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**(1965) 05 P&H CK 0025**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : F.A.F.O. No. 65 of 1964**

Pritam Dass

APPELLANT

Vs

Nand Ram

RESPONDENT

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**Date of Decision :** 05-05-1965

**Acts Referred:**

Succession Act, 1925 — Section 263, 283(1)

**Citation :** AIR 1966 P&H 88

**Hon'ble Judges :** Shamsheer Bahadur, J

**Bench :** Single Bench

**Advocate :** Dalip Chand Gupta and M.R. Agnihotri, for the Appellant; K.S. Thapar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Shamsheer Bahadur, J.—The simple question for determination in this appeal is whether the letters of administration in respect of a will which was found to be fictitious in contested litigation between the concerned parties should be annulled, obtained, as they were, without notice to the other party?

2. The origin of the protracted litigation of which the present appeal is an aspect is the death on 24th of February, 1935, of Mahant Jai Parkash of Udasi sect owning extensive properties of two Udasi Deras, one at village Manki in Samrala tehsil of Ludhiana district and the other in village Hamirgarh in Tehsil Sunam of Sangrur district. There were two rival claimants to the gaddi of the Mahant and both of them are parties in this appeal. Pritam Dass appellant in this appeal (hereinafter called the appellant) set up his title by virtue of a will said to have been executed by the deceased Mahant 13 days before his death, that is to say on 11th of February, 1965. Anant Ram respondent (hereinafter called the respondent) on the other hand, claimed to have been appointed a successor to the gaddi by Mahant Jai Parkash himself and asserted his title as a result of installation to this office by the beikh itself on the 17th day after the death of Mahant Jai Parkash. The first round of battle between the two claimants was

fought before the revenue authorities and culminated in a mutation in favour of the appellant whose appeal was allowed on 15th of March, 1937. The respondent, though he allowed this position to remain for, many years, started the second phase of the contest by filing a suit on 19th of August, 1946, and asserted that he had been appointed a Chela by Mahant Jai Parkash 25 years before and the beikh of the Udasis and also the village Panchayat of Manki had invested him with a turban of office on the 17th day ceremony of the deceased. On his behalf it was pleaded that the appellant was not even a chela of the deceased Mahant and the mutation in his favour had been sanctioned on the strength of a spurious will which was never executed by the deceased Mahant in a sound disposing mind and was a fabricated document.

For two years the case was fought on the preliminary question of court-fee and issues on merits were framed on 13th of August, 1948. Before the first court, the appellant again won the case and the suit was dismissed, but it may be observed that the finding of the Court was, that the deceased Mahant did not make any valid will in his favour. The suit failed mainly on the ground that the respondent had failed, to make good his case of appointment as a Chela of Mahant Jai Parkash and also because the appointment as a Mahant by the Dera had not been established. The suit which was dismissed on 20th of July, 1949, was, however, decreed in appeal by a Division Bench of the High Court consisting of Chopra and Gosain JJ. in R. F. A. No. 197 of 1949 decided on 19th of September, 1957. According to the judgment, of the High Court, the respondent succeeded not only because he had been able to prove his appointment as a Chela of Mahant Jai Parkash, as also his installation to the gaddi on the 17th day after the death by the beikh and the panchayat which had assembled for this purpose, but also because the will which was the basis of the appellant's claim was supported by documents of doubtful authenticity, and neither its: execution was proved nor was it made out that the testator had a disposing mind. The pith and substance of this finding is given in the penultimate paragraph of the judgment delivered by the Bench thus:--

"It appears that Pritam Dass defendant; No. 1 who was with him at that moment, took undue advantage of the position and fabricated documents Exhibits D. 9 and D. 6. . .The alleged will does not appear to be natural and we have grave doubts that this will was ever executed by the deceased Mahant. In any case the will has not been proved to have been executed in accordance with the provisions of the Indian Succession Act and it has further not been proved in the manner laid down in the Indian Evidence Act. We have therefore no hesitation in finding that the alleged will in favour of the defendant is not proved."

The appellant has not allowed the matter to rest there and his appeal before the Supreme Court is stated by the counsel to be still pending.

3. A second front was opened by the appellant who made an application for grant of letters of administration of the will executed by Mahant Jai Parkash on 11th of February, 1935. In the citations the respondent in this appeal was not made a

party and it would be obvious that if any one was interested in contesting the genuineness of the will it was the respondent who had actually won his title and status to the property in litigation which had been bitterly contested. The letters of administration with a copy of the will attached were granted in favour of the appellant by the Court of the District Judge, Ludhiana on 4th of January, 1961, in respect of property situate in village Manki. For reasons best known to the appellant, the letters of administration had not been applied for in respect of the other properties in Sangrur district but it is stated at the bar that this has been now done and the appropriate Court in Sangrur has also been moved for grant of similar letters in respect of the Dera situate within the jurisdiction of that Court. The respondent having come to know of the grant of letters of administration then moved the Court of the District Judge, Ludhiana, by an application made on 16th of December, 1962, for their annulment and revocation, u/s 263 of the Indian Succession Act which is to this effect:--

"The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation:-- Just cause shall be deemed to exist where--

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by snaking a false suggestion, or by concealing "from the Court something material to the case; or
- (c) x x x x (d) x x x x (e) x x x x

Illustrations.

