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**(1996) 05 CAL CK 0006**  
**In the Calcutta High Court**  
**Case No : C.O. No. 188 of 1995**

Goutam Shantilal Shah

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision :** 09-05-1996

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Succession Act, 1925 — Section 265, 26A, 270, 271, 272

**Citation :** (1996) 2 CALLT 437 : (1997) 1 ILR (Cal) 1 : (1996) 2 ILR (Cal) 1

**Hon'ble Judges :** Tarun Chatterjee, J

**Bench :** Single Bench

**Advocate :** Surajit Samanta, for the Appellant; S. dasgupta, for the Respondent

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## Judgement

Tarun Chatterjee, J.—A question of very great importance has been raised by Mr. Samanta, a learned Advocate of this court on this petition under Article 227 of the Constitution of India. The question is whether a District Delegate u/s 276 of the Indian succession Act, 1925 (hereinafter referred to as the "Act") can entertain an application for grant of probate of a will in respect of the Immovable property valued at more than Rs. 10,000 of a deceased which is situated outside the limit of this State although moveable assets of the deceased are within its local limit. In order to answer this question, only the facts which are relevant for our purpose are narrated below:

An application for grant of probate of a will relating to the estate of one Mohan Lal chand Shah alias M.L. Shah since deceased was made before the District Delegate, 24 Parganas (South) by the petitioner who claimed to have acquired the assets of the deceased on the basis of the will.

2. According to the petitioner, the deceased died on 15th of December, 1981 at his residence at 5/2 Beltola Road, Calcutta - 700026 on 15th December, 1981, which was his fixed abode. In the application for grant of probate of the will of the deceased, the petitioner has annexed to it a schedule of assets left by the deceased. The schedule of assets for which the probate of the will was applied

for fell within the jurisdiction of the District Delegate at Alipore excepting one Immovable property in the form of a two storied house at Patan, North Gujarat which was valued by the applicant at Rs. 20,000. The learned District Delegate by an order dated 31st July, 1992 held that the application for grant of probate be returned for the purpose of filing the same before the proper forum as he was of the view that since an Immovable property valued more than 10,000 which is outside the local limits of the State had been included is the assets of the deceased, he had no jurisdiction to grant probate of the will to the estate of the deceased. Feeling aggrieved by this order, the present application under Article 227 of the Constitution of India has been moved by the petitioner.

3. Mr. Dasgupta appears on behalf of the State of West Bengal as the notice has been duly served on them. In my view, the learned District Delegate has acted illegally and with material irregularity in the exercise of his Jurisdiction in passing an order directing the petitioner to take back the application for grant of probate filed u/s 276 of the Act and to file the same before the proper forum as valuation given in respect of the Immovable property which is situated beyond the local limits of the State in the annexure to the application for grant of probate exceeds Rs. 10,000. It is not in dispute that the application for grant of probate was made in respect of Immovable and moveable properties left by the deceased. So far as the moveable properties particulars of which have been given to the annexure of the application for grant of probate are concerned, there is no dispute that probate of the will to the estate of the deceased may be granted by the District Delegate, 24 Parganas (South). Since the District Delegate, 24 Parganas (South) has been conferred with the power under the Act to grant probate of the will of the deceased in respect of moveable properties which are all within his jurisdiction, I fail to understand why instead of granting probate of the will in respect of such property, the District Delegate, 24 Parganas (South) directed by the impugned order return of the application for grant of probate in its entirety. The District Delegate, 24 Parganas (South) can therefore grant probate of the will to the estate of the deceased M.L. Shah in respect of the moveable properties in accordance with law as there is admittedly no contention and at the time of death of the deceased 5/1 Beltolla Road, Calcutta-700026 which is within the local limit of the District Delegate, 24 Parganas (South) was his fixed place of abode. Accordingly, I am of the view that the learned District Delegate has the Jurisdiction to grant probate of the will to the estate of the deceased in respect of the moveable properties. Accordingly, the impugned order is set aside to the extent indicated above. So far as the jurisdiction of the District Delegate to grant probate of the will of the deceased in respect of the Immovable property which is situated at Patan, North Gujarat and valued by the petitioner himself at more than Rs. 10,000 is concerned, I am however of the view that as the learned District Delegate had no Jurisdiction to grant probate of the will to the estate of the deceased relating to Immovable property valued at Rs. 20,000 which is beyond the local limit of the State, the learned District Delegate has rightly directed the petitioner to file the application for grant of probate of the

will in respect of such Immovable property before the appropriate forum by the impugned order. Accordingly, this part of the impugned order can not be interfered with. Reasons for reaching this conclusion are as follows:

Part IX of the Act deals with probate, letters of administration and Administration of Assets of a deceased. Chapter I of Part IX of the Act, however, deals with grant of probate and Letters of Administration. Chapter II of Part IX deals with limited grants in duration. Chapter III of this part deals with alteration and revocation of grants. Chapter IV of this part deals with practice in granting and revoking probates and letters of Administration.

