

(1997) 07 DEL CK 0084

In the Delhi High Court

Case No : Interim Application No. 3720 of 1997 and Letters Patent Appeal No. 12 of 1997

Murli Dhar Dua and Others

APPELLANT

Vs

Shashi Mohan

RESPONDENT

Date of Decision : 22-07-1997

Acts Referred:

Succession Act, 1925 — Section 213

Citation : (1997) 68 DLT 284

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : S.K. Chaudhary, for the Appellant;

Judgement

K.S. Gupta, J.

(1) Petitioners have Filed this petition under Order Xxxiii, Cpc for permission to sue the respondent as indigent persons in suit for recovery of possession of immovable/movable properties and also the mesne profits. It is, inter alia, alleged in the petition that Madan Mohan, who expired on July 4, 1996, appointed the petitioners as trustees in respect of the estate left behind by him under the Will dated April 23, 1995. According to the Will property No. 8-2/187, Paschim Vihar, New Delhi and movables owned by aforesaid Madan Mohan were conditionally bequeathed by him in favor of his son Lalit Mohan with the stipulation that if before the end of the year, 2001 he did not have any issue born to his wife or any child and being legally adopted by them, all the assets including the immovable property were to be disposed of as soon as possible by the petitioners as trustees and invest the complete income accruing there from as donation for charitable purpose either as one time donation or donations in the form of recurring income from the investment made for the purpose or both as per the majority decision of the petitioners. It is further stated that said Lalit Mohan expired on October 12, 1996, at Hardwar and till his death he was neither blessed with a son nor did he and his wife adopted any child. It is further stated

that the petitioners requested the respondent to hand over the vacant possession of the aforesaid house and the movables as detailed in Annexure "A" in her power and possession but she has not cared to respond to their request and has illegally usurped them.

(2) Along with the petition I.A. No. 3720/97 under Order XXXIX, Rules 1 & 2 read with Section 151, CPC was also filed for restraining the respondent from dealing with the immovable and movable assets left behind by late Madan Mohan and / or creating any third party rights therein.

(3) By the order dated May 1, 1997, Joint Registrar (0) taking into consideration the statements made by all the three petitioners reached the conclusion that prima facie petitioners in their capacity as trustees of the assets of late Madan Mohan do not have the means to pay the prescribed Court fee and, Therefore, notice of the petition has been issued to the respondent for August 12, 1997. In terms of the said order- 1A No. 3720/97 was ordered to be placed before the Court for consideration on May 8, 1997. On that date my learned predecessor posed a query if the petitioners are entitled to administer the assets without obtaining probate/appointment of executor of the Will and the matter was, thus, posted for hearing on that query.

(4) Relying on the decisions in "Didar Singh Cheeda v. Sohan Singh Ram Singh & Ors., Air 1966 P&H 382, Behari Lal Ram Charan Vs. Karam Chand Sahni and Others, and Arjan v. Madan Lal, 1970 SCR Del 785, contention advanced by Shri S.K. Choudhary appearing for the petitioners was that the provisions contained in Section 213 of the Indian Succession Act requiring probate do not apply to the Wills made outside Bengal and the local limits of the ordinary original jurisdiction of the High Courts of Madras and Bombay except where such Wills relate to property situated in the territories of Bengal or within the aforesaid local limits. According to him, as the Will dated April 23, 1995, was executed by Madan Mohan in Delhi, the petitioners need not obtain probate in respect of the Will for seeking the reliefs prayed for. Decisions referred to above do support the submission advanced by Mr. Choudhary that no probate is required by the petitioners for claiming the reliefs prayed for in the main petition.

(5) Considering the averments made in the main petition and I.A. 3720/97 which are supported by the affidavit of Chander Mohan Kukreti, one of the petitioners. I am satisfied that the petitioners have been able to make out a prima facie case for grant of the ad-interim injunction prayed for and the object of main petition would be defeated if the interim injunction is not granted to the petitioners. Notice of the I.A. be issued to the respondent for August 12, 1997, the date already fixed in the petition. In the meantime, the respondent is restrained from selling, mortgaging or parting with possession of the property No. B-2/187, Paschim Vihar. She is further restrained from disposing of the movables belonging to or in the name of deceased Madan Mohan in her possession as noted in Annexures from A to E. Process fee and registered Ad cover be filed within three days.

(6) Compliance of the provisions of Order Xxxix Rule 3, CPC be made within three days from today.