

(2006) 04 AHC CK 0044
In the Allahabad High Court

Captain Jagdish Chandra Varshney

APPELLANT

Vs

Smt. Muni Varshney and Another

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 19, 31
Societies Registration Act, 1860 — Section 20, 5, 6
Succession Act, 1925 — Section 100, 101, 102, 103, 104

Citation : AIR 2006 All 347 : (2006) 4 RCR(Civil) 394

Hon'ble Judges : Sunil Ambwant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwant, J.—With consent of parties, the following issues were framed as preliminary issue to be decided before framing further issues;

Whether in view of Section 236 of the Indian Succession Act 1925, "Letters of Administration" can be granted of the estate of the deceased to a registered society.

2. Heard Shri Virendra Pal Varshney, learned Counsel for the plaintiff and Shri Navin Sinha, Senior Advocate for Archana Varshney, heir and legal representative of Smt. Muni Varshney- caveator and the widow of Cap. Jagdish Chandra Varshney, the deceased-testator, whose will dated 26.9.1999 is sought to be administered by the plaintiff.

3. Brief facts giving rise to the Suit as stated in pleadings are that Captain Jagdish Chandra Varshney (the deceased), son of late Shri Tej Pal Varshney, resident of 44/41 Dilkusha Naya Katra, Lajpatra Rai Marg. Allahabad died on 21-12-1998 leaving behind his widow Smt. Munni Varshney and caveator Sri Gyanendra Kumar. The deceased did not leave behind him any children. Shri Varshney Sabha Prayag, registration No. 1025/1990 through its Secretary Krishna Murari Lal Gupta, son of late Madan Mohan Lal Gupta, R/o 1/10. B.K.

Banerjee Marg, Naya Katra, Allahabad filed the Testamentary Case No. 17 of 1998, which has been converted into Testamentary Suit No. 2 of 2003 for grant of probate of the will dated 11.10.1998 executed by the deceased by which he has bequeathed his self acquired house No. 44 Dilkusha Naya Katra, Allahabad, for the office and dharmshala of Varshney Sabha, Prayag. The will states that deceased retired as Deputy Labour Commissioner in 1987. He has given half of his service dues to his wife to Smt. Munni and the remaining to his nephew Gyanendra Kumar. He had married Smt. Shanti Devi. He did not have any issue from her and divorced her. He entered into second marriage with Smt. Munni but he did not have any children from her, as well. The will states that Smt. Munni did not treat him well and that he was suffering from several deceases. She had kept her sister's granddaughter Archana with her without executing the adoption deed or any document. Archana also was not treating him well and had married a boy against his wishes causing loss to his reputation. The deceased has in the will allowed Smt. Munni, who retired from Education Department the use of all his movable and immovable properties including cash jewellery; Maruti car Priya Scooter and households articles detailed in the will. The deceased expressed his happiness over the attitude of his nephew Gyanendra Kumar and his wife Smit Shashi Bala and allowed him to be owner of the investments made by the deceased jointly with him. It is further stated in the will that the deceased was Zonal President of Vishwa Hindu Parishad and thereafter Vice President of Bhartiya Janata Party. He was elected as President of Varshney Sabha Prayag continuously for four years and was actively engaged in the activities of Varshney Sabha which has no office or building of its own and thus he desires to bequeath all his properties except those which he had given to Smt. Munni to Varshney Sabha Prayag. The will was witnessed by Shri Jagdish Chandra Dixit and Shri Aditya Narayan Singh.

4. The plaint encloses death certificate of the deceased; an affidavit of Shri Jagdish Chandra Dixit, the attesting witnesses and schedule of properties with its valuation.

5. A caveat application was filed by late Smt. Munni Varshney through Shri Navin Sinha and Shri Vipin Sinha, Advocate. In her counter affidavit filed on 27-9-1999, she has stated that the deceased had along with her adopted Archana Varshney, who is now aged about 26 years. He was brought up and educated by the deceased. He did not execute any will. The alleged document is forged and fabricated, set up by Gyanendra Kumar in collusion with attesting witnesses. The will does not bear the signature of late Shri Jagdish Chandra Varshney. They were married in 1960 after he had divorced first wife Smt. Shanti. He acquired House No. 44 Dilkusha Naya Katra, Lajpat Rai Marg, Allahabad in 1966 and obtained its vacant possession in 1972. They were living in this house till he died. In para 6. She states that she along with her daughter Archana are entitled to estate of the deceased.

