(2006) 11 AHC CK 0195

In the Allahabad High Court

In Re: Late Sri Muslim Siddiqui, Bhai Lal Shukla

Date of Decision : 17-11-2006

Acts Referred:
Evidence Act, 1872 — Section 68
Foreign Exchange Management Act, 1999 — Section 6
Foreign Exchange Regulation Act, 1973 — Section 31
Succession Act, 1925 — Section 115, 116, 117, 118, 119

Citation : (2007) 1 ADJ 395

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Judgement

Sunil Ambwani, J.—Shri Muslim Siddiqui (the deceased) a bachelor, died on 26.8.1996, at Allahabad leaving behind a nephew, Shri Suhail Siddiqui, a Pakistani national and a few relatives and friends at Allahabad and Lucknow. One Shri Bhai Lal Shukla is claiming ''letters of administration'' of his estate worth more than twenty laes including a bunglow No. 50/1 84 Muir Road, Allahabad, shares and bank balance on the basis of a will dated 17.8.1996. The Administration General U.P. has claimed letters u/s 7 read with Section 9 of the Administrator General Act, 1963.

2. The Administrator General in Testamentary Suit No. 5 of 1998 is claiming ''Letters of Administration'' to administer the estate of the deceased, with the averments that Shri Bhai Lal Shukla, claiming the estate of deceased through a will, is not related to the deceased. Mohd. Arshad, a stranger has filed a Suit No, 391 of 1996 for a declaration that he is owner of house No. 50/184 Muir Road, Allahabad by virtue of the oral gift, has no right and likewise Suhail Siddiqui, Pakistani citizen has no interest in the property of the deceased. Shri Suhail Siddiqui has also filed a Suit No. 414 of 1996 for declaration that he has succeeded to the estate of deceased under the muslim personal law, as his nephew. The Administrator General contends that Shri Zuhair Siddiqui, father of Shri Suhail Siddiqui migrated to Pakistan after partition in 1947 and became Pakistani national. He did not take any steps for acquisition of the property in possession of Muslim Siddiqui and had no share on the property. The estate of

the deceased is valued at Rs. 16 lacs, is under threat of misappropriation/ deterioration and requires immediate protection.

3. Shri Bhai Lal Shukla, in Testamentary Suit No. 4 of 1998 contends that the deceased executed a ''will'' dated 17.8.1996 bequeathing all his movable and immovable properties to him. He has filed the original will, which witnessed by Pt. Bhola Nath Tripathi and Mohan Lal Yadav, Advocate. He states that Mohd. Arshad has no claim to the house and that the father of Suhail Siddiqui migrated to Pakistan in 1947. His share vested in the custodian as evacuee property. The custodian did not take any steps to recover the possession which empowered the deceased testator and the deceased was exclusive owner of the property.

4. Shri Bhai Lal Shukla amended the plaint by adding para No. 6-A and 6-B on 24.9.1998 stating therein that the plot, on which the house is situate, was leased by the Secretary of State in India in favour of Shri Sarju Prasad, Deputy Librarian, Allahabad through sale deed dated 5.4.1933. Shri Sarju Prasad on his turn transferred it in favour of Prof. Abdussattar Siddiqui through sale deed dated 2.9.1933, who constructed a house and residential building. He had two sons Shri Muslim Siddiqui and Shri Zuhair Siddiqui, Shri Juhair Siddiqui migrated to Pakistan in 1947 without inheriting any property from his lather, and had no movable and immovable property of his own in India. Prof. Abdussattar Siddiqui made an oral gift of his lease hold rights together with residential house erected and constructed by him in favour of late Muslim Siddiqui on 2.1.1967, and on the basis of this oral gift, he moved an application before the Tax Superintendent, Nagar Maha Palika Allahabad on 10.1.1967 to accept the oral gift in favour of late Muslim Siddiqui. The deceased also filed an application for mutation. Dr. Abdussattar Siddiqui did not file any objection as he had already informed the Tax Superintendent admitting oral gift dated 2.1.1967 through letter dated 10.1.1967 and in absence of any objection mutation orders were passed in favour of the deceased on 22.2.1968. The deceased was absolute owner of the properties owned by him, and competent to execute the will dated 17.8.1986.

