

(2009) 07 GUJ CK 0102

In the Gujarat High Court

Case No : Special Civil Application No. 4403 of 2009

Hemantbhai Karshandas Leuva

APPELLANT

Vs

Bhartiben Ratilal Leuva and Another

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Ahmedabad City Civil Court Rules, 1961 — Rule 201
Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 3 GLR 2294

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Hitesh N. Acharya, for the Appellant; None for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—This petition has been filed under Articles 226 and 227 of the Constitution of India with a prayer to quash and set aside order dated 12-1-2009 passed by the learned Chamber Judge, City Civil Court, Ahmedabad, below Exh. 17 in Civil Suit No. 871 of 2007.

2. Briefly stated, the facts of the case, as emerging from the material on record are that, one Menaben Maganlal executed a registered Will on 26-7-1994. She then expired on 27-9-2005. The petitioner, who is the original-plaintiff, moved an application for obtaining probate under the Will by filing Miscellaneous Application No. 548 of 2005, wherein the respondents were the opponents. In the said application for probate, the petitioner sought certain reliefs which could not have been prayed for and as the respondents (original opponents) objected to it by filing a reply, the Court converted the said miscellaneous application into a suit, which was registered as Civil Suit No. 871 of 2007, under Rule 201 of the Ahmedabad City Civil Court Rules, 1961 (hereinafter referred to as "the Rules"). The petitioner carried out an amendment in the pleadings and deleted certain

reliefs, which were initially sought for. Subsequently, by filing an application Exh. 17, the petitioner prayed that the above-mentioned suit be re-converted into a Misc. Civil Application. After hearing the parties at length, the learned Chamber Judge, by impugned order dated 12-1-2009, rejected the application of the petitioner on the ground that there is no rule or provision in the Code of Civil Procedure, 1908, ("the Code" for short) empowering the Court to convert the suit into a miscellaneous application, once the miscellaneous application has been converted into a suit.

3. Mr. Hitesh N. Acharya, learned Counsel for the petitioner has submitted that:

(a) Although, it is true that there is no provision in the Rules or in the Code, empowering the Court to convert a civil suit into a miscellaneous application, at the same time, it is also true that there is no rule or provision which bars conversion of a suit into miscellaneous application. Therefore, in exercise of inherent powers of the Court, u/s 151 of the Code, the Court below could easily have converted the suit into a miscellaneous application, as prayed for, and by not doing so, an error or law has been committed.

(b) That the Court below ought to have considered that if the suit is converted into a miscellaneous application, the matter is likely to be disposed of within six to eight months and the petitioner can get speedy justice, which aspect has been lost sight of.

(c) The impugned order is bad in law as the Court below has not exercised the jurisdiction vested in it in a proper manner, and therefore, the petition may be allowed and the impugned order be quashed and set aside.

4. I have heard the learned Counsel for the petitioner at length, perused the averments made in the petition, contents of the impugned order and the material on record.

5. While rejecting the application at Exh. 17, the Court below has taken into consideration the following aspects:

(i) Initially, the petitioner (original plaintiff) had filed Miscellaneous Application No. 548 of 2005 against the respondents (original-defendants). The prayers made in the said application were for issuance of probate and other ancillary reliefs. The said application was strongly opposed by the respondents, by filing a reply.

(ii) Under Rule 201 of the Rules, the application for probate was converted into a civil suit and registered as Civil Suit No. 871 of 2007.

(iii) The petitioner thereafter amended the reliefs sought for and deleted certain reliefs.

(iv) The petitioner filed an application at Exh. 17, to reconvert the said suit into a miscellaneous application.

(v) There is no rule in the Rules or provision in the Code, empowering the Court to convert a suit into a miscellaneous application once the miscellaneous application has been converted into a suit. The provisions of Section 151 of the Code cannot be pressed into service to grant the prayer made by the petitioner, in the absence of any specific provision of law. Rule 201 of the Rules empowers the Court to convert a miscellaneous application into a suit, however, there is no provision in the said Rules to convert a suit into a miscellaneous application.

6. Keeping in mind the above-mentioned aspects, it would be fruitful to advert to the relevant provisions of law. Chapter XIV of the Rules deals with Testamentary and Intestate matters. Rule 201, which is in Chapter XIV, reads as under:

201. Procedure : Upon the affidavit in support of caveat being filed, the petition for Probate or Letters of Administration shall be numbered as a suit in which the petitioner shall be the plaintiff and the caveator shall be the defendant. The procedure in such suit shall, as nearly as may be, be according to the provisions of the CPC and these Rules.

7. The learned Counsel for the petitioner has fairly conceded that there is no rule empowering the Court to convert a civil suit into miscellaneous proceedings, however, there is no bar in doing so, in exercise of inherent powers u/s 151 of the Code.

8. Section 151 of the Code reads as under:

151. Saving of inherent powers of Court : Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

9. There can be no doubt that the inherent powers of the Court cannot be limited by any provision in the Code and the Court is empowered to pass such orders, as may be necessary, to meet the ends of justice or to prevent the abuse of the process of the Court. It is equally well-settled that the inherent powers of the Court cannot be exercised, so as to nullify the provisions of the Code and where the Code deals expressly with a particular matter, the provisions would normally be regarded as exhaustive. (See : National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara,

10. In the present case, the respondents objected to the application for probate by filing a reply. In view of the same, the application was ordered to be registered as a civil suit, under Rule 201 of the Rules. There is no provision in the Rules to do the converse. Apparently, the petitioner raised no objection against conversion of the application for probate into a civil suit, as there is no material on record, pointing to this and neither has the learned Counsel for the petitioner raised this point. On the contrary, the petitioner amended the reliefs by deleting certain reliefs on conversion of the application into a civil suit.

11. Section 151 of the Code saves the inherent powers of the Court. These

powers are not limited by any provision contained in the Code and the Court is empowered to make such orders "as may be necessary for the ends of justice or to prevent abuse of the process of the Court".

12. In *Padam Sen and Another Vs. The State of Uttar Pradesh*, the Supreme Court has lucidly held in Para 8 that:

8. ...The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers, and therefore, it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the legislature. It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.

(Emphasis supplied)

13. Applying the principles of law enunciated by the Apex Court to the facts and circumstances obtaining in the present case, it is evident that the application for probate filed by the petitioner was converted into a civil suit under Rule 201 of the Rules, which do not provide for the contrary being done. The Code contains no provision to convert a suit into a miscellaneous proceeding. The powers u/s 151 of the Code are to be expressly used to enhance the ends of justice and prevent abuse of the process of the Court. In the present case, no miscarriage of justice has resulted in passing the impugned order, so as to merit the exercise of the inherent power u/s 151 of the Code. Such powers cannot be exercised de hors the provision of the Code, for insertion therein of something which has not been enacted by the legislature.

14. Regarding the contention of the learned Counsel for the petitioner that by converting the suit into miscellaneous proceedings, he would get speedy justice, the same has no legal basis, and therefore, is not deserving of acceptance.

15. As no miscarriage of justice, manifest error of law or jurisdiction is apparent in the impugned order, there is no justifiable reason warranting the interference of this Court. The petition deserves to be dismissed. It is, accordingly, dismissed.