
(2013) 10 BOM CK 0039

In the Bombay High Court

Case No : Notice of Motion No. 49 of 2013 in Suit No. 74 of 2011 in Petition No. 970 of 2009

Panna Surendra Mehta

APPELLANT

Vs

Jaisukh Krishnalal Shah and Another

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2014) 3 ALLMR 341 : (2014) 3 MhLj 724

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

Bench : Single Bench

Advocate : T.G. Vora instructed by Mr. D.R. Mishra, for the Appellant; Y.K. Sharma A/w Mr. Kiran Mohite, Ms. Ishita Bhagat instructed by Mr. Kiran Mohite for Caveators, for the Respondent

Judgement

R.D. Dhanuka, J.—By this Notice of motion filed by the Petitioner/Plaintiff, the Petitioner seek a declaration that the Caveat dated 16.1.2013 filed by Jitendra Krishnalal Shah and Jaisukh Krishnalal Shah are not maintainable and seeks dismissal thereof. Some of the relevant facts for the purpose of deciding the Notice of Motion are summarised as under:

2. To appreciate the issues involved in this Notice of motion, it would be appropriate to reproduce the Geneology and relationship of the present Caveators with the deceased Jaswantlal Jolia. Those are reproduced as under:

3. A perusal of the above Geneology shows that Jaswantlal Jolia who is alleged to have executed a will dated 10.8.2002 expired on 26.1.2004. Wife of the deceased Veenaben predeceased the said deceased. The said deceased left three daughters namely Mrs. Ramaben K. Shah, who pre-deceased the said deceased, Mrs. Indiraben V. Bankley also pre-deceased the said deceased and Mrs. Trilochanaben Thakorlal Fozdar the only then surviving sister died on 11.11.2010. Mrs. Trilochanaben left behind her six legal heirs. Mrs. Ramaben K. Shah daughter of the said deceased who pre-deceased the said deceased left behind four legal heirs namely Jaisukh, Jitendra, Kishore and Mrs. Panna.

4. It is the case of the Caveators that the said Mrs. Trilochanaben Fozdar had left a Will dated 11.2.2008 and she gave her entitlement in the estate of Jaswantlal Jolia the said deceased at 50% to her legal heirs and balance 50 % to the legal heirs of Mrs. Ramaben Shah. On 3.3.2000 Mrs. Veenaben Jaswantlal Jolia expired. On 26.1.2004 Jaisukh expired. One Ashit Surendra Mehta was alleged to have been appointed as an Executor by the said deceased in his Will dated 10.8.2002. The said Ashit Surendra Mehta filed a Probate Petition bearing 243 of 2004 in this Court. In the said Probate Petition, Mrs. Trilochanaben the only surviving sister of the deceased filed a Caveat. On filing the said Caveat by Mrs. Trilochanaben, the said Probate Petition was converted into a Suit. On 18.5.2009 the said Ashit Surendra Mehta who was the Executor to the said will of the said deceased expired. On death of the said Executor, the Probate Petition filed by him stood abated.

5. On 30.9.2009 Mrs. Panna Surendra Mehta who claims to be one of the beneficiary under the said Will dated 10.8.2002 filed a Petition for letters of administration with the Will annexed to the Petition (Petition No. 970 of 2009) in this Court. The said Petition for letters of administration was converted into a Suit (74 of 2011). On 11.10.2010 Mrs. Trilochanaben Fozdar expired. In view of the demise of Mrs. Trilochanaben Fozdar, the Citation was served upon the legal heirs of Mrs. Trilochanaben. All the legal heirs of Mrs. Trilochanaben filed Caveats in the said Suit. On 11.2.2008 Mrs. Trilochanaben is alleged to have executed a Will by which 50 % of the property which she would have inherited from the estate of Jaswantlal Jolia in case of intestacy stood bequeathed in favour of her pre-deceased sister Mrs. Ramaben K. Shah i.e. Jitendra Shah, Jaisukh Shah, Kishore Shah and Panna Shah and remaining 50% stood bequeathed to her own children Chandresh Fozdar, Mrs. Devyani Bhagat, Mrs. Poornima Shah and Famini Parekh.

6. On 16.1.2013 Jitendra K. Shah who is alleged to be one of the executor of the Will of Mrs. Trilochanaben and also the beneficiary has filed a Probate Petition in this Court (374 of 2013). Jaisukh Krishnalal Shah and Jitendra Krishnalal Shah have filed Caveats in this Court in these proceedings on 16.1.2013 respectively.

7. Mr. Vora learned Counsel appearing for the Petitioner submits that the Caveators are claiming rights in the property of Mrs. Trilokchanaben to the extent of 50% by virtue of the alleged Will of Mrs. Trilochanaben dated 26.2.2008. Probate Petition for obtaining Probate of the alleged Will of Mrs. Trilokchanaben is pending in this Court. It is submitted that the Caveators are neither legal heirs nor next of kin of either late Jaswantlal Jolia or of Mrs. Trilokchanaben in accordance with the provisions of Hindu Succession Act which are applicable to the parties. It is submitted that in case of intestacy, these Caveators cannot inherit any property in accordance with the provisions of the Indian Succession Act, 1925. It is submitted that even if the Petitions filed by Mrs. Panna Surendra Mehta is dismissed, these Caveators who are not the legal heirs of Mrs. Trilokchanaben would not inherit anything in the Probate Petition filed by these

Caveators if granted.