5. Shri Suhail Siddiqui filed his objection in Testamentary Suit No. 5 of 1998 by the Administrator General stating that Dr. Abdusattar Siddiqui died in 1972 leaving his two sons Shri Zuhair Siddiqui and Shri Muslim Siddiqui. Shri Zuhair Siddiqui was a renowned journalist. He had died in a road accident in Pakistan, in the year 1979. Late Zuhair Siddiqui succeeded to the half share in all the properties of Dr. Abdul Sattar Siddiqui and had gifted his entire property inherited from his father to his son Shri Suhail Siddiqui, which was accepted by him, coupled with delivery of possession. He had succeeded to half share in all movable and immovable properties including the property in dispute. The remaining half share belongs to Muslim Siddiqui who was a bachelor and died on 26.8.1996 leaving no heir except Suhail Siddiqui, as his real nephew as the only heir and legal representative. Under the Muslim Law the remaining half share of Muslim Siddiqui devolved upon him. Mohd. Arshad is a total stranger. He has no concern with the property of Muslim Siddiqui and has filed frivolous suit No. 391

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of 1996 in the District Court, Allahabad. Shri Suhail Siddiqui obtained an injunction in suit No. 414 of 1996. The real name of Bhai Lal Shukla is Bhai Lal Garg. He has played fraud by forging the will. He first forged a will alleged to be executed in favour of his son Narcndra Kumar on 16.5.1996. Subsequently a will dated 17.8.1996 was forged, allegedly executed in his favour. In fact Muslim Siddiqui did not execute any such will. A muslim cannot bequeath more than l/3th share of his property by will, and the will in favour of non-muslim is invalid. Shri Bhai Lal Shukla has also filed an application for amendment dated 27.11.1996 in the suit in the district court to the effect that Muslim Siddiqui had transferred the property in dispute in his favour by oral gift on 18.8.1996. This amendment nullifies his claim on the basis of will. Mr. Suhail Siddiqui has further stated in paragraph 16 that his father Zuhair Siddiqui was sub-editor in news paper ''Dawn'' and was posted at Delhi. After partition the news paper ''Dawn'' shifted to Pakistan and was temporarily posted at Karachi in Pakistan but continued to be Indian citizen and often visited India. He died in 1979. The property was never declared as evacuee property u/s 7 of the Administrator of Evacue Property Act 1950.

6. Shri Suhail Siddiqui also filed similar objections in Testamentary Suit No. 5 of 1998 filed by Bhai Lal Shukla, and has denied execution of the will.

7. Following issues were framed on 11.5.1999:

1. Whether Late Muslim Siddiqui executed a Will in favour of Bhai Lal Shukla on 17.8.1995?

2. Whether the Will dated 17.8.1995 is a fabricated document?

3. Whether the deceased Muslim Siddiqui had no right to execute the Will dated 17.8.1995?

4. Whether the deceased made an oral gift of his property to Sri Bhai Lal Shukla? If so, its effect?

5. Whether Suhail Siddiqui has a right to contest the proceedings?

6. Whether the Administrator General has a right to contest the present proceedings?

7. Whether the application for the grant of Letters of Administration is legally maintainable?

8. Whether the Will executed by Muslim Siddiqui is against the Muslim Law of Wills?

9. Whether this Testamentary Case is maintainable under law?

10. What is the effect of death of Muslim Siddiqui over the rights of the parties?

11. To what relief, if any, is the petitioner entitled?

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8. The parties have filed documents in evidence. In Testamentary Suit No. 4 of 1998 Shri Rajendra Singh, Sub Registrar, IIIrd Kanpur Nagar was examined as PW-1 and Shri Ashutosh Lal, Chief Manager, Bank of Baroda, Civil Lines Branch, Allahabad was examined as PW-2. Shri Ziaul Haq son of late Syed Azmcel Haq; Iftrakhan Haneef; M. Syeed Ullah and Mohd Zaman were examined and cross examined as DW-1, 2, 3 and 4 for Shri Suhail Siddiqui.