6. Shri Gyanendra Kumar Varshney entered appearance and has filed counter

affidavit through Shri J. Nagar, Advocate. In para 10 of his affidavit, he admitted that the will dated 11-10-1998 was duly executed and attested by Shri Jagdish Chandra Varshney in sound and disposing mind and that Varshney Sabha Prayag being the beneficiary is entitled to "Letters of Administration" to the estate of the deceased.

7. Shri Krishna Murari Lal Gupta, Secretary of Shri Varshney Sabha Prayag, filed a counter affidavit on 24-4-2000 supporting the will. In para 4 of his affidavit, he stated that Registrar of the Society has renewed the registration on Shri Varshney Sabha Prayag for five years w.e.f. 31-8-1995. The society, according to him, is entitled to hold the property and the property shall not vest in the State of U.P. The Administrator General, U.P. is not entitled to hold the same. Smt. Munni Varshney filed a replication to the return filed by Shri Varshney Sabha Prayag, in which she stated that petitioner is neither accompanied of any affidavit of the attesting witnesses nor any affidavit of valuation has been filed. Smt. Munni Varshney also filed objections to the impleadment of the Administrator General.

8. Shri Varshney Sabha Prayag filed an - application under Order VI Rule 17 read with Section 151 CPC for amending its application which was allowed on 12-3-2003, amending praying for "Probate" to "Letters of Administration" and annexing an affidavit of valuation.

9. Smt. Munni Varshney expired on 16.1.2005. Archana Varshney aged about 33 years, filed an impleadment application on 21-11-2005 seeking impleadment in place of Smt. Munni Varshney, as her daughter. She annexed copy of the High School certificate and two receipts issued by office of Girls High School, Allahabad on 18-10-1979 and 18-1-1980 evidencing the deposit of her tuition fees by Captain J.C. Varshney. The High School certificate bearing enrolment No. 0422181 issued by Board of High School and Intermediate Education, U.P. dated 22-6-1987 describes Jagdish Chandra Varshney as father of Km. Archana Varshney. She has also annexed a will of Smt. Munni Varshney wife of the deceased dated 24-6-1999 witnessed by Smt. Saubhagyawati Singh and Shri Shiv Prasad Misra bequeathing all her entire assets to Smt. Archana Varshney. She has also annexed decision of the Sub Committee No. 2 of Nagar Nigam. Allahabad dated 13-19-1999 directing the name of Smt. Archana Varshney to be recorded on House No. 44/41 New Catchery Ex scheme and rejecting objection of Shri Krishna Murari Lal Gupta dated 24-7-1999 on the basis of unregistered will. The impleadment application was allowed on 28-3-2006 and on the same date, the parties had agreed that the preliminary issue with regard to the maintainability of the suit in view of Section 236 of the Indian Succession Act 1925, to be decided as a preliminary issue.

10. "Shri Varshney Sabha, Prayag,"-plaintiff is a society registered under the Societies Registration Act. It made a prayer for grant of probate and has now amended its pleadings and has seeking "Letters of Administration" as a legatee of House No. 44 Dilkusha Naya Katra Lajpura Rai Marg, Allahabad bequeathed by

late Captain Jagdish Chandra Varshney to the society by unregistered will dated 11-10-1998, witnessed by Shri Jagdish Chandra Dixit, who has filed his affidavit and Shri Aditya Narain Singh.

11. Section 236 of the Indian Succession Act 1925 is couched in negative terms and provides that "Letters of Administration" cannot be granted to certain classes of persons. Section 236 is re-produced as below:

236. To whom administration may not be granted Letters of administration cannot be granted to any person who is 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 notification in the Official Gazette by the State Government in this behalf.

