
(1930) 03 PAT CK 0004
In the Patna High Court

Bibhuti Prasad Chaudhury and Others APPELLANT
Vs
Mt. Pan Kuer and Others RESPONDENT

Date of Decision : 21-03-1930

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Succession Act, 1925 — Section 263

Citation : AIR 1930 Patna 488

Hon'ble Judges : Kulwant Sahay, J;Adami, J

Bench : Full Bench

Judgement

Adami, J.—This is an appeal against the order of the District Judge of Patna rejecting the appellants' application for the revocation of a grant of letters of administration of the estate of Ram Keshwar Prasad Chaudhury to respondent 1 Mt. Pan Kuer.

2. The following genealogical table will help to explain the case.

(For pedigree table see p. 489.)

3. Jainandan had four other sons, the surviving great-grandsons of whom were cited in the probate proceedings, but it is unnecessary to detail them here.

4. Ram Keshwar Prasad died without issue on 26th July 1917, his wife having predeceased him. After his death his uncle's wife, Mt. Pan Kuer, propounded a will which she alleged to have been executed by Ram Keshwar on 21st July 1917, and applied for letters of administration. Under that will Ram Keshwar left all his property to Mt. Pan Kuer, for her lifetime, and after her death to Mt. Hem Kuer, his sister, absolutely. Citations were issued to Govind Prasad, the father of the present appellants, who were then minors, and to the surviving great-grandsons of the sons of Jainandan and four others. This application was opposed by Gobind Prasad, but unsuccessfully. Letters of administration with a copy of the will annexed were granted to Mt. Pan Kuer by the District Judge on 30th July 1918. Gobind Prasad then appealed to this Court, but his appeal was dismissed on 13th

July 1920.

5. On 4th February 1928, the present appellants filed their petition for revocation of the will alleging that the will was a forgery, and that letters of administration had been fraudulently obtained, that the present appellants received no citation in the probate proceedings, that their father Gobind Prasad had not taken all necessary steps in opposing Mt. Pan Kuer's application, and it was due to his negligence and laches that; the truth was not revealed that no handwriting expert had been called, and if one had been called the will would have been shown to be forged, that Mt, Pan Kuer had herself admitted in Title Suit Nos. 26 and 27 of 1925 in the Court of the Additional Subordinate Judge, Patna, that the will was a forged one, and that Ram Keshwar, when he died, was too young to be capable of making a will. The appellants claimed that being the sons of Gobind Prasad, the nearest and sole legal heir of Ram Keshwar, they were entitled to maintain the petition for revocation. It is to be noted that the allegations of fraud in the petition show no particulars, and the only allegations of which the Court could properly take notice were that there was an admission by Mt. Pan Kuer that the will was not genuine and that the appellants had not been cited as they should have been.

JAINANDAN

CHAUDHRY

Fateh Chand. Bidhi Chand. | | Gobind Prasad. _____ | |
| | | | Lal Narayan Lachman. _____ =Mt. Pan | | | Kuer.
_____ Bibhuti Prasad. Shiam Narayan | | | Prasad. | Ramkeshwar
Mt. Hem | Prasad. Kuer. | _____ | | |
Daughter. Daughter. Daughter.

6. The District Judge after hearing the appellants' pleader, passed the following order, which is the order now under appeal:

The petitioners want this Court to revoke letters of administration that were granted ten years ago. Their father was a party to the previous proceedings which went as far as the High Court. I fail to understand how the matter can be reopened in such a way. I have seen the previous record. The proceedings were keenly contested by the father of the present applicants and both sides called a number of witnesses and produced documents, etc. I do not find that the applicants have locus standi to reopen the matter now. The application is rejected.

7. The questions which arise in this appeal are whether the appellant, the minor son of Gobind Prasad, had interests in the estate of Ram Keshwar affected by the will which would entitle them to citations in the probate proceedings of 1917, and, the absence of such citations, would entitle them to apply for revocation of the letters of administration in 1928 when one of the appellants had attained majority. There can be no doubt that, if they had such interests and no citation was issued, they would be entitled to apply for revocation u/s 263, Succession

Act, 1925.

8. If, in fact, Mt. Pan Kuer, who propounded the will and obtained letters of administration, subsequently admitted in evidence to another suit that the will was a forged one, the Court, apart from anything contained in Section 263, would be bound, on satisfying itself that the admission was voluntarily and intentionally made, to exercise its inherent powers u/s 151, Civil P.C., for revocation of the letters of administration. With this matter of the alleged admission by Mt. Pan Kuer, I will deal later.