9. In support of the plaint case the Administrator General did not examine himself or any authorized person in his office. Shri Bhai Lal Shukla, the plaintiff in Testamentary Suit No. 5 of 1998 did not enter the witness box. Learned Counsel for Shri Suhail Siddiqui took several adjournments to produce Shri Suhail Siddiqui for his deposition and cross examination but for one reason or other he did not appear in Court. A number of adjournments were taken on the ground that Indian Government is not giving Visa to Shri Suhail Siddiqui on the ground that he had earlier over-stayed in India. The case was adjourned on his request for several years. Since he could not appear, plaintiffs evidence was closed on 30.1.2006 and the defendant''s evidence was also closed on 11.7.2006.

10. I have heard Shri Dhruv Narain and Shri Pradeep Verma for plaintiff Shri Bhai Lal Shukla in Testamentary Suit No. 4 of 1998; Shri J. Nagar, Administrator General in Testamentary Suit No. 5 of 1998 and Shri J.R. Naqvi for Shri Suhail Siddiqui. The judgment was reserved on 24.8.2006.

11. Shri Muslim Siddiqui (the deceased) retired serving as Professor in Agricultural Institute, Naini allahabad. He died on 24.1.1997 leaving behind Bungalow No. 50/184, Muir Road, Allahabad built on Nazul Plot No. 1 and 2 west of Rajapur. He has also leaved behind locker in bank and shares in the companies and deposits detailed in the schedule appended to the testamentary suit No. 5 of 1998, with a total value of more than Rs. 15 lacs. The house must be valued for much more than the amount mentioned in the schedule.

Issue Nos. 1, 2, 3 and 4

12. In Testamentary Suit No. 4 of 1998 the plaintiff Shri Bhai Lal Shukla has set up a registered will dated 17.8.1996 executed by the deceased bequeathing all his movable and immovable properties to the plaintiff. Pt. Bhola Nath Tripathi and Shri Mohan Lal Yadav, Advocate are the attesting witnesses of the will. Shri Bhai Lal Shukla, aged 45 years son of Pt. Ram Ruchi Shukla, R/o 50/184 Muir Road, Allahabad along with petition has filed an affidavit of Shri Mohan Lal Yadav, the attesting witness to the effect that on 17.8.1996 he was present along with Shri Bhola Nath Tripathi at the residence of Shri Muslim Siddiqui at 5.30 p.m., when the Sub-Registrar visited him for registering the testamentary paper. They saw the deceased set and subscribe the name at the foot of the testamentary paper, and thereafter the deponent and Shri Bhola Nath Tripathi at the request of the deceased in his presence and in the presence of each other, all present at the same time, set and subscribed names and signatures at the foot of the testamentary paper as witness thereof. He further stated that the deceased was

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in sound and disposing mind, memory and understanding and executed the document of his own free will and pleasure.

13. In the written statement of Shri Suhail Siddiqui, the execution of the will in favour of Shri Bhai Lal Shukla and oral gift in favour of Mohd. Arshad set up in the suit No. 391/96 filed by Mohd. Arshad on 12.7.1996 is denied. It is alleged that Shri Mohan Lal Yadav is the own man of the petitioner and is in collusion with him. The valuation of the property is about 20 lacs. The deceased died in a very suspicious and mysterious circumstances on 26.8.1996, which was not a natural death. The plaintiff and his wife and other persons responsible for forging the will are responsible for his unnatural death. On 23.8.1996 he was medically examined at Ganga Medical Nursing Home, Allahabad in which doctors suggested treatment for Parkinson, Pulmonary Bronchitis, and hip injury. On 24.8.1996 he was admitted to Priti Hospital. A duplicate death certificate dated 19.9.1996 issued by Dr. A.D. Singh of Priti Hospital shows that Muslim Siddiqui was admitted on 24.8.1996 and died on 26.8.1996 due to A.G.E. with haemetamesis with melaena with bleeding, gastric and duodenal ulsar. He died at 1.50 p.m. on 26.8.1996 due to cardio-respiratory arrest. In para 19 of the written statement it is stated that the answering respondent personally approached Dr. A.P. Singh on 18.9.1996, who told him that Muslim Siddiqui had died of burst of ulsar though admitted for suffering dyhacria.

