
(2000) 08 AHC CK 0151
In the Allahabad High Court

Jai Bharat Mani Acharya Dixit

APPELLANT

Vs

Kunwar Anirudh Pratap Narain Singh and Others

RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:

Administrator Generals Act, 1963 — Section 2(2), 7, 9
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4A(1)
Succession Act, 1925 — Section 231

Citation : (2000) 08 AHC CK 0151

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—I have heard Sri S.N. Singh learned Counsel for the applicant/ Defendants on application A-96 and Sri A.K Singh learned Counsel for applicant of application A-80 and Sri J. Nagar learned Counsel for the Administrator General.

2. A-96 is an application by Aditya Pratap Narain Singh and Anil Pratap Narain Singh, Two of the Defendants in Testamentary Suit No. 4 of 1985 for recalling the order dated 8.7.1993 passed by the Court and to dismiss the present Testamentary Suit No. 4 of 1985 in question. The dispute relates to the estate of the deceased Rani Reoti Devi widow of Ravi Pratap Narain Singh. Originally, Testamentary Case No. 10 of 1984 was filed by Jai Bharat Mani Acharya Dixit for grant of Letters of administration in respect of the estate of the said deceased lady on the basis of a will allegedly executed by her on 14.4.1984 in which he was the executor. As caveat had been filed opposing the grant of Letters of administration, Testamentary Case No. 10 of 1984 was converted into present Testamentary Suit No. 4 of 1985. Application A-25 was made by Jai Bharat Mani Acharya Dixit that he be relieved of the executorship on account of his ill health and paucity of funds. His prayer was that his renunciation from executor ship be accepted in favour of Administrator General U.P. or any other person the Court

might find fit. The said Jai Bharat Mani Acharya Dixit died after making of such application. Another application A-35 was made by the Administrator General, U.P. that he be substituted in place of deceased executor Jai Bharat Mani Acharya Dixit. By the impugned order dated 8.7.1993 this Court accepted the renunciation of Jai Bharat Mani Acharya Dixit from executor ship and directed the Administrator General, U.P. to continue the proceedings of the Testamentary Suit.

3. The present two Applicants/ Defendants Aditya Pratap Narain Singh and Anil Pratap Narain Singh pray for setting aside the said order on the ground that a civil suit for partition had already been filed by Rani Reoti Devi against her father-in-law late Raja Brij Narain and other co-sharers of the entire co-parcenary property of his family, being Original Suit No. 55 of 1945 which is still pending in the court of Civil Judge, Deoria. It has yet to be decided in the partition suit as to whether Rani Reoti Devi actually had any share in the property. In case it is found that she had no share, then the present Testamentary Suit No. 4 of 1985 has to be dismissed. The alleged will is a forged document. It having not yet any right on the basis of the alleged will and the question of renunciation from executorship in favour of Administrator General, U.P. could not arise at all. The deceased Rani Reoti Devi has left a number of successors who have wrongly been mentioned as near relatives and after her death, if she had any share, the same would devolve on her successors. u/s 9 of the Administrator General Act, 1963, the Administrator General can be permitted to administer the estate of the deceased if there is apprehension of misappropriation, deterioration or waste of such assets. Nothing of the kind had been shown in the question of substitution of Administrator General in place of Jai Bharat Mani Acharya Dixit. It has also been submitted that the applicant-Defendant No. 4 did not get any opportunity to contest the matter before the passing of the order dated 8.7.1993.

4. The prayer made in the application A-96 has been vehemently opposed by the Administrator General by filing a counter affidavit A-98. It is submitted that this Court has only to decide the genuineness otherwise of the will and not the title of the parties; u/s 231 of the Indian Succession Act, the executor could renounce the executorship the will dated 14.4.1984 is a genuine document and u/s 9 of the Administrator General Act, he could apply for grant of Letters of administration for the estate of the deceased on the renunciation of executorship by Jai Bharat Mani Acharya Dixit. It is relevant to state that in the present Testamentary Suit the title or rights of the parties are not to be determined. This Court has only to determine the limited question as to whether the will in question dated 14.4.1984 had actually been executed by Rani Reoti Devi. Right and title of the parties may have to be decided in the partition suit but not in the present testamentary proceedings. The parties are at issue on this pertinent aspect of the matter in the said suit which has not yet reached the ripened state of decision after the evidence of the parties. The apparent state of things is that Jai Bharat Mani Acharya Dixit has been named as executor by the testator Rani Reoti Devi in the will aforesaid.

5. It is significant to take note of the provision contained in Section 231 of the Indian Succession Act which reads as under;

231. Procedure where executor renounces or fails to accept within time limited- If an executor renounces, or fails to accept an executorship within time limited for the acceptance or refusal thereof the will may be proved and letters of administration with a copy of the will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

6. The above provision contained in Section 231 of the Indian Succession Act leaves not the slightest doubt that the executor Jai Bharat Mani Acharya Dixit could renounce the executor ship which he did by making application A-25. I do not think that the substitution of the Administrator General in place of executor Jai Bharat Mani Acharya Dixit suffers from any defect of any nature whatsoever. It is of no consequence that in application A-25 the executor Jai Bharat Mani Acharya Dixit had stated that his renunciation was in favour of Administrator General, U.P. or any other person as this Court may find fit. What is material is that he renounced his executor ship which he could have very well done.

7. The point of the matter is that as per Section 9 of the Administrator General Act, in case no application for grant of Letters of administration is made within one month after the death of the person concerned, the Administrator General may apply for grant of Letters of administration for the estate of the deceased. It is not disputed that the executor who renounced the executor ship by means of application A-25 later on died. It is a fact that after his death, no person came forward before this Court for substitution to continue the present proceedings. The Administrator General, therefore, had a right u/s 9 of the Administrator General Act to move this Court for continuing the proceedings.