9. With regard to the question whether the appellants had and have interests, in Ram Keshwar's estate affected by the will which would entitle them to citations and to apply for revocation in the absence of citations, Sir Sultan Ahmad on behalf of the appellants argued that though the appellants had at the time of the death of Ram Keshwar, and the probate proceedings a lesser interest than their father Gobind, who in the absence of a will would have succeeded to Ram Keshwar's property, still they had some interest since, if Gobind died, the property would come to them. The possibility of their succeeding to the property might be very remote, but even the barest possibility would entitle them to citations and in their absence, to apply for revocation. The learned Counsel has relied on *Kipping and Barlaw v. Ash* [1845] 163 E.R. 1035 where it was held that the bare possibility of an interest is sufficient. William Ash devised a certain real estate to his brother in fee simple and in case of the brother's death during his lifetime, to the children of his brother as tenants in common. His brother died in his lifetime. By a codicil some two years later William Ash, revoked the devise of the real estate to his brother's children and gave them instead pecuniary legacies. The brother's children lodged a caveat against the grant of probate so far as the codicil was concerned. The executors denied the interest of the children to oppose the codicil, for their only right to a share of the personality was under the codicil. It was, as I have stated, held that they had a bare possibility of an interest. If they could show that the codicil under which they could take personality only was executed owing to fraud and must, therefore, be disregarded, their interest in the real estate under the will would revive. There was a possibility of this happening though it was a bare possibility.

10. In the present case, if the will of Ram Keshwar were found to be a forged and fraudulent document and the letters of administration were revoked, the present appellants would take nothing as their father is still alive and the same would have been the case at the time letters of administration were applied for in 1917. They had not the barest possibility then of taking Ram Keshwar's estate, though of course, if Gobind took it, they would eventually get it as Gobind's estate passing to his sons.

11. The cases of *Brindaban Chandra v. Sureswar Saha* [1909] 3 I.C. 178 and *Satindra Mohan Tagore v. Sarala Sundari Debi* [1917] 45 I.C. 59 are also relied on as supporting the appellant's case. In the former the will provided that the testator's wife was to take a life estate and adopt a son. The nearest relations

left by the testator were his widow, his sister and his sister's adopted son who were mentioned in the petition and also a cousin who entered a caveat, but withdrew it. Probate was granted to the executors in 1901.

12. In 1908 the sister's adopted son, having attained majority, applied for revocation alleging that he had not been cited in the probate proceedings, and that the will was forged. The application was successful and there was an appeal against the order of revocation. It was argued that the reversionary heir of a Hindu is not entitled to be heard in a proceeding for probate of a will because he has not a present interest in the estate. It was held that the adopted son of the testator's sister was entitled to appear and be heard in the probate proceeding, for any interest, however slight and even the bare possibility of an interest is sufficient to entitle a party to oppose a testamentary paper or instrument and that although a reversioner has no present alienable interest in the property left by the deceased, he is substantially interested in the protection or devolution of the estate.

13. In the case of *Satindra Mohan Tagore v. Sarala Sundari Debi* [1917] 45 I.C. 59 the testator left a widow. When probate of his will was applied for caveats were entered by the immediate reversioner, C, by the mother of the widow, as well as by D and E who would be reversioners if C were to die before the widow. C came to a settlement with the executor which made it impossible for him successfully to challenge the will. It was held that D and E had sufficient interest to enable them to enter caveat.

14. Another case relied on by Sir Sultan Ahmad is that of *Priya Nath Bhattacharji Vs. Saila Bala Debi*, . There the testator having a wife, a son, a daughter-in-law, two sisters and sister's son at Bhagalpur, as well as an alleged mistress with two alleged illegitimate sons at Benares, made a will in 1890. Thereafter his son died and the testator executed another will in 1905 leaving his property to one of the alleged illegitimate sons at Benares who was to carry on his business at Bhagalpur. The testator died in 1907. The widow and daughter-in-law agreed with the Benares son not to contest the will of 1905. This Benares son, however, died after applying for letters of administration. His widow then applied for letters of administration and obtained a grant. Thereafter, the testator's sister's son applied for a revocation of this grant on the ground that no citation had been served on him, as should have been as he was a reversionary heir. Sir Courtney-Terrell, C.J., in the course of his judgment remarked:

Now it has long been well established that a person having a reversionary interest although such interest be inalienable and dependent upon remote contingencies is nevertheless substantially interested in the protection or devolution of the estate and as such is entitled to appear and be heard in probate proceedings: see, e.g., *Brindaban Chandra-Shaha v. Sureswar Saha Paramanik* [1909] 3 I.C. 178. It is true that the interest of Haran's "(the testator)" sisters could not arise until the death of his widow and minor sons yet nevertheless it was an interest which entitled them to special citation.