12. The Indian Succession Act 1925 was enacted to consolidate the law applicable to intestate and testamentary succession. It consolidated the then prevailing seven Acts relating to domicile marriage; rules of intestate; Indian Succession Act 1865; Indian Wills Act, and Probate and Administration Act 1881. The act provides for domicile and marriage in consanguinity; intestate Succession Act of those who are Hindu; Mohammedan; Buddhists; Sikh or Jaina. It provides for special rule for Persian intestate. The provisions dealing with testamentary succession from Section 57 to 190 are applicable to persons of all religions. The Act also provides for protection of properties of the deceased and representative title to property of the deceased on succession. The grant of succession certificate is regulated in Section 372 to 390.

13. Section 217 in Part IX of the Act provides for grant of probate and letters of administration with the will annexed and the administration of the assets of the deceased in cases of intestate succession. The administration may be granted u/s 218 where the deceased is a Hindu, Muham-madan, Buddhists, Sikh, Jaina or exempted persons. According to the rules for distribution of the estate applicable in the case of such deceased to the whole or any part of the deceased's estate. When several such persons apply, the discretion is vested in the Court to grant administration to any one or more of them. When no such person applies, it may be granted to a creditor of the deceased. Where the deceased is not Hindu; Mohammedan; Buddhist; Sikh; Jain or exempted persons, Section 219 provides for grant of letters of administration to the persons, who are connected with him, either by marriage or by consanguinity. The section further provides in Clause (a) that if the deceased had left a widow, the administration shall be granted to the widow, unless the Court sees cause to exclude her. either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

14. The letters of administration u/s 220 of the Act entitles the administrator to all the rights belonging to the intestate as effectually as if the administration was granted at the moment after his death. The probate however u/s 222 is granted only to the executor appointed by the will which may be under Sub-section (2)

expressed or by necessary implication.

15. Section 223 places restriction upon a minor or a person of unsound mind or any association or individual to be granted probate unless it is a company which satisfies the conditions prescribed by rules to be made by the notification in the official gazette of the State Government in this behalf. When the deceased has made a will but has not appointed an executor who is legally incapable or refused to act or has died before the testator or before he has proved the will, Section 232 provides that all the assets of the deceased or executor dies after having proved the will, but before he has administered all the estate of the deceased. Section 232 provides that an universal or a residuary legatee may be admitted to prove the will, and letters of administration be granted to him of the whole estate or which has remained un-administered. This section talks of letters of administration as the probate cannot be issued if no executor has been appointed. In *Ganga Sahai Vs. Bharat Bhan and Others*, Hon"ble Motham, J., while considering the appeal from judgment and decree of District Judge, Saharanpur granting letters of administration with will annexed of the estate of one Mt. Iswari Devi to the Arya Pratinidhi Sabha, a Society registered under Societies Registration Act 1860 after examining the provisions of the Societies Registration Act held that a society has an existence distinct from that of its members. It has a separate name and can hold property through its trustees. It can sue or be sued any person having a claim against him. It must look to its property and not that of its members for satisfaction of his dues. It was held that even if the society is not a corporation in the full sense, it certainly is a legally person. The Court, however, felt itself bound by the judgment in *Benares Hindu University Vs. Gauri Dutt Joshi*, and did not disagree with the judgment while dismissing the appeal.

16. The leading case on this issue is *Benares Hindu University Vs. Gauri Dutt Joshi*, In this case Chief Justice Malik was hearing the letters patent appeal against the order of learned Single Judge dismissing the application u/s 276 of the Act filed by Banaras Hindu University for letters of administration as universal legatee under will dated 14-1-1943 left by Ram Dutt Das, who died on 11-3-1943. The application was contested by the father of the testator, who claimed that the will was not validly executed and further that Banaras Hindu University is an association of individuals and is not entitled to get letters of administration. The Division Bench found that the word "person, "association of individuals" or company in Section 236 of the Act has not been defined. The word "administrator" has been defined to mean a person appointed by competent authority to administer the asset and word "executor" to mean a person to whom the execution of the last will of the deceased person is, by the testator's appointment, confided. The Bench held that Banaras Hindu University was established and incorporated under the Banaras Hindu University Act 1915. It has perpetual succession, and common seal and can be sued or be sued by its name and thus it is a corporation. It is a collection of individuals united onto 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.

