
(2007) 10 P&H CK 0056
In the Punjab And Haryana At Chandigarh

National West Minister Bank PLC	Vs	APPELLANT
General Public and Others		RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Evidence Act, 1872 — Section 82, 86
Succession Act, 1925 — Section 276

Citation : (2008) 149 PLR 523 : (2008) 1 RCR(Civil) 595

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—This is a petition for grant of probate u/s 276 of the Indian Succession Act, 1925 (Act No. 39 of 1925) (hereinafter referred to as "the Act") filed by National West Minister Bank named as one of the executors in the will dated 6.12.1993, allegedly executed by Mr. Paul Gill alias Darshan Singh Gill. It is alleged that late Mr. Paul Gill was a Non-resident Indian having his permanent place of residence at 10, Wellington Court Clare Road Standwell Middlesex, England. Mr. Gill is said to have died on 8.2.1995. The will sought to be probated is said to be the last testament of Mr. Paul Gill. It is further stated that the testator has bequeathed his movable and immovable properties in favour of petitioner and respondents No. 2 to 4. The deceased had named other beneficiaries also. It is also alleged that the mother of the deceased Paul Gill, pre-deceased him and Mr. Paul Gill has left behind Vikas Singh Gill as the Class I heir and other legal representatives under the will-respondents No. 2 to 4. The particulars of properties movable and immovable governed by the will are detailed in Annexures P-3 and P-4 with the petition. At the time of filing of the petition, a Xerox copy of the will dated 6.12.1993 was filed. From the will, it appears that the deceased has bequeathed properties mentioned in paragraph 5 to his son Vikas Singh Gill and his wife Paramjit Kaur Gill and some amounts to certain persons named in paragraph 4. The deceased has also declared the petitioner-Bank as a beneficiary in respect to his residuary estate as detailed in paragraph 7 of the will, for the purposes indicated therein.

2. This petition is opposed by respondent No. 2 on variety of grounds: It is mentioned that the deceased never executed any will. Even the relationship of respondent No. 3 with respondent No. 2 as his wife are disputed. It is further mentioned that Smt. Inderjit Kaur wife of Paul Gill is still alive. Respondent No. 2, however, claimed that he is the only Class I legal heir of deceased Paul Gill and entitled to inherit all his estate. He has also mentioned in paragraph 9 that the will sought to be probated is subject matter of challenge in the Civil Court at Ludhiana. It is accordingly contended that in view of the fact that the will is under challenge in the civil court, probate cannot be issued. In the Probate Petition in paragraph 10, it is stated that no petition for probate on the basis of the will in question has been made in any other court.

3. During the pendency of these proceedings, the petitioner placed on record order dated 22.8.1995 granting probate of the will in question by the High Court of Justice, the District Probate Registry at Bristol. However, learned Counsel appearing for respondent No. 2 objected to the order on the ground that the same has not been duly authenticated. Vide order dated 12.5.2003, the original order was returned back to the learned Counsel for the petitioner with liberty to again file the same after getting the same authenticated in accordance with law. Thereafter an authenticated order was placed on record and the matter was considered by this Court. Hon'ble Mr. Justice Hemant Gupta passed a detailed order admitting the order dated 22.8.1995 granting probate and following observations were made on 17.2.2005:

Consequently, it is held that the order dated 22.8.1995 produced by the petitioner is duly certified and authenticated copy of the order and thus admissible in evidence.

4. This order has not been challenged in any manner. As a consequence of the aforesaid order, the order granting probate has been taken on record and is admitted in evidence before this Court.

5. Now two questions arise for consideration.- (i) whether the probate granted by the High Court of Justice, the District Probate Registry at Bristol can be operated upon in respect to the properties of Mr. Paul Gill situated within India and/or outside India? (ii) whether this Court in exercise of jurisdiction u/s 276 of the Act can grant a second probate, if so, the procedure to be adopted for grant of such probate?

6. With a view to answer the above questions, it is necessary to understand the intention of testator and also the substance of the will. The will is reproduced as under:

This is the last Will and testament.

Paul Gill otherwise known as Darshan Singh Gill of 10 Wellington Court Clare Road Stanwell Middlesex TW 19 7 HL Retired Accounts Clerk:

1. I HEREBY REVOKE all former wills and testamentary dispositions made by me

and declare thus to be my last will and I expressly revoke the will made in favour of my brother BIRINDER SINGH GILL in 1969 giving him possession of my share in the farm and other ancestral properties at Village Gill Ludhiana Punjab India

2. I APPOINT National Westminster Bank Plc (hereinafter called "the Bank") to be the Executor and Trustee of this my will on its standard terms and conditions in force at the date hereof including those governing the Bank's remuneration which shall be in accordance with its scale of fees in force at my death.