15. Some mistake seems to have crept into this last sentence; if the minor sons were illegitimate as alleged in that case, their existence would be disregarded as they could have no claims. If they were legitimate and alive at the time of the testator's death and at the time of the probate proceedings it is hard to see how the sister's son could come in. Probably the words "and minor sons" crept in by mistake.

16. Now there is a noticeable point in all these Indian cases on which the appellants rely; in every one of them, on the testator's death the estate was held by a limited owner, the widow, on whose death the testator's estate would fall to the nearest reversionary heirs to the testator, and until the widow died it would be impossible to say who would be the nearest reversionary heir alive, so that even remote reversioners had some chance, if only a very bare one of eventually succeeding to the property. In the case now before us the position was quite different. If there had been no will, Gobind Prasad, the father of the appellants, would have taken the property of Ram Keshwar as his nearest agnate and the appellants at the time of the proceedings for Letters of Administration had no possible chance of succeeding to the estate of Ram Keshwar. What they had a chance of doing was of being maintained out of the property after it had come into the hands of Gobind and of eventually succeeding to the property as sons of their father and not as heirs of Ram Keshwar. Gobind being alive, they could not be reversioners of Ram Keshwar. In this case there was no uncertain interval to be filled by a life owner during which some intermediate reversioner might die. On Ram Keshwar's death intestate, his property would pass absolutely to Gobind Prasad.

17. Sir Sultan Ahmad has argued that as his sons the appellants would be entitled to be maintained by their father out of his property acquired from Ram Keshwar, and that this right of maintenance gives them an interest which would entitle them to a citation in probate proceedings, and he quotes cases where it has been decided that a right to maintenance out of an estate gives a right to a citation and to entering caveat in probate proceedings. The sons of Gobind may have a right to maintenance as against their father, but they had and have no right to maintenance out of the estate of Ram Keshwar.

18. In the case of *Cripin v. Dogloni* [1860] 164 E.R. 897, which is referred to in the case of *Rahamtullak Saheb v. Rama Rau* [1894] 17 Mad. 373, it was held that the possibility of filling a character which would give the party concerned an interest, was not sufficient; there must be a possibility of having an interest in the result of setting aside the Will, and in this latter case it was remarked that the bare possibility mentioned in *Kipping and Barlow v. Ash* [1845] 163 E.R. 1035, should rest on existing facts and not on mere conjecture. If we take the facts existing at the time of the proceedings in 1917 and 1918 in the present case we know that Gobind Prasad, being alive the appellants by no possible conjecture could have succeeded to the property as a result of the will being set aside.

19. In the case of Rahamtullah Sdheb v. Rama Rau [1894] 17 Mad. 373, the testator by a previous will remitted a debt due to him by the defendant and gave the defendant a legacy of Rs. 5,500; by a later will the testator merely gave the defendant a legacy of Rs. 1,000. The defendant entered a caveat against this later will, it was decided that he had sufficient interest to attack the second will since, if it was disregarded he would receive the greater benefit under the first will.

20. It must be remembered that Gobind Prasad actively opposed the grant of letters of administration to Mt. Pan Kuer, throughout up to this Court. There is nothing to show that he had any interest adverse to his minor son, which would warrant citations on them through another guardian. The only allegation made by the appellants in their petition is that Gobind was negligent in the conduct of the case in that he did not get a handwriting expert examined. The Courts which heard Mt. Pan Kuer's application and the appeal laid no stress on the point that an expert should have been examined.

21. In Nistariny Dabya v. Brahmomoyai Dabya [1890] 18 Cal. 45 the paternal uncle of a minor opposed the grant of probate, though he had himself no interest in opposing it except on behalf of the minor who, he contended, was the heiress at law to the deceased's estate. He was unsuccessful. The minor thereafter applied for revocation on the ground that she had no special citation. The Court came to the conclusion that as the paternal uncle was really appearing on behalf of the minor, and was fully aware of the previous proceedings, there was no just ground for reopening the proceedings. In the present case Gobind Prasad, contested the application on his own behalf it is true, but having no adverse interest to his minor sons he was contesting on their behalf as well as his own.