4. Since in this case I am concerned with grant of probate, let me deal with the different provisions made under Chapter IV of the Act,

5. Section 264 confers Jurisdiction on the District Judge to grant and revoke Probates and Letters of Administration in all cases within his District Section 265 confers powers on the High Court to appoint such judicial officer within any district as it thinks fit to act for the District Judge as Delegates to grant probate and Letter of Administration in non-contentious cases within such local limits as it may prescribe. Section 270 of the Act deals with grant of Probate or Letters of Administration to the estate of a deceased person by a District Judge where it appears to him that at the time of death the deceased had a fixed place of abode, or any property, moveable or immovable, within the jurisdiction of the District Judge. From a plain reading of Section 270 of the Act it is, therefore, evident, that the jurisdiction of the District Judge to grant probate or Letters of Administration to the estate of a deceased person depends on fulfilment of two factors. One is that at the time of death the deceased had a fixed place of abode which must be within the jurisdiction of the District Judge. The other factor is that the District Judge has the jurisdiction to grant probate of a will or letters of administration to the estate of a deceased person if the property moveable or immovable, of the deceased person is situated within the jurisdiction of the District Judge. Section 271 of the Act relates to disposal of an application made to a Judge of the District in which the deceased had no fixed place of abode. Section 272 of the Act confers powers on the District Delegate to grant probate and letters of administration in respect of estate of a deceased in cases where there is no contention provided that the testator or intestate as the case may be, at the time of his death had a fixed place of above within the jurisdiction of such delegate. Therefore, from a reading of Section 272 of the Act it is clear that the District Delegate has the jurisdiction to grant probate of a will or letters of administration in respect of an estate of a deceased provided that there is no contention and that at the time of death of the deceased, he had a fixed place of abode within the jurisdiction of such delegate. Therefore it can be safely held that u/s 272 of the Act, if the deceased at the time of his death had a fixed place of abode within the jurisdiction of the District Delegate, the District Delegate is conferred with the power to grant probate of a will or letters of administration in respects of an estate of a deceased provided there is no contention. Section 273

of the Act, however, says that probate or letters of administration shall have effect over all the property and estate moveable or Immovable of the deceased throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration is granted. Proviso (a) to Section 273 of the Act. is very much important. Proviso (b) to 273 of the Act says that an all India grant can be made by the High Court only that is to say the High Court can only exercise its Jurisdiction under this proviso if there is some property within its jurisdiction. Proviso (b) to Section 273 of the Act, however, provides that all India grant can be made by the District Judge also when the deceased had a fixed place of abode within the jurisdiction of the District Judge and the Judge certified that the value of the property which is beyond the limit of the State does not exceed Rs. 10,000. Therefore, in view of proviso (b) to Section 273 of the Act the District Judge or the district delegate retains jurisdiction to grant probate in respect of the properties throughout the whole of India if it is found that the deceased had a fixed place of abode within the jurisdiction of the District Judge or the District Delegate and the valuation of the property does not exceed Rs. 10,000 if such property is beyond the local limits of the State. From the conjoint reading of the aforesaid provisions, the following conclusion can be safely reached:

The District Judge or the District Delegate as the case may be has the jurisdiction to grant probate of a will or letters of administration to the estate of a deceased person if it is found that at the time of death of the deceased he had a fixed place of abode or any property moveable or Immovable is within the jurisdiction of the Judge, that is to say they retain jurisdiction to grant probate of a will or letters of administration to the estate of the deceased person if the deceased had at the time of death a fixed place of abode and the Immovable and moveable property are situated within their jurisdiction. Therefore, if both the moveable and Immovable property of the deceased are lying within the jurisdiction of the District Judge or the District Delegate as the case may be, the District Delegate or the District Judge has the jurisdiction to grant probate of the will or letters of administration to the estate of the deceased, irrespective of the valuation of the assets moveable or immovable. In my view, sub section (b) of Section 273, however, takes away the jurisdiction of the District Judge or the District Delegate to grant probate of the will or letters of administration to the estate of a deceased person, if it appears that the value of the property and estate affected beyond the limits of the State exceeds Rs. 10,000.

6. In that case, even when some assets of the deceased are within the jurisdiction of the District Judge or the District Delegate, still then it will not be open to them to grant probate of the will or letters of administration to the estate of a deceased person in respect of the property which is beyond the limits of the State and the valuation of such property exceeds Rs. 10,000. Therefore, in view

of the discussions made hereinabove, I am clearly of the view, that the district Judge cannot have any jurisdiction to grant probate of the will or letters of administration to the estate of the deceased in respect of the property, valuation of which exceeds Rs. 10,000 as such property is beyond the limits of the State. Therefore, so far as the present case is concerned, it appears that the District Delegate has the jurisdiction to grant probate of the will or letters administration to the estate of the deceased M.L. Shah excepting the Immovable property in Gujarat in respect of which the petitioner himself has valued such Immovable property at Rs. 20,000 which admittedly exceeds Rs. 10,000. Therefore, in my view, the District Delegate had the jurisdiction to entertain the application for grant of probate of the will or letters of administration to the estate of the deceased M.L. Shah in respect of the properties indicated in the annexure to the application excepting the Immovable property situated in Patna. In North Gujarat.