The Bank shall have power if its standard scale of fees shall be altered after my death to charge remuneration for its service in accordance with such scale of fees as shall from time to time be in force.

The Solicitor to be employed in connection with the estate shall if possible be Messrs Home Engall & Freeman of 47a High Street Engham Surrey but without prejudice to the right of the Bank to consult or employ any other Solicitors should it so desire.

3. I DESIRE that my body shall be cremated.

4. I GIVE and bequeath the following pecuniary legacies absolutely free of all duty and taxes:

(a) to JOHN PEMBERTON THE SUM OF THREE HUNDRED POUNDS (300).

(b) TO BRITISH AIRWAYS CAMERA CLUB the sum of THREE HUNDRED POUNDS (300) and I express the wish that the said Club shall purchase a trophy in memory of me for presentation annually to the winner of a competition for the best portrait photography as judged by the Committee of the said Club and I direct that the receipt of the Treasurer or other proper officer of the said Club shall be a discharge to the Bank.

(c) to SRI GURU SINGH SABH (SIKH TEMPLE) (GURDWARA) OF Alice Way Hanworth Hounslow Middlesex TW3 UA FIVE HUNDRED POUNDS (500) for the BOG CEREMONY in connection with my demise.

(d) to AGE CONCERN Stanwell FIVE HUNDRED POUNDS (500).

5. I DEVISE my flat 10 Wellington Court Stanwell subject to any outstanding mortgage on the property and also subject to any outstanding expenses in connection with the property to my son VIKAS SINGH GILL and his wife PARAMJIT KAUR GILL of 835,6-122 AS Surrey British Columbia V3 WOTI Canada ABSOLUTELY and I also bequeath to them all my personal chattels (including my motor car) ABSOLUTELY and I also DEVISE to my said son and his said wife all my ancestral real properties in India including the farm at Village Gill District Ludhiana Punjab:

6. I GIVE all the remainder of my property both moveable and immovable of whatsoever nature and wherever situate and all property over which I shall have at my death any General Power of Appointment or disposition except property

otherwise disposed of by this Will or any Codicil hereto to the Bank upon Trust.

(a) to sell call in and convert the same into money or such parts thereof as shall not consist of money with full power at its discretion to postpone such sale calling in and conversion without being responsible for loss:

(b) to pay or provide for out of such property and the proceeds of sale thereof (in exoneration of assets which would otherwise be liable for payment of the same)

(i) my funeral-testamentary and administration expenses and debts (ii) except as otherwise provided by this will or any Codicil thereto all inheritance tax and estate duties and other impositions payable on or by reason of my death which are livable in any part of the world in respect of my estate (whether moveable or immovable) passing under this Will or any codicil hereto.

(iii) any legacies or annuities given by this Will or any Codicil hereto.

(c) Subject as aforesaid to hold such property and proceeds of sale and the assets from time to time representing the same (hereinafter together referred to as "my residuary estate") and the income thereof upon the trusts and with and subject to the powers and provisions hereinafter declared.

7. THE BANK shall hold my residuary estate upon trust absolutely for CHRISTIAN MEDICAL COLLEGE BROWN MEMORIAL HOSPITAL, LUDHIANA PUNJAB INDIA for the care and attention of the poor and cancer patients and to include medical supplies for them (Funds to be remitted via Friends of Ludhiana (Reg. Charity Number 314148) 157 Waterloo Road London SE1 8UU) and it is my wish that the Bank shall retain the capital for so long as it is entitled so to do without offending the Rule of Perpetuities and that the income accruing thereon is paid to the Beneficiary annually or at such other time or times as may be convenient to the Bank.

8. I WOULD like my portrait photograph to be displayed on the wall in a ward of Brown Memorial Hospital.

9. THE BANK shall have the following powers in addition to its powers under the general law or under any other provisions of this Will;

(a) to invest or apply trust monies in the purchase or acquisition of or upon the security of any real or personal moveable or immovable property rights or interests of whatsoever kind and wheresoever situate including any shares stocks funds securities bonds life insurance policies repair or improvement of land or chattels or other investments (including deposits with Finance Houses Banks Building Societies or similar institutions) or property of whatever nature and in any part of the world whether involving liability or not of a wasting character or not whether producing income or not whether with a view to its enjoyment in kind or not and whether in the names of the Bank or in the names of nominees or a nominee or in any other manner giving the Bank control there over as the Bank shall in its absolute discretion think fit to the intent that the Bank shall be