22. I am satisfied that, in the circumstances of this present case, there being no intermediate life estate, and the appellants' father being the nearest agnate who would have succeeded immediately on Ram Keshwar's death, had there been no will the appellants were not entitled to citations and have not an interest sufficient to entitle them to apply for revocation of the letters of administration.

23. The question next arises whether the Court should take action on the allegation that Mt. Pan Kuer has made an admission that the will propounded by her as that of Ram Keshwar, was not genuine. In Title Suits "Nos. 26 and 27 of 1927 and 1925, Ramnarain Chaudhry, son of Sankar Chaudhry, cousin of Mt. Pan Kuer's husband Lal Narain claimed that disputes having arisen about 1896 between Sankar, Lal Narain and Lachman, two deeds of partition were drawn up and an ekrarnama safainama was executed by the members of the disputing branches of the family. Under the ekrarnama safainama it was agreed between Sankar, Lal Narain and Lachman that if any one of the three died without male issue, the whole of his properties would devolve on such of the other two as had male issue and on no one else; in pursuance of the agreement Lachman took all the property of Lal Narain who died without male issue, but in contravention of the agreement made over the property to Mt. Pan Kuer. The plaint further

averred that after Lachman's death, Ram Keshwar his son reunited with Ramnarain, son of Sankar, and therefore had no right to devise to Mt. Pan Kuer any of the joint properties by will, and the will was null and void.

24. That was Ramnarain's case. Mt, Pan Kuer in her written statement denied the genuineness of the ekrarnama safainama and the partition, and claimed right to the property under the will of Ram Keshwar which she made the basis of her case. She was examined as defence witness No. 9 on 27th January 1927 and was cross-examined at great length, the record of the evidence in cross-examination taking up ten closely printed pages of the paper book. In the course of that long and trying cross-examination, after questions on every conceivable subject had been put to her, not a single question as to the factum and genuineness of the will having been asked, she was asked whether she had made any inquiries as to the existence of the alleged ekrarnama safainama. She said:

When the complaints of these two suits were read over to me I had enquired from my servants if there was any ekrarnama-safainama. I had enquired of it from my Diwan Kunj Bahari. He looked into the papers and said it was not there. I had not asked him about the batwara (partition) papers.

25. She then went on to say that Lachman, Lal Narain and Sankar had divided their properties and got their names separately mutated, but she knew of no papers showing the division. She was then asked if the batwara had taken place 30 or 31 years before, and she answered that she did not know. She then seems to have been asked whether she had made enquiry and she answered:

I had enquired from Sital Lal about the batwara when the complaints of these suits were read over to me. I said it was false. Sital Lal did not say anything about it to me.

She was then apparently asked whether she then said that the wasiat (will) safainama, ekrarnama and genealogy were false, and she then probably answered "yes." Her answer was recorded:

I had then said that the wasiat, safainama, ekrarnama, and genealogy were falsa.

26. It is this last statement that is relied on as an admission that the will was not a genuine one. I cannot believe that the lady noticed that the word "wasiat" had been added to the words ekrarnama, safainama in the question. There had been no question throughout her cross-examination about the genuineness of the will the point on which she was being cross-examined was the existence of papers showing that there had been a partition accompanied by an ekrarnama safainama. The cross-examining pleader intentionally or unintentionally added the word "wasiat", about which there had so far been no question, to the words "safainama ekrarnama" about which he had been questioning her, but she did not notice the conjunction, and merely answered yes" with regard to the ekrarnama safainama.

27. It was the only mention of the will in the whole cross-examination. It is quite

impossible to believe that when Mt. Pan Kuer had affirmed the will to be genuine in the previous proceedings and had successfully maintained her claim in this Court, she would lightly in the subsequent suit admit the will to be false. It was less likely seeing that in that subsequent suit she made the will the basis of her defence in her written statement and in fact her defence depended on the will. In any case in spite of any admission she had made regarding the will her defence succeeded in appeal to this Court, and no stress can have been laid on this alleged omission in the course of the appeal.

28. I find that it was under stress of a long and trying cross-examination and through inadvertence that she allowed her answer to the question, whether the documents mentioned had been pronounced by her to Sital to be false, to include the will. I am certain that she did not intentionally say she had pronounced the will to be false.

29. Under the circumstances there is no occasion for this Court to take any action under its inherent powers.

30. Having found that the appellants are not persons whose interests are affected so as to entitle them to citation or to apply for a revocation of the letters of administration, I would dismiss the appeal with costs.

Kulwant Sahay, J.

I agree.