

(1992) 09 BOM CK 0060

In the Bombay High Court

Case No : Petition No. 278 converted into Suit No. 39 of 1984

Jayshree Raghuvir Balgi

APPELLANT

Vs

Gokuldas Sheshgiri Prabhu

RESPONDENT

Date of Decision : 18-09-1992

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Succession Act, 1925 — Section 218

Citation : (1993) 1 BomCR 230

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : Sarookh Kathawala and S.N. Vimadalal, instructed by Vimadalal and Co, for the Appellant; Niranjana, of Niranjana and Co., for the Respondent

Judgement

D.R. Dhanuka, J.—The material facts having bearing on the preliminary issues framed by the Court regarding locus standi of the Caveator to file the Caveat herein are as under :

(a) On 30th June, 1983, the Testator Shri Shreeniwas alias Shrinath son of Manjanath Prabhu alias Shrinivas Manjunath Prabhu alias Shrinath Manjunath Prabhu died at Bombay. The deceased left his widow and two daughters, as mentioned in para 9 of the petition, i.e Mrs. Rukminibai Shrinivas Prabhu (widow), Vatsala Vinayak Pai (married daughter) and Jayshree Raghuvir Balgi (married daughter). The widow of the deceased is of unsound mind and is in the mental hospital in Kolhapur.

(b) Jayshree Raghuvir Balgi has filed this petition for probate in respect of the Will dated 4th September 1977 contending that the deceased has left the said Will as his last Will at the time of his death. Shri Gokuldas Sheshgiri Prabhu, the nephew of the deceased had filed a Caveat.

2. Even if the deceased had died intestate, the estate of the deceased would have been inherited by the widow and the daughters of the deceased. u/s 8 of

Hindu Succession Act, 1956 when the relatives specified in Class I of the Schedule are in existence at the time of death of a Hindu who died intestate, relatives specified in Class II of the Schedule are not entitled to inherit. In such a situation, relatives not specified in Class I of the Schedule cannot be considered as heirs of the deceased. It is not possible to agree with the submission made on behalf of the Caveator that all the relatives of the deceased are to be considered as heirs of the deceased, whether the said relatives are specified in Class I of the Schedule or Class II of the Schedule.

3. In *Pirojshah Bikhaji v. Pistonji Merwanji*, ILR 34 Bom. 459, the Division Bench of our High Court held that only such person can file a caveat who has interest in the estate of the deceased person. It is also imperative that the Caveator must not dispute title of the deceased to the properties disposed of by Will. In other words the Caveator cannot claim adversely to the testator and seek resolution of a title dispute by the Probate Court. By this judgment, Chandavarkar, J., on behalf of the Division Bench, approved the principles of law laid down by the High Court of Calcutta in the well known case of *Abhiram Dass v. Gopal Dass*, reported in ILR 17 Cal 48. It is well settled that the Probate Court cannot decide disputed questions of title in respect of the estate of the deceased and such disputes can be resolved only in a regular Civil Suit.

4. The learned Counsel for the petitioner has relied upon the judgment of High Court of Patna in the case of *Ramyad Mahton v. Ram Bhaju Mahton*, ILR 10 Pat 813. In this case, the objector had claimed that he was joint with the testator and that the property which the testator purported to dispose of by Will was joint Hindu family property. The Honourable Division Bench of the High Court of Patna held that the Caveator had no locus standi to object to the grant of letters of administration on such a ground. In this case, the High Court of Patna relied upon the ratio of the judgment of the High Court of Calcutta in the case of *Abhiram Dass v. Gopal Dass*, reported in ILR 17 Cal 48 referred to in para 3 hereof. In *Abhiram Dass v. Gopal Dass*, the High Court of Calcutta held that the objector had no locus standi to file the caveat as he had no interest in the estate of the deceased. Similar the High Court of Patna held in the above referred case that the objector had no locus standi to file the caveat. I am in respectful agreement with the view taken by the High Court of Calcutta and the High Court of Patna in the above referred two cases.

5. The learned Counsel for the Caveator has relied upon the judgment of High Court of Orissa in the case of *M/s. Rao and Sons v. Chandramoni Dei*, AIR 1971 Ori 95, in support of his contention that the Caveator had the necessary locus standi since general citation was issued in this case. The learned Counsel has, in terms, referred to para 14 of the said judgement. I have read para 14 of the said judgment again and again and I find that the ratio of the said judgment does not support the case of the Caveator. The relevant portion of para 14 of the said judgment reads as under :

"But when a general citation is issued under the law, persons having an interest

in the estate of the deceased might come forward to enter caveat."

In that case it was further observed that the creditors of the heirs at law may come under the latter category and may have locus standi to file caveats. In this case, the nephew of the deceased has filed the caveat although he is not the heir in any sense of the term. The Caveator claims adversely to the testator and raises title dispute which cannot be adjudicated by the Probate Court.

6. On the averments made in the affidavit in support of the caveat, I have reached the conclusion that the Caveator in this case is not entitled to challenge the Will. Since the Caveator has no locus standi to challenge the Will, the merits of controversy raised by the Caveator are irrelevant. The Caveator has already filed suit in this Court, being Suit No. 2010 of 1986 for partition of the properties alleging that the suit properties are joint family properties. The said suit is pending. The said suit shall take its own course. Disputes as to title would be adjudicated on its own merits on the said suit.

7. The learned Counsel for the Caveator has relied upon the judgment of High Court of Calcutta in the case of Banku B. Das Vs. Kashi N. Das and Another, . In this case, it was held that once the proceeding is converted into a suit, it is no longer open to the propounder to contend that the caveator has no locus standi. I am in respectful disagreement with the view taken by the learned Judge in this case. When the suit reaches final hearing, the locus standi of the Caveator can still be examined by the Court and if it is found that the Caveator has no locus standi to contest the grant, the caveat is liable to be dismissed as non-maintainable. In the result, having regard to the ratio of binding judgments, I cannot treat the petitioner as estopped from raising the dispute as to locus standi of the Caveator.

8. In light of the above discussion the preliminary issue framed by me is answered as under:

"Shri Gokuldas Sheshgir Prabhu has no locus standi to file the caveat dated 11th October, 1984. The caveat is accordingly dismissed."

9. The Prothonotary and Senior Master is directed to proceed further with the petition on the footing that it is an uncontested petition expeditiously grant the probate on the petitioner complying with all the office requisitions. In the event of the Prothonotary and Senior Master finding any legal impediment in the grant of probate, the Prothonotary and Senior Master as well as the petitioner shall be at liberty to mention the matter to the Court for further directions.

10. Having regard to the facts and circumstances of the case, there shall be no order as to costs.

11. The Prothonotary and Senior Master is directed to act on ordinary copy of this order duly authenticated by the Associate of this Court.

12. Certified copy to be issued expeditiously.