14. In para 20 to 25 of the written statement it is stated that plaintiffs real name is Bhai Lal Garg. He is a habitual forger and forges document for grabbing properties. He is a resident of village Aichwara Pargana Karwi, Tehsil Karvi, District Banda and his real name is Bhai Lal Garg, son of Ram Ruchi. The Khatauni of Khata No. 162 of 1388 to 1393 F. and Khasra of village Aichwara of Khet No. 250, 233, 258, 1956 and 232 in the name of Bhaiyya Lal and Satya Narayan and Ram Bhau are annexed as annexure Nos. 6 to 8. The fee receipt of Narandra Kumar son of Bhai Lal Garg with local address 22/A, Muir Road, Allahabad, Rajapur also showing the name of Mr. Siddiqui of Class VII- Bal Bharati School, 13 Kamla Nehru Road, Allahabad and a monthly rail pass between Manikpur and Satna dated 11.6.1983 in the name of Bhaiya Lal Garg is annexed as Annexure No. 9. An application addressed to Food Officer District Satna, Madhya Pradesh, Ward No. 28 made by Bhai Lal Garg stating that he was serving in Power House, Allahabad and was earlier living in Ward No. 28 and is now permanently living at Allahabad wants a Ration Card at Allahabad.

15. In para 23 and 24 of the written statement it is stated that some time back Shri Bhai Lal Garg and his wife came to serve the deceased as gardener and servants. Gradually they gained confidence and attained fiduciary relationship with him, in as much as they were in a position, to dominate his will, and due to the said influence a forged will dated 16.5.1996 was alleged to be executed in favour of their son Narendra Kumar, which is not a valid will Subsequently another will dated 17.8.1996 was forged in collusion with the armed guard of Muslim Siddiqui namely Pt. Bhola Nath Tripathi and Shri Mohan Lal Yadav and

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Shri H.C.Yadav, Advocate, who were his own men and were in collusion with each other. This will is also forged and bogus and does not bear the signatures of Muslim Siddiqui. It was not a voluntary act of Shri Siddiqui but is a result of undue influence as they were in dominating position. Neither the deceased intended to execute a will nor he actually signed the same by understanding it to be the will. Both the wills are forged. Shri Bhai Lal Shukla did not examine himself to remove the suspicious circumstances surrounding the will nor the will was proved by examining any attesting witness u/s 63 of the Indian Succession Act, and Section 68 of the Evidence Act

16. The attesting witnesses to the will have not been examined. Shri Bhai Lal Shukla has examined Shri Rajendra Singh, the Sub-Registrar (as PW-1), who registered the will at the residence of Shri Muslim Siddiqui. The witness stated that the testator was lying on bed with an injury on his back. The testator was identified by Shri Bhola Nath Tripathi and Shri Mohan Lal Yadav. These persons were not known to the Registrar. He believed their statement because they appeared to be good and honest persons, The witness admitted that he has not mentioned about the illness and the injury of the person in his record. There was some Advocates present at that time but he does not know his name. He also docs not know Shri Bhai Lal Shukla. The statement of Shri Rajendra Singh, Sub-Registrar is not worthy of belief. He identified the deceased through the persons, who were not known to him and have not entered the witness box. He also did not enter and report the physical and mental condition of deceased in his records. He was not the Sub-Registrar having jurisdiction south of G.T. Road and was not an authorized person to register the will. The other witness Shri Ashutosh Lal, PW-2, is an employee of Bank of Baroda, Civil Lines Branch. He brought paper No. A-64, the original, which appeared to be a carbon copy for opening joint account. The witness stated that though the joint account was opened by Shri Bhai Lal Shukla, there is no mention of any person, who has identified Shri Bhai Lal Shukla in the bank records.