8. The matter may be considered yet from another angle. Rule 39 of Chapter XXX of the Rules of the Court states that after the proceedings are converted into a suit, procedure in such suit shall, as nearly as may be, be according to the provisions of the court (C.P.C.). Order XXII Rule 4A(1) of the CPC says that if, in any suit, it appears to the court that any party who had died during the pendency of the suit had no legal representative, the court may on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator General, or an officer of the court or such other person for the purpose of the suit. Therefore, the Administrator General could very well be substituted in place of the deceased executor Jai Bharat Mani Acharya Dixit who had renounced the executor ship by making the application A-25.

9. The contention of the applicant of A-96 that Rani Reoti Devi left a number of successors cannot be taken note of at this stage to oust the Administrator General from prosecuting the suit. Really speaking, the applicants of application A-96 being Defendants in the case have challenged the genuineness of the will in question and it has to be tested as to whether the same is a genuine document

or otherwise. Non- suiting the Administrator would tantamount to the acceptance of the case of the applicants/Defendants offering challenge to the will without any contest. After all, it has to be determined on the anvil of reliability after weighing the evidence of the two sides as to whether the will in question is a genuine document or a forged one.

10. It is not case of the applicant of application A-96 that they were not parties in the suit before the passing of the order dated 8.7. 1993. They have not at all been prejudiced by the substitution of the Administrator General in place of Jai Bharat Mani Acharya Dixit, executor, who renounced the executor ship by application A-25 where after he died. It makes no difference to them as to whether the proceedings were carried on by Jai Bharat Mani Acharya Dixit or the same are now being carried on by the Administrator General.

11. It may be observed that the proceedings before the testamentary court are the proceedings in rem.

12. As held by this Court in the case of Subhash Chandra Pandey v. Administrator General, U.P. 1983 ALJ NOC 12, the right of Administrator General to make an application for the grant of Letters of administration and obtain the same is governed by Sections 7 and 9 of the Administrators General Act 1963. The whole object of conferring powers on him and casting an obligation on him to apply for Letters of administration is that the assets of the deceased may be saved from the danger of misappropriation, deterioration or waste etc. There is no inherent bar to the Administrator General applying for probate or Letters of administration for the benefit of a third party. This is clearly indicated by Section 2(2) of the Act which defines "letters of administration ". The term includes any Letters of administration "whether general or with a copy of the will annexed or limited in time or otherwise". So, the Administrator General comes in his own rights u/s 9 read with Section 2 of the Act. The purpose of making such application is that after administering the estate, he would give the remaining assets to the legatee.

13. In view of the above discussion, I do not find any merit in application A-96 whereby the prayer has been made to recall the order dated 8.7.1993. This application is bound to-be rejected.

14. Application A-80 has been moved o behalf of one Vishnu Prasad, attorney of the Receiver appointed in O.S. No. 55 of 1945 of the court of Civil Judge, Deoria with the prayer that it be directed that the properties of the deceased situate at Allahabad shall be managed by the said Receiver appointed by the order of the Civil Judge, Deoria in Suit No. 55 of 1945 during the pendency of the present Testamentary Suit. The application is supported by an affidavit. It may be stated that by order dated 13.3.1989, this Court permitted the Administrator General and the Official Trustee to take charge, as an interim measure, of the property at No. 2 N.K. Mukerji Road, Allahabad (which also forms the subject matter of the will dated 14.4.1984 executed by Rani Reoti Devi). One Yadvendra Dutt Dubey is

putting up claim in respect of the said property and he is also a party before this Court.

15. The argument of the learned Counsel for the applicant of application A-80 is that the Administrator General has no right to be replaced as executor in place of Jai Bharat Mani Acharya Dixit and to prosecute the above Testamentary Suit. It is urged that Jai Bharat Mani Acharya Dixit left behind one son and five daughters and there could be no justification for execution of renunciation by him. The genuineness of the will in question has also been challenged. It has been argued that Jai Bharat Mani Acharya Dixit had died before making of the purported application A-25 (which was made on 19.7.1988). The sheet anchor of the application A-80 is that Rani Reoti Devi claimed half share in the entire property of Padrauna Raj by filing suit no 88 of 1945 in the court of Civil Judge, Deoria and the property is custodia legis since 2.1.1946 under the management of Receiver appointed from time to time by the order of the court of Civil Judge, Deoria and presently, Sri Ram Autar Kesriwal is the Receiver. He alone and none else has the right to manage the property of Rani Reoti Devi also which is included in the properties of Padrauna Raj.

16. Prayer made in application A-80 too has been opposed by the Administrator General. I have held above while deciding Application A-96 that the Administrator General could be substituted in place of Jai Bharat Mani Acharya Dixit who had renounced the executor ship by making application A-25 on 19.7.1988. It is not disputed that Jai Bharat Mani Acharya Dixit had actually died. There is no evidence from the side of the applicant of application A-80 to back the contention that he died even before making the application A-25. As a matter of fact, the receiver appointed in Suit No. 55 of 1945 by the court of Civil Judge, Deoria has no business to object to the appointment of Administrator General as the custodian of the property at Allahabad as an interim measure. He can have no independent right in the matter to assert. The law is well settled that when a court puts the receiver in possession of the property, it (property) comes under court's custody, the receiver being merely an officer or agent of the court. It is the court which becomes custodia legis of the property in respect of which the receiver is appointed. Such de jure possession of the court is through receiver. The contention raised by the Receiver is wholly untenable that a direction should be made that the property of the deceased situate at Allahabad shall be managed by him. This application, therefore, also does not have any merit and is to be rejected.

17. In view of the above discussion, the application A-96 and A-80 are hereby rejected.

18. The office is directed to list application A 97 for orders/hearing.