17. Chief Justice Malik further held that in the cases with the corporate personality like Banaras Hindu University created under the statute is a legal persona distinct and separate from the individual members of the corporation. It is not merely an association of individuals. The word "association" implies the result of an agreement giving rise, rights and obligation went against the other. In *Smith v. Anderson* (1880) 15 Ch.D. 247, James L.J. observed that the word "administration" does not properly describe the thing formed, but properly and etymologically describes the act of association together, from which act of associating there is formed a company or partnership. A company or association is the result of an arrangement by which parties intent to form a partnership which is constantly changing the association which creates mutual rights and obligations between the persons associating and that Banaras Hindu University cannot be called an association of individuals. The corporation has a separate entity, quite distinct and separate from that of its members and thus it cannot, in that sense, be called a mere association of individuals. The appeal was allowed and the Banaras Hindu University was granted administration with copy of the will of the deceased annexed..

18. A society registered under the Societies Registration Act is an association of individuals distinct from a company, which satisfies the conditions prescribed by Rules to be made by the notification in the official gazette of the State Government in that behalf. A society under the Societies Registration Act can be formed by any seven or more persons associated for any literary, scientific and charitable purpose or for any other person described in Section 20 of the Act by subscribing their names to the Memorandum of Association and filing the same with the Registrar of the Joint Stock. The word "Joint Stock Companies" was substituted with the word Registrar by Section 2 of U.P. Act No. XXXI of 1958. A Society registered under Society Registration Act 1960 is not a body corporate. It may enjoy the status of legal entity apart its members and may be capable of suing or be sued but it is not a corporate body having perpetual succession and common seal. Section 5 of the Societies Registration Act 1860 provides that the properties movable and immovable belonging to the society registered under the Act, if not vested in trustees, shall be deemed to be vested for the time being in the governing body of such societies and in all proceedings civil and criminal may be prescribed as the property of the governing body of such society through proper title. In *Board of Trustees, Ayurvedic and Unani Tibba College, Tibba v. State of Delhi*, Board of Trustees of the college was dissolved by the Tibbia College Act 1952 and the property was passed to the newly constituted Board. The Supreme Court held that there is no violation of fundamental rights guaranteed of Article 19(1)(f) and Article 31 of the Constitution of India.

19. If the society is not registered, it will have the character of an association which can not sue or be sued except in the name of all the members of the

administration. The registration, however, confers certain advantages and gives identity to the society to continue even if the members of the Society or governing body fluctuate from time to time. Section 6 of the Societies Registration Act 1960 provides that every society registered under the Act may sue or be sued in the name of President or Chairman or Principal Secretary or Trustees as is determined by the rules and regulations of the society and in default of such determination in the name of such person as shall be appointed by the governing body for that action.

20. The society registered under the Act is not a body corporate or corporation having distinct legal entities apart from the members constituting it in the sense in which a company is incorporated to the company act or a society is vested under the Cooperative Societies Act which has its own identity, personality and entity which is not identical with the members constituting it. The legal title of the properties, however, vests in the trust or board of governors and equitable title in the *Satyavart Sidhantalankar Vs. The Arya Samaj*, held as follows;

41. The society is neither a corporation nor a limited company incorporated under the Indian Companies Act. It is a registered society of individuals which has acquired a legal status by reason of its registration with the Registrar of Joint Stock Companies under the provisions of the Societies Registration Act. Every member of a corporation or an incorporated company joins the same on the basis that prima facie the majority of the members is entitled to exercise its powers and control its operations generally. The same would be the position in the case of unincorporated associations of individuals whether the same be registered under the Societies Registration Act or not. The rule of the majority is the normal basis of these associations. The members of these associations do join these associations whether incorporated or unincorporated, whether registered or unregistered, knowing full well that the affairs of these associations would be conducted normally by the vote of the majority of the members thereof. In the absence of any specific rules and regulations governing the conduct of these affairs, this would be the normal presumption, and no member who joins any association would be heard to contend to the contrary.