empowered to invest and apply and to transpose that investment and application of trust monies in the same unrestricted manner so if it was the beneficial owner of such monies or investments including the lending of money to any person (including any beneficiary hereunder) with or without taking security or charging interest and Section 6(1) of the Trustee Investment Act, 1961 shall not apply (b) to insure against loss or damage by fire or from any other risk any property for the time being forming part of my estate or subject to the trusts hereof to any amount and to pay the premium for such insurance out of the income or capital of my residuary estate or the property itself and any money received by the Bank under such policy shall be treated as if it were the proceeds of sale of the property insured unless applied in the restoration or replacement of the property (c) to allot appropriate partition or apportion (whether expressly or by implication) any investment money or other property forming part of my estate or subject to the trusts hereof in or towards satisfaction of any share or interest whether settled or not in any part of my estate and the income thereof in such manner as the Bank shall in its absolute discretion (without the necessity of obtaining any consent) consider just according to the respective rights of the persons interested and even though the Bank may be beneficially interested.

(d) to adjust in such manner as the Bank in its absolute discretion think fit the incidence between capital and income of the debts expenses and other payments made in due course of administration.

(e) in exercising the statutory power of appointing new Trustees to appoint a professional person or a trust corporation at such remuneration and on such terms as shall be agreed:

AS WITNESS my hand this 6th day of December one thousand Nine Hundred and Ninety Three.

7. From the above will, it is evident that the testator has appointed the petitioner-Bank to be the executor and trustee of his will and authorized the executor to utilize his properties except those in paragraphs 4 and 5 for the purposes indicated in paragraphs 6 and 7. As a matter of fact, all the immovable properties, particularly situated within India, have been bequeathed in favour of his son Vikas Singh Gill and Paramjit Kaur Gill w/o Vikas Singh Gill. It is only the movable and such properties which are situated outside India which have been placed at the disposal of the petitioner-Bank for utilization by Christian Medical College Brown Memorial, Ludhiana, Punjab, India for the care and attention of the poor and cancer patients. He has further permitted the bank to invest the money for the defined purposes in any part of the world. The deceased has an account with the petitioner's bank at London. This is the source of money which was intended to be utilized for the purposes specified in the will. At the time of death, the deceased had his permanent place of abode at London. The Will was executed at London and it has been duly probated by the competent authority at London. No part of property situated in India is required to be regulated by the Will. The petitioner has already been authorized by the competent probate

authority to act as an executor by virtue of the probate letter dated 22.8.1995. The petitioner-Bank is required to utilize the money in India placed at its disposal from the account of the deceased testator in London. Part of the money is required to be spent and applied in India through the Friends of Ludhiana, an organization having a proper registered society number etc. as mentioned in paragraph 7 of the will. The petitioner is well within its rights to perform its obligation as an executor under the will by virtue of the probate granted by the District Probate Registry at Bristol. For the purposes of applying that money in India, petitioner may have to seek permission from any competent authorities of Government of India. It may be regulated by the laws in vogue in India. However, that has nothing to do with the grant of probate of the will in India and the authority already conferred upon the petitioner is sufficient to enable the petitioner to execute the desire of the testator under the will on the strength of probate issued by the authorities at Bristol. The Hon''ble Apex Court has held that once probate of a will is issued, it is a judgment in rem. What has been observed by the Hon''ble Apex Court in the case of Smt. Rukmani Devi and Others Vs. Narendra Lal Gupta, with regard to the probate of a will may be noticed here-in-under:

2. ...It is well-settled that the decision of the probate court is a judgment in rem. The High Court rightly held that till the order granting probate remains in force it is conclusive as to the execution and validity of the will till the grant of probate is revoked. Apart from the fact that a decision of the probate court would be a judgment in rem not only binding on the parties to the probate proceedings but it will be binding on the whole world....

8. Answer to Question No. 1: This probate has already been admitted in evidence by this Court by virtue of its order dated 17.2.2005. in view of the provisions of Sections 82 and 86 of the Indian Evidence Act. In view of the clear finding in the order dated 17.2.2005 and the authentication of the probate order by the District Registrar Probate at Bristol, the probate already granted in favour of the petitioner is valid for the purposes of the execution to be carried out by the petitioner-executor under the Will. Thus, I am of the view that by virtue of the probate granted by High Court of Justice, the District Probate Registry at Bristol, petitioner has every right to discharge its obligations under the Will even in India, subject to leave/permission by the competent authority in Government of India and no separate probate is required for the purposes.

Answer to Question No. 2: From the provisions of the Indian Succession Act, it appears that there is no statutory prohibition for this Court to grant or issue probate of the will which has already been probated in any country outside India. In such an eventuality, the court is required to adhere to the provisions of Section 276 of the Indian Succession Act, 1925 and/or any other relevant provisions of the Act.

9. In view of my finding that the probate already secured by the petitioner is valid for the purposes of the execution of the last desire of the testator in India,

it is unnecessary to grant another probate under the provisions of the Indian Succession Act. This petition is accordingly disposed of.