8. It is submitted that the claim of the Caveators is based on the premise that the Petition filed by Mrs. Panna Surendra Mehta would be rejected and on such rejection, Mrs. Trilochanaben would inherit the property of the deceased and in that situation, on the basis of the Will of said Mrs. Trilochanaben these Caveators as well as other beneficiaries of the said Will would inherit the property of late Mrs. Trilochanaben. It is submitted that only the legal heirs of Mrs. Trilochanaben would have caveatable interest and not these Caveators who do not fall in Class I as required for being the heirs of Mrs. Trilochanaben or Jaswantlal Jolia. It is submitted that the property of the said deceased would be inherited by Mrs. Trilochanaben only if the Petition of Mrs. Panna Surendra Mehta is dismissed and is contingent upon dismissal of the Petitions filed by Mrs. Panna Surendra Mehta. It is further submitted that as of today, these Caveators have no caveatable interest and are not entitled to maintain such a caveat.

9. Mr. Vora learned Counsel placed reliance on the Judgment of this Court in the case of Ashitkumar Surendra Mehta Vs. Trilochanaben Thakorlal Fojdar and Others, . The present Caveators have filed a Caveat in the same proceedings claiming to be the legal heirs of Mrs. Panna Surendra Mehta who pre-deceased the deceased. Notice of motion was filed by the Petitioner herein for dismissal of the said Caveat.

10. By an order and Judgment dated 3.3.2008 this Court held that succession open on the date of death. Jaswantlal Jolia died on 25.1.2004. Thus succession opened on 25.1.2004. Situation prevailing a day before the date of death is required to be taken into account to consider the issue of succession. On 25.1.2004 Mrs. Ramaben K. Shah (sister) to whom these Caveators claim rights at that point of time was not alive as she pre-deceased the deceased. While allowing the Notice of motion and dismissing the Caveat filed by these Caveators this Court considered that Mrs. Trilochanaben and Kanayalal Dalal were the surviving heirs being sister and brother as per Class II, Entry I, Item (3) and (4) of the Schedule of the Act and since the present Caveators were the children of Mrs. Ramaben K. Shah, they would fall under Item No. 3 and (4) of Class II. This Court also considered section 9 of Indian Succession Act, 1925 and held that the Caveators were not next of kith and kin of the deceased and were not entitled to inherit the property of the deceased and thus had no caveatable interest to maintain the said Caveat filed by them. This Court thus rejected those two Caveats filed by the present Caveators.

11. It is not in dispute that these Caveators do not fall under Class I heir of the said deceased Jaswantlal Jolia. It is also not in dispute that the present Caveators do not fall in Class I heir of Mrs. Trilochanaben.

12. Mr. Sharma, learned Counsel appearing on behalf of the Caveators submits that admittedly Mrs. Trilochanaben was the sole surviving sister of the said deceased at the time of his death. It is submitted that since Mrs. Trilochanaben

had executed a Will appointing the Caveators as Executors and have bequeathed her right, title and interest in the property that would be inherited by her from the estate of the said deceased Jaswantlal Jolia, these Caveators have caveatable interest. It is submitted that the probate Petition in respect of the Will of Mrs. Trilochanaben has been already filed by the Caveators and is pending in this Court. It is submitted that if the Petition filed by Mrs. Panna Surendra Mehta is dismissed, Mrs. Trilochanaben would inherit the property of the said deceased and accordingly on the basis of the Will left behind by Mrs. Trilochanaben, the Caveators would inherit the property and thus have caveatable interest.

13. In my view, the Caveators have no caveatable interest to maintain this Caveat in so far as the Petition for letters of administration in respect of the Will of Jaswantlal Jolia is concerned. Rights of the Caveators is contingent upon the situation that the Petition for letters of administration in respect of the Will of Jaswantlal Jolia is dismissed and the property of the said deceased would stand inherited in Mrs. Trilochanaben who is alleged to have bequeathed her property share in the property of Mr. Jaswantlal Jolia which she would have inherited from Jaswantlal Jolia would go to the Caveators. In my view, Mr. Vora learned Counsel appearing on behalf of the Petitioner is right in his submission that these Caveators are neither the legal heirs nor next of kith and kin of Jaswantlal Jolia of the said deceased or Mrs. Trilochanaben and thus, are not entitled to maintain this Caveat. I therefore, pass the following order:

ORDER

Notice of motion is made absolute. Caveats dated 16.1.2013 filed by the Caveator Jaswantlal Natwarlal Jolia and Jaisukh Krishnalal Shah are dismissed. No order as to costs.