21. In *Illachi Devi (D) by Lrs. and Others Vs. Jain Society, Protection of Orphans India and Others*, Supreme Court set aside the judgment of Delhi High Court and held as follows;

47. Keeping in view the legislative policy we are of the opinion that the High Court was not correct in its view that an Administration can be granted in favour of a society registered under Act 21 of 1860.

48. The apprehension of the High Court that in case of this nature, in the event, a Letter of Administration is not granted in favour of the beneficiary society, the purport of the "will" will be frustrated is not wholly correct and for grant of Letter of Administration what is necessary is that the person duly authorised by the Society in accordance with the law may file such an application.

49. Furthermore, the validity of the Sections 223 and 236 of the Act is not in question. So long the said provisions are not declared unconstitutional, the same must be allowed to hold their field.

50. We may state that, as noticed hereinbefore, in terms of rules framed by the States under the Societies Registration Act, a society may sue or may be sued through its President or Secretary or in absence of any specific provisions in that behalf, any person authorised by the Society.

51. Grant of probate in favour of society registered under the Societies Registration Act is refused, as discussed here in before, inter alia on the ground it is not a Juristic person. It, in a litigation, must be represented through a person authorised in this behalf either in terms of its bye-laws or otherwise.

52. We, however, intend to lay emphasis on the fact that a will or gift in favour of a society is not totally unenforceable in law. A probate or Letter of Administration with a copy of the will annexed although may not be granted in favour of a society but may be granted in favour of a person authorised by a society either in terms of the statute or a resolution adopted in this behalf by the society, as the case may be, so that such person may be answerable to the Court. On grant of Letter of Administration the person so nominated by the society shall carry out the wishes of testator for the benefit of society.

53. before parting, however, we may add that growing needs of the country in this field of law appears to have not received sufficient attention of the Parliament. Existing law is required to be suitably amended to meet the requirement of changing scenario.

54. A Society registered under the Societies Registration Act in the changed scenario play an important role in society. They discharge various functions which are beneficial to the society. They run educational and other institutions. They sometimes work in public interest and act in aid of State functions. They have their own accountability. They sometimes incur liability. Public Interest Litigations filed by Societies are galore.

55. For reasons stated above, the appeal is allowed in part. The Judgment under challenge stands modified. The matter is sent back to the High Court with liberty to respondent to amend the petition for grant of Letter of Administration. It would be open to the respondent-society to nominate any of its office- bearer to whom Letter of Administration is granted. Such nominated person may move application for substitution of his name for grant of Letter of Administration. If such amendment application is made, the High Court shall permit this amendment and grant Letter of Administration in favour of person nominated by the society for carrying of the wishes of the testator which is for the benefit of the society.

22. The plaintiff, however, has not amended the petition for grant of Letters of Administration by nominating any office bearers to whom the Letters of

Administration may be granted. The amendment application filed by Shri V.P. Varshney on 12-9-2000 is allowed on 12-3-2003 sought to add only para 9 and 10 regarding execution of the will by the deceased and the fact that the plaintiff (the society) is a beneficiary named under the will and is entitled to Letters of Administration. The prayer of probate was sought to be amended by a prayer of grant of Letters of Administration.

23. In the present case Shri Varshney Sabha Prayag is an association of individuals registered under the Society Registration Act 1860. It is as such not entitled to the grant of letters of administration with eill attached to administer the properties of the deceased. This petition as such is not maintainable by the society for grant of letters of administration. The amendment application allowed on 12-3-2003 also does not change the title and character of the application. The legal bar created u/s 236 of the Indian Succession Act 1925 does not allow the Court to proceed to consider the validity of the will and to decide other issue. The preliminary issue is as such decided against the plaintiff and the suit is consequently liable to be dismissed with observations that the Court has not considered the validity of the due execution of the unregistered will dated 11-10-1998.

24. The Suit is accordingly dismissed, with costs to be paid to defendant-Archana Varshney.