(i) x x x x (ii) The grant was made without citing parties who ought to have been cited.

"(iii) x x x x (iv) x x x already exist (v) x x x already exist (vi) x x x already exist (vii) x x x already exist (viii) x x x x x."

The learned District Judge being of the view that the appellant's failure to implead the respondent in his application for the grant of probate and letters of administration amounted to a "just cause" under the explanation has revoked and annulled the grant. It is this order of the District Judge passed on 31st of December, 1963 which is the subject-matter of the appeal now before this Court.

4. A bare narration of events is sufficient to show that the respondent had won his suit in what has been called a "fair contest" by the District Judge and it became imperative for the appellant in such a situation to implead the contestant in the application. Illustration (ii) to the Explanation of "just cause" makes it clear that if the grant is made without citing parties who ought to have been cited it will amount to a cause which is just to revoke or annul the letters of administration. The appellant before the District Judge and also here has tried to evade this conclusion by an argument which I feel bound to reject as artificial and unconvincing. It is contended that the respondent knew of the proceedings

which had been initiated by the appellant for the grant of letters of administration inasmuch as he was aware of the Collector's enquiry with regard to the valuation of property for which the letters of administration had been obtained. It is sought to be deduced that the respondent, therefore, had knowledge of the probate proceedings. On the other hand, it was the case of the respondent that he first came to know of these proceedings when the appellant made a statement in the Supreme Court that he had moved for the grant of letters of administration. Having come to know of this, the respondent moved forthwith for the revocation of these letters.

The evidence adduced to fix the respondent with knowledge of probate proceedings is vague, unreliable and tenuous, and there is nothing to justify the conclusion which the learned counsel for the appellant before me urges that I should draw from the respondent's attitude of unconcern and indifference in the probate proceedings. When the parties had fought litigation to the bitter end for a period extending over quarter of a century it is hardly to be believed that any step taken by one would be regarded with a feeling of indifference by the other. It cannot be inferred that the respondent underestimated the financial position of the appellant to pursue his remedies further. As held by a Division Bench of Mukerji and Bartley, JJ. in *Banga Chandra De and Others Vs. Sm. Menaka Sundari De*, , the failure to mention the existence of the relatives and to have them represented and cited is defect sufficient to revoke the probate and grant of letters of administration. The appellant had obtained an adverse finding about the will which he had propounded in a probate Court. There is no escape from the conclusion that the omission of the respondent from the array of parties as the person who was really responsible for the adverse finding with regard to the testamentary disposition in previous litigation was deliberate and intentional and virtually amounted to concealment of a material particular. The appellant cannot take advantage of the exception to the rule laid down by a Division Bench of the Patna High Court in *Kanhai Raut v. Jogendra Rout* AIR 1922 Pat 406, that "a person is bound by the proceedings for obtaining letters of administration to which he is no party but of which he has received knowledge and whereto he has had a capacity to make himself a party". Reference may be made to a decision of their Lordships of the Supreme Court in *Anil Behari Ghosh Vs. Smt. Latika Bala Dassi and Others*, , wherein it was held that the omission to issue citations to persons who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant, though this proposition was hedged with the qualification that this is not an absolute right irrespective of other considerations arising from the proved facts of a case. In the context of the circumstances, there is no doubt that if any person had to be cited a party to the probate proceedings it was the respondent.

5. It is also contended by Mr. Dalip Chand Gupta, the learned counsel for the appellant, that letters of administration may be granted even where a necessary party is not cited and reliance is placed on a judgment of Harries, C. J. and Banerjee, J. in *Latikabala Dasi Vs. Anil Behari Ghose*, , wherein it was held that if

the Court on the evidence before it comes to the conclusion that the will was duly executed and has not been revoked, the Court will not revoke the letters of administration even if a necessary party has not been cited. It is merely to be mentioned that in the present case a Division Bench of the High Court had reached the conclusion that the will was based on fabricated documents and was not to be relied upon. In face of this finding, it is hardly arguable that the grant of letters of administration should still be maintained.

6. In my opinion, the learned District Judge has reached a right conclusion in revoking the grant of letters of administration and I would accordingly dismiss this appeal with costs.