7. However, Mr. Samanta appearing on behalf of the petitioner relied on two decisions, one decision is reported in In the matter of Mohanaprakasam, and the other is a Division Bench decision of the Madhya Pradesh High Court reported in Smt. Yuvrani Tank Rajeshwari Devi Vs. Harilal and Others, In my view, the principle laid down in the decision reported in In the matter of Mohanaprakasam, cannot be applied to this case. The said Madras decision dealt with the provisions of grant of succession certificates which,, in my view, cannot be applied in the case of grant of probate or letters of administration. From a plain reading of the relevant paragraphs of the aforesaid Madras High Court decision it is clear that the learned single Judge of the Madras High Court in that decision only limited his finding on the question of succession certificates which are issued u/s 371 of the Act. In that decision, the Madras High Court never considered the proviso (b) to Section 273 of the Act or it. had the occasion to consider that the District Judge or District Delegate had the Jurisdiction to grant probate of a will in respect of Immovable property of a deceased if such Immovable property is situated beyond the limits of the State or the District Delegation when the valuation of such property exceeds Rs. 10,000. As noted hereinabove, the principles laid down in any case for grant of succession certificate cannot be applied in a case of grant of probate or letters of administration. Proviso to Section 370 and sub section (2) of Section 370 of the Act deal with the cases when a succession certificate under the said provision of the Act can be granted. To understand the object for grant of succession certificates the preamble to the Succession Certificate Act 7 of 1889 needs to be considered which is as follows:

"where as it is expedient to facilitate the collection of debts on succession and afford protection to parties paying the debts to the representative of the deceased person."

8. Therefore, from a plain reading of the preamble to the Succession Certificate Act it is absolutely clear that the object in reenacting this part is to facilitate the collection of debts and not to enable the parties to litigate the question of disputed title. It is also evident from the above that grant of succession

certificate does not determine any question of title or decide what property does or does not belong to the estate of the deceased but it merely enables the parties to whom the succession certificates is granted to collect any debt or security belonging to the deceased. Therefore, from the above the principles laid down in a case of grant of succession certificates cannot have any manner of application to a case for grant of probate or letters of administration. The other decision which was cited by Mr. Samanta is a Division Bench decision of the Madhya Pradesh High Court reported in Smt. Yuvrani Tank Rajeshwari Devi Vs. Harilal and Others, Relying on paragraph 33 of the said decision Mr. Samanta submitted that the District Delegate did not loose his jurisdiction to grant probate merely because the properties worth more than 10,000 belonging to the deceased person are outside the State in which it exercised its jurisdiction. In my view, the principle laid down in the aforesaid decision cannot be applied in the facts and circumstance of this case. The aforesaid observation was made by the Division Bench of the Madhya Pradesh High Court in paragraph 33 of the same in connection with the case where revocation of a probate was under consideration before them. In that context the Division Branch of the Madhya Pradesh High Court held that even if the property was worth more than Rs. 10,000 belonging to the estate of the deceased which is situated outside the State in which the District Judge exercised its jurisdiction, the District Judge or the District Delegate as the case may be, did not loose their jurisdiction to grant probate as that will not invalidate the probate proceedings.

9. For the reason aforesaid, I am therefore, of the view that the District Delegate had the jurisdiction to grant probate or letters of administration to the estate of the deceased M.L. Shah in respect of the moveable properties as mentioned in the application for grant of probate but. the District Judge had no jurisdiction in view of Proviso (b) to Section 273 of the Act to grant probate in respect of the Immovable property situated in Gujarat which is beyond the limits of their State and the valuation of which exceeds Rs. 10,000. Accordingly, the impugned order is set aside in part and the application under Article 227 of the Constitution is allowed to the extent indicated above. The District Delegate shall be entitled to grant probate of the will or letters of administration to the estate of the deceased M.L. Shah in respect of all the properties mentioned in the application for grant of probate excepting the Immovable property which is situated in the State of Gujarat for which the petitioner has to approach before the appropriate forum. This forum may be before the District Judge or the District Delegates in whose jurisdiction the Immovable property of the deceased is situated or the High Courts under proviso (a) of Section 273 of the Act. I however, make it clear also that the petitioner, without asking for grant of probate of the will in question before the District Delegate, may also pray for withdrawal or return of the application for grant of probate and on withdrawal of the same from the District Delegate it will be open to the petitioner either to approach this Court or the High Court at Gujarat for grant of probate of the will of the deceased.

10. I make it clear that if any application is made for grant of probate of the will

in question in this Court, such application shall be decided in accordance with law and it will be open to the petitioner to contend that this Court has the jurisdiction to grant probate in respect of the property situated in the State of Gujarat.

This application under Article 227 of the Constitution is thus allowed in part.

There will be no order as to costs.