(1976) 04 KAR CK 0001

In the Karnataka High Court

Case No : Probate Civil Petition No. 4 of 1976

In Re: Canara Bank, Bangalore

Date of Decision : 02-04-1976

Acts Referred:

Citation : (1976) 04 KAR CK 0001

Hon'ble Judges : M.N. Venkatachaliah, J

Bench : Single Bench

Advocate : K. Balakrishna Rao, for the Appellant;

Judgement

M.N. Venkatachaliah, J.—Canara Bank, a body corporate u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the petitioner in this petition under part IX of the Indian Succession Act, 1925, seeks a limited grant of probate in respect of the Will dated 3-11-1970 of a certain Divakar Amrit, limited to the assets set out in the schedule to the said petition as respects which petitioner is appointed executor by the said Will.

2. The averments in the petition disclose that the testator, Divakar Amrit, who died on 15-9-1971 at No. 430, 40th Cross, V Block, Jayanagar, Bangalore-41, left a will dated 3-11-1970 bequeathing the immoveable property particularised in Schedule ''B'' to the said will and also set out in the schedule to the petition in favour of his son D. J. Rajashekar then a minor and appointed the petitioner as the executor in respect of this particular bequest.

3. It is also stated that in respect of the other bequests made in the Will in favour of the testator''s two other sons viz. D. Benjamin Ajit Kumar and Edwin D. Amrith, no executor has been appointed and that the Canara Bank, as the duly constituted agent and power of attorney holder for and on behalf of the said D. Benjamin Ajit Kumar and Edwin D. Amrith, has brought in separate proceedings in Probate Civil Petition No. 5 of 1976 Letters of Administration respecting the remainder of the estate constituting the subject-matter of bequests in favour of the said two sons of the testator.

4. The petition has been duly advertised and no objections are received.

Certificate of Death bearing No. 3770 dated 22-9-1971 issued by the Commissioner, Corporation of the City of Bangalore, shows that the said Divakar Amrit son of N. Amrit, aged 57 years, died on 15-9-1971. The original Will filed into Court is perused. It is signed by the testator and attested by two witnesses namely, B. R. Krishna of No. 297, I Block East, Byrasandra, Jayanagar, Extension, Bangalore-11 and A. H. Madhava Rao of No. 341 XI Cross, Malleswaram, Bangalore-3. The affidavit of the said B. R. Krishna, one of the attestors is filed into Court, He has stated in his affidavit that he knew the testator well and that on 3-11-1970, he along with A. H. Madhava Rao, was present when the testator executed the Will in question and saw him subscribe his signature at the foot of the testamentary paper and declare and publish the said document as his last Will and testament. He further states that thereupon he (B. R. Krishna) and A. H. Madhava Rao, in the presence of each other and in the presence of the testator affixed their signatures to the document as attestors and that at the time of executing the said Will the testator was in a sound and disposing state of mind and understood the nature and effect of the document he was executing and executed the same out of his own free Will. It, therefore, requires to be held that the said Will dated 3-11-1970 of the said Divakar Amrit has been duly proved.

5. An order u/s 59 (3) of the Estate Duty Act, 1953 assessing the estate of the late Divakar Amrit to a duty of Rs. 58,92 passed by the Assistant Controller of Estate Duty, Bangalore, is also produced. A challan evidencing payment of the said sum of Rs. 58,92 is also produced.

6. In these proceedings, the petitioner has sought a limited grant. The general principle is that, normally, the executor or the administrator represents the whole estate of the deceased, and if the executor, if any, appointed under the Will were to apply for probate, or, in the absence of an executor if any other person entitled to apply should apply for letters of Administration then it should be for the whole of the estate and not for a fraction of it or in respect of a specific property. However, provisions of Sections 254 to 257 of the Indian Succession Act constitute an exception to this rule and provide for a severance of representation if the particular requirements of the case so require. Chapter II of Part IX of the Indian Succession Act envisages circumstances in which a limited grant could be made. They are in the nature of special provisions enabling the Court, in its discretion, to make limited grant in appropriate cases. The rule of exception embodied in Sections 255 and 256 is sufficiently comprehensive. Provisions in Section 257 are only ancillary to Sections 255 and 256 and provide that whenever a grant with exception has been made, the person entitled to probate or the administration of the remainder of the deceased''s estate may take a grant of the rest of the deceased''s estate. In the English law, grants "save and except" are a form of limited grants. Limited administration can be granted only under special circumstances. A reference may be made to the following passages in Tristram and Coote''s "Probate Practice" (Twenty-Second Edition):

Will limited to personality.

Where a Will is specifically limited to personal estate and an executor is appointed, his powers must be regarded as limited, and the grant of probate must be limited to personal estate.

"Probate" "Save and except"

If a testator has appointed one executor for a special purpose, or in respect of a specific fund or asset only, and another executor for all other purposes, the latter may take probate save and except the specific purpose or fund.

Administration (with Will), save and except.

On the renunciation or failure of the executor appointed for all other purposes, or if there be no such executor, the residuary legatee or devisee may take administration (with Will) of the estate of the deceased, save and except as to the special fund or purpose.

Administration save and except.

Similarly, where necessary, a grant of administration may be made by order of the Court save and except a particular purpose.

"Caeterorum" Grant.

Probate or administration following a grant limited to part of the estate or to a particular purpose is a grant caeterorum i.e., of all the rest of the estate it is complementary to the limited grant.

Where the first grant extracted was a grant "save and except" a particular part of the estate or purpose, the succeeding grant is a grant limited to the estate or purpose excepted.

"Administration Caeterorum.

If a limited grant of Probate has been made to an executor in a case where the will was limited to a special purpose, or to estate in a certain country, and the testator died intestate in all other respects, the person entitled to the estate not disposed of may take administration of the rest of the estate."

In Williams and Mortimer "Executors, Administrators and Probate," it is stated:

"Grants" Caeterorum.

Where a grant limited to part of the estate or a particular purpose has been made, the grant to the rest of the estate is known as a grant caeterorum i.e., of the remainder. Such a grant may be of probate or of administration with or without the will.

7. Thus, though the general rule is grant of representation respecting the entire estate, there is no impediment for the issue of the probate by way of a limited

grant, if the nature of the case so requires. In the present case, the circumstance that the appointment of the executor is limited to the bequest with which this petition is concerned, constitutes a special circumstance requiring a limited grant to be made in favour of the petitioner.

8. Issue probate in favour of the petitioner, limited to the part of the Will as respects the bequest in Schedule ''B'' of the said Will made in favour of D. J. Rajashekar, the grant being limited to the said property, excluding, saving and excepting from the grant all other bequests in the Will made in favour of the other legatees.

9. Inventory in six months and accounts in one year.

