

(2013) 01 MP CK 0157
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1314 of 2012

Neena V. Patel (Dr.)

APPELLANT

Vs

Smt. Jyotsna Ben P. Patel and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 3
Constitution of India, 1950 — Article 227
Succession Act, 1925 — Section 237, 238, 239, 276, 283

Citation : (2013) ILR (MP) 357

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : V.S. Shrotri and Priyankush Jain, for the Appellant; Akshat Agrawal for the Respondent No. 1 and Rajas Pohankar for the Respondents No. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—Order dated 10.1.2012 passed by VI Additional District Judge, Jabalpur in Probate Case No. 7/2005 is being assailed vide this petition under Article 227 of the Constitution of India. Vide impugned order the Trial Court while entertaining an interlocutory application filed by respondent No. 1/applicant directed for impleadment of Public in General as respondent in the Probate case. The probate case, at the instance of respondent No. 1/applicant, wife of late P.B. Patel, is for grant of probate based on Will dated 23.12.1991 of late P.B. Patel. The petitioner and respondent Nos. 2 to 5 are daughters and son of late P.B. Patel who are non-applicants in the probate case.

2. That, an application. I.A. 25 was filed by respondent No. 1/applicant; whereby she sought impleadment of Public in General as party respondent/non-applicant No. 6. It was contended vide paragraph 6 of the application that although there is no provision in Indian Succession Act, 1925 to implead Public in General as party to the probate application, but as a matter of procedure to avoid any

dispute in future by public against the estate of late Parmanand Bhai Patel, which is subject matter of Will, it is necessary to implead Public in General as party respondent/non applicant No. 6.

3. The application was opposed by present petitioner/non-applicant No. 1.

4. The Trial Court by impugned order allowed the application and directed for impleadment of Public in General as non applicant No. 6. Aggrieved, the petitioner/non-applicant No. 1 has assailed the said order vide this petition.

5. It is contended that the Trial Court ignoring the provisions contained under Sections 283 and 284 of Indian Succession Act, 1925 as also the principles culled out from Order 1 Rule 3 and order 1 Rule 10 Code of Civil Procedure, 1908 in respect of impleadment of necessary and/or proper party has erred in directing for impleadment of public in general as non-applicant No. 6. It is urged that the trial court exceeded its jurisdiction vested in it in directing the impleadment of Public in General. Reliance is placed on the decision in Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others, and Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others,] to bring home the submission that unless necessary or a proper party, public at large cannot be impleaded as non-applicant in a probate proceeding.

6. Learned counsel appearing for respondent No. 1 on his turn supports the impugned order. It is urged that with the impleadment of public in general, notices have already been issued by publication and the evidences have already been led as such the challenge to an order directing impleadment of public in general has lost its tenacity. It is further contended that no prejudice would be caused even if the impugned order is allowed to remain.

7. Learned counsel appearing for respondent Nos. 2 to 5 adopts the submission put-forth on behalf of respondent No. 1/applicant.

8. Considered the rival submissions.

9. The issue which crops up for consideration is as to whether it was within the jurisdiction of the Trial Court to have directed for impleadment of public in general by entertaining an application for its impleadment.

10. Section 276 of the Act of 1925 makes a provision regarding petition for probate. It stipulates that an application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before Court in which the application is made, with the will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating there in the time of the testator's death, that writing annexed is his last will and testament, that it was duly executed, amount of assets which are likely to come to the petitioner's hands, and when the application is for probate, that the petitioner is the executor named in will. Sub-section (2) of Section 276 further obligates that, the petition shall further state

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situ within the jurisdiction of the Judge; and when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

11. Sub-section (3) of Section 276 provides for that where the application is to the District Judge and any portion of the assets likely to come to petitioner's hands is situate in another State, the petition shall further state amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

12. Section 283 of the Act of 1925 provides for the powers of District Judge. It stipulates:

283. Powers of District Judge. (1) In all cases the District Judge or District Delegate may, if he thinks proper,

- (a) examine the petitioner in person, upon oath;
- (b) require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be;
- (c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

13. Apparent it is from clause (c) of sub-section (1) of Section 283 that it is within the power of District Judge or District Delegate to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

14. Sub-Section (2) of Section 283 provides that the citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

15. Apparent it is from above provision that, the citation is issued to enable a person interested in the estate of the deceased to have a say which could be after taking note of citation and by invoking provisions of Section 284 of Act of 1925. Public at large cannot be said to be a person interested in the estate of the deceased.

16. In Krishna Kumar Birla (supra) in the context of conferment of discretion upon a Court vide clause (c) of sub-section (1) of Section 283, it has been observed:

85. Section 283 of the 1925 Act confers a discretion upon the court to invite some persons to watch the proceedings. Who are they? They must have an interest in the estate of the deceased. Those who pray for joining the proceeding cannot do so despite saying that they had no interest in the estate of the deceased. They must be persons who have an interest in the estate left by the deceased. An interest may be a wide one but such an interest must not be one which would not (sic) have the effect of destroying the estate of the testator itself. Filing of a suit is contemplated inter alia in a case where a question relating to the succession of an estate arises.

Section 284 of the Act of 1925 stipulates:

284. Caveats against grant of probate or administration.

(1) Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate.

(2) Immediately on any caveat being lodged with any District Delegate, he shall send copy thereof to the District Judge.

(3) Immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had a fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

(4) Form of caveat. The caveat shall be made as nearly as circumstances admit in the form set forth in Schedule V.

While dwelling upon the aspect of caveatable interest it has been held in Krishna Kumar Birla (supra):

85. We may, by way of example notice that a testator might have entered into an agreement of sale entitling the vendee to file a suit for specific performance of contract. On the basis thereof, however, a caveatable interest is not created, as such an agreement would be binding both on the executor, if the probate is granted, and on the heirs and legal representatives of the deceased, if the same is refused.

86. The propositions of law which in our considered view may be applied in a

case of this nature are:

- (i) To sustain a caveat, a caveatable interest must be shown;
- (ii) The test required to be applied is: does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right.
- (iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein.

17. Thus, on a citation being issued u/s 283(1)(c), a person having a caveatable interest in the estate of the deceased gets an opportunity u/s 284 to lodge the caveat in the proceedings.

18. When overall scheme of Sections 283 and 284 of the 1925 Act is taken into consideration, it is clear that unless there is an interest in the estate of the deceased a person cannot be made party in probate proceedings. In other words public at large being not a person interested in the estate of the deceased could not have been directed to be impleaded as non-applicant No. 6. At most the trial court could have exercised the discretion vested in it u/s 283(1)(c) of Act of 1925. However, directing for impleadment of public at large in a probate case being beyond the jurisdiction of the probate judge, the impugned order cannot be given the stamp of approval. The impugned order dated 10.1.2012 is accordingly set aside. In the result petition is allowed to the extent above.

C.C. as per rules.