17. It is contended by Shri J.R. Naqvi, learned Counsel appearing for Shri Suhail Siddiqui that a muslim cannot dispose of more than l/3rd of his estate by a ''will''. Shri Bhai Lal Shukla, the propounder did not enter the witness box and has not produced any witness to prove the will. The presumption to registered document is not available to will, which requires attestation and has to be proved by atleast one of the attesting witness. There is no suggestion that the witnesses are not available for proving the will. He further contends that in such case the property shall vest in Shri Suhail Siddiqui, who is brother''s son of the deceased and is an heir in residuary class III (9) in table appended to Mulla''s on Principle of Mohammedan Law.

18. In H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, and Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another, the Supreme Court held that mode of proving a will does not ordinarily differ from that of proving any other document except,'' to the special requirement of

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attestation prescribed u/s 63 of the Succession Act. The onus of proving the will is on the propounder, and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator, is sufficient to discharge the onus. Where, however, there are suspicious circumstances the onus is on the propounder to explain them to the satisfaction of the Court, before the Court accepts the will as genuine. Where the circumstances give rise to doubts, it is for the propoundcr to satisfy the conscience of the Court.

19. In the present case Shri Bahi Lal Shukla was not related to nor had any special relation with the deceased living a bachelor''s life. From the pleading it appears that Shri Bhai Lal Shukla was serving the deceased as servant. There is no evidence to show that Shri Bhai Lal Shukla had taken such care of the deceased that the deceased, made a will in favour of his son Narendra Kumar on 16.5.1996 and then executed a similar will dated 17.8.1996 in favour of Bhai Lal Shukla a week before his death. The deceased died in the circumstances, which have not been adequately explained. The doctors'' certificates and the cause of death are contradictory to each other. It has come on record that a portion of the property was sold by the deceased in favour of wife of Shri Bhai Lal Shukla. Learned Counsel for Suhail Siddiqui is correct in submitting that Bhai Lal Shukla was behaving in a suspicious manner. His correct name is Bhai Lal Garg, a surname, which is associated with a person of business community. He was residing in District Banda and was an employee in Power House, The circumstances in which he described himself as Bhai Lal Shukla, a brahmin by caste, and started serving the deceased and then developed confidence of the deceased have not been explained. There is no evidence that Zuhair Siddiqui had made any oral gift of his property to Shri Muslim Siddiqui. There was no antecedent debt to execute a will. Shri Muslim Siddiqui had distant relatives in Indian and a nephew in Pakistan. It is not pleaded that their consent was taken before making the will of more than l/3rd share of his property. In the circumstances neither the will is proved on record nor the circumstances surrounding the will in which the propounder had taken active interest have been explained. It is thus held that will dated 17.8.1995 has not been proved on record. Issue Nos. 1, 2, 3 and 4 are as such decided against Shri Bhai Lal Shukla, the plaintiff in Testamentary Suit No. 4 of 1998.

Issue Nos. 5, 6 and 7

20. It is not denied that Shri Suhail Siddiqui is son of Shri Zuhair Siddiqui, the brother of Muslim Siddiqui. He is real nephew of the deceased living in Pakistan. Under the muslim personal law he is an heir of the deceased. Shri Suhail Siddiqui as such had right to contest the suit, Issue No. 5 is decided in favour of Suhail Siddiqui and against the plaintiff in both the testamentary suits.

