the grant of letters of administration with a copy of the will annexed. Section 236, Succession Act is, to our minds, no bar to the grant of letters of administration as the Benares Hindu University is neither an association of individuals; nor is it necessary under that section that the letters of administration should be granted to a person meaning a human being.

13. The result, therefore, is that this appeal is allowed, the judgment of the learned single Judge is set aside and letters of administration are granted to the Benares Hindu University with a copy of the will annexed. The appellant is entitled to his costs of both the hearings.