21. Section 7 of the Administrator General Act, 1963 entitles the Administrator General to letters of administration unless they are granted to the next of kin of the deceased. "He is entitled to claim letters in preference to creditors, certain

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legatees or friends. These legatees are the legatees other than universal legatees or residuary legatee or the representative of residuary legatee. He may also apply for letters of administration u/s 9 where no person to whom any court would have jurisdiction to commit administration for such assets within one month after the death of the deceased and there is any apprehension of misappropriation, deterioration or waste of assets. In the present case the nephew of the deceased is party to the proceedings and is contesting the will dated 17.8.1995 alleged to be executed by the deceased in favour of Bhai Lal Shukla. The Administrator General as such will be entitled to claim letters only if Suhail Siddiqui docs not succeed in proving succession.

22. Shri J. Nagar, the Administrator General states that Suhail Siddiqui is not entitled to the letters as he is Pakistani national. The Court may decide the question whether a Pakistani national is entitled to succeed to the estate of his relatives in India and claim letters of administration. However, before considering the right the Court must discuss the evidence led by Shri Suhail Siddiqui.

23. Shri Zia-ul-Haq, DW-1 stated that he was born on 28.9.1920. Muslim Siddiqui was his class fellow from Class 5 to High School in Government Enter College, Allahabad. He was a good friend. After High School Muslim Siddiqui took admission in Agricultural Institute. The witness knew Zuhair Siddiqui, the younger brother of Muslim Siddiqui, who was two years junior in the same college. He took M.A. in Political Science in Allahabad University and was a journalist. He shifted to Pakistan and died there in a car accident in 1978. Dr. Tara Chand and Shri Beni Prasad, Professors acknowledged Zuhair as a good student. The house of the wife of witness Dr. R.Z. Bashir, is about one furlong away from the disputed house, Dr. Abdul Sattar Siddiqui, the father of the deceased was a Professor and Head of Department of Arabic language in Allahabad University. He died about 30-35 years ago. After his death the deceased used to live alone in the house. The aunt of the deceased was married at Lucknow and lives there with her family. Bhai Lal Shukla, his wife and son came to live in servant quarter of bungalow of the deceased and he was working as gardener, About 3-4 years before his death Muslim Siddiqui was not keeping good health. The family of Bhai Lal Shukla was always present in his house. On many occasions the witness found Muslim Siddiqui in the state of intoxication. On all those occasions Bhai Lal and his wife told the witness that the deceased is sleeping after taking medicine. They did not inform the witness about the death of the deceased. According to the witness the deceased was not in a good mental condition and was not in a position to write any document. Further there was no reason to execute the will in favour of Bhai Lal Shukla.

24. In the cross examination the witness was not asked any such question. On a question put by Shri J. Nagar the witness admitted that Zuhair Siddiqui had shifted to Pakistan and died in a car accident. He could not say whether Prof. Abdul Sattar died before the death of Zuhair Siddiqui and the deceased did not marry.

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25. The other witness namely Shri Mohd. Ikhtekhar Hanif, DW-2, son in law of the father''s sister of Muslim Siddiqui living since 1965 at Kareli in Allahabad, has given almost the same statement as DW-1. Shri M. Sayeed Ullah, DW-3 aged 84 years stated that he was class fellow of Muslim Siddiqui in Government Inter College from Class V to High School. The witness qualified PCS and was appointed as Deputy Collector in 1945. He was promoted to IAS. He was close friend of Muslim Siddiqui, His father in law Dr. M.A. Rauf was Ambassador to Burma. The witness was appointed as Regional Director Census Operation in 1971 and shifted to Allahabad at 29, Kanpur Road. Muslim Siddiqui did not marry. His mother''s sisters and their families are living at Lucknow. Bhai Lal was employed by Muslim Siddiqui as Mali 4-5 years before his death. On one of the occasion he found Bhai Lal''s wife inside the house, giving medicine to the deceased and pressing his feet, which was quite unusual. He also found that Muslim Siddiqui was under influence of some drugs about 2 or 2Vi months before his death, when the witness suddenly reached the residence of deceased he found that Bhai Lal and his family were taking him somewhere in a car. Muslim Siddiqui was feeling lost. They told him that he was admitted to Medical College. When the witness visited Medical College, he could not find Muslim Siddiqui.

26. Shri Moh. Zaman Khan aged 82 years appeared as DW-4 and gave almost same statement as the three witnesses regarding acquaintance, and mental condition of the deceased and the fact that Bhai Lal and his family appointed as servants were taking keen interest and were administering medicines and food to the deceased keeping him in a state of intoxication.

27. The provisions of the Enemy Property Act, 1968 are not applicable to the present case. Enemy property is property belonging to enemy and is vested in custodian. The Enemy Property Act, 1968 succeeded the provisions of Defence of India Rules, 1962 and all the immovable properties belonging to or held or by managed on behalf of Pakistani nationals after the outbreak of hostilities between Indian and Pakistan in 1965 were put under management of custodian. The provisions of the Act do not extend to apply to the inheritance of properties in India by a Pakistani national. Such properties were not properties of Pakistani nationals of which the management vested in Custodian of enemy property on 11.9.1965.

28. Section 31 of the Foreign Exchange Regulation Act, 1973 places restriction on acquisition, holding, transfer or disposal of any immovable property by foreigners in India. Sub-section (1) of Section 31 provides that no persons, who was not citizen of India shall except with previous general or special permission of the Reserve Bank of India, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement of otherwise in immovable properties situate in India. Sub-section (4) of Section 31 provides for declaration of immovable properties or properties held by every person, who is not citizen of India. The enjoyment of such right is, however, subject to declaration made within the time specified therein.

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29. The Administrator General submits that the word ''hold'' in Section 31 of the Foreign Exchange Regulation Act, 1973 includes inheritance by which a person comes to acquire the property on the death by testator or non-testamentary succession.

30. Shri J. Nagar relied upon the judgment in Re-Duke of Wellington, Glentanar v. Wellington and Ors. All England Law Reports Vol.2 854 in submitting that the succession to the immovable property depends upon situs of death of the person. The succession of the Spanish will was to be determined on the testator''s death domicile in English by English law and further the word ''hold'' means possession backed by some right or title.

31. According to Black''s Law Dictionary, Sixth Edition page 730 ''hold'' means to possess in virtue of a lawful title, to administer, to conduct or preside at etc. The Bombay High Court in Joaquim Mascarenhas Fiuza v. Smt. Jaime Rebello and Anr. reported in 1989 Comp Cas (66) 349 held that the restrictions under Sub-section (1) of Section 31 of Foreign Exchange Regulation Act, 1973 makes enjoyment of right to hold the property by foreign national subject to declaration made within the period of time specified therein. Shri J. Nagar submits that Pakistani national cannot hold the property in India even by succession and that in such case the Administrator General is entitled to administer the property under the provisions of Section 7 to 9 of the Administration General Act. 32. Shri J.R. Naqvi appearing for Suhail Siddiqui has relied upon Section 6(5) of the Foreign Exchange Management Act, 1999, which provides that a person residing outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India, if such currency security or property was acquired, held or owned by such person when he was resident in India or inherited from a person, who was resident in India. The foreign exchange department, in a clarification about acquisition and transfer of immovable property in India by a person resident outside India, in the ''Frequently Asked Questions'' (FAQs) has referred to various RBI notifications, the latest being notification No. FEMA 64/2002-RB dated June 29, 2002, notification No. FEMA 65/2002-RB dated June 29, 2002 and notification No. FEMA 93/2003-RB dated June 6,2003 clarifying that general permission is available to purchase a residential/ commercial property in India, to a person resident outside India, who is a citizen of India or who is person of Indian origin. In reply to the question No. 13 the Foreign Exchange Department has answered:

Q.13. Can a person resident outside India (i.e. NRI or NO or foreign national of non-Indian origin) hold any immovable property in India acquired by way of inheritance from a person resident in India?

A. 13. Yes. A person resident outside India can hold immovable property acquired by way of inheritance from a person resident in India as per the provisions of Section 6(5) of the Foreign Exchange Management Act, 1999.

33. There is no legal prohibition in acquisition of property in India by a foreign

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national by inheritance. If any permission is required, the same may be obtained as soon as the right to hold the property fructifies.

Issue No. 8

34. The Muslim law of wills, by Mulla "Principles of Mahomedan Law" provides for wills in Chapter IX. In Section 115, 116 and 117 of Chapter IX Mulla states that subject to the limitations hereinafter set forth, every Mahomedan of sound mind and not a minor, may dispose of his property by will. The form of will is immaterial. A bequest to an heir is not valid unless the other heirs consent to the bequest after the death of the testator. In Section 118, Mulla states that a Mahomedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of the legal third cannot take effect, unless the heirs consent thereto after the death of the testator. In Section 119 he states that if the bequests exceed the legal third, and the heirs refuse their consent, the bequests abate rateably. In Section 133 Mulla states that it is not necessary that the executor of the will of a Mahomedan should be a Mahomedan. A Mahomedan may appoint a Christian, a Hindu, or any non-Mahomedan to be his executor. Mahomedan law does not prohibit a will by Mahomedan in favour of non-Mahomedan and that Mahomedan may appoint a person of any other religion to be his executor. The issue No. 8 is decided accordingly. However, it does not help Shri Bhai Lal Shukla, the plaintiff as the will is not proved.

Issue No. 9

35. The Mahomedan law as explained by Mulla "Principles of Mahomedan Law" in Section 132 Chapter IX states that except as regards debts due to the estate of the deceased, no letters of administration are necessary to establish any right to the property of a Mahomedan who has died intestate.

36. Section 212(1) of the Indian Succession Act 1925 provides that no right to any part of property of a person, who is died intestate can be established in any Court of justice unless letters of administration have first been granted by a Court of competent jurisdiction. Sub-section (2) of the Section however provides that section shall not apply in the case of intestacy of Hindu, Mahomedan, Buddhist, Jain, Indian Christian or Parsi. A letter of administration as such is not necessary to establish any right to the property of a Mahomedan. However, if a person applies for letters of administration, to establish his right, the Indian Succession Act, 1925 or the Muslim Personal Law does not prohibit him to do so. The issue answered accordingly.

Issue No. 10

37. The will dated 17.8.1995 is not proved. Shri Suhail Siddiqui, a Pakistani national is son of Shri Zuhair Siddiqui, the brother of the deceased. Shri Suhail Siddiqui as such will succeed to the property of his uncle in India subject to permission to be given to him by Reserve Bank of India for dealing with the

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property including its transfer. He may, however, manage the same or may appoint a power of attorney duly executed for the purposes of managing the properly and may be entitled to the proceeds thereafter.

38. The issue is decided accordingly.

Issue No. 11

39. The will dated 17.8.1996 set up by Bhai Lal Shukla is not proved. Me is as such is not entitled to any relief. The Administrator General was entitled to letters of administration only if the deceased did not have an heir capable of holding property by inheritance. Since the Court find that Shri Suhail Siddiqui nephew of Muslim Siddiqui (the deceased) is entitled to hold the property, the Administrator General is not entitled to any relief.

40. The testamentary suits are liable to be dismissed with the observation that Suhail Siddiqui nephew of Shri Muslim Siddiqui (the deceased) is found to have succeeded to his properties by inheritance. He can hold the properties and exercise all his rights subject to the permissions to be granted by the competent authority in India.

41. Both the testamentary suits namely Testamentary Suit No. 4 of 1998 by Shri Bhai Lal Shukla and Testamentary Suit No. 5 of 1998 by the Administrator General, U.P. arc dismissed with costs against Shri Bhai Lal Shukla quantified at Rs. 10,000/- to be paid to the Administrator General for prosecuting the case. Shri Bhai Lal Shukla has set up a forged will, which he did not even attempt to prove and has filed false affidavits in proof of the will. He shall, therefore, be prosecuted by the State for filing false affidavit and setting up a manufactured will in the Court. The Registrar General shall initiate criminal prosecution against him under the relevant provisions of IPC within three months.

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