

(2012) 12 DEL CK 0017

In the Delhi High Court

Case No : CO. A. (SB) 25, 27, 49, 50, 75 and 76 of 2011

Rajkumar Devraj and Another

APPELLANT

Vs

Jai Mahal Hotels Pvt. Ltd. and Others etc. etc.

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Companies Act, 1956 — Section 111, 381
Constitution of India, 1950 — Article 16, 18
Hindu Marriage Act, 1955 — Section 14
Succession Act, 1925 — Section 370, 381
Suits Valuation Act, 1887 — Section 11

Citation : (2013) 113 CLA 387 : (2013) 200 DLT 527 : (2013) 135 DRJ 213 :
(2013) 118 SCL 128

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Vibhu Bhakru with Mr. Abhishek K. Rao, Ms. Anjali Varma and Ms. Meera Mathur, in CO. A. SB 25, 49 and 50/2011 and Mr. Neeraj Kishan Kaul and Mr. Vikas Singh with Mr. D.D. Singh, Ms. Nand Devi Deka and Mr. Sanket, No. 2. in CO. A. SB 27, 75 and 76/2011, for the Appellant; U.K. Chaudhary, with Mr. Sanjay Sen and Ms. Srishti Jain Singh, in CO. A. (SB) 25, 49 and 50/2011 and Mr. Neeraj Kishan Kaul and Mr. Vikas Singh with Mr. D.D. Singh, Ms. Nand Devi Deka and Mr. Sanket for R-2, Mr. Shyam Munjrani, Advocate for R-4 in CO. A. (SB) 25/2011 and Mr. Vibhu Bhakru, with Mr. Abhishek K. Rao, Ms. Anjali Varma and Ms. Meera Mathur, in CO. A. (SB) 27, 75 and 76/2011, for the Respondent

Judgement

Indermeet Kaur, J.—These appeals are directed against the impugned order dated 16.03.2011 passed by the Company Law Board (CLB) whereby the petition filed by the petitioners Devraj and Lalitya Kumari group u/s 111 of the Companies Act seeking a rectification in the share register of Jai Mahal Hotels Pvt. Ltd., Rambagh Place Hotels Pvt. Ltd., SMS Investment Corporation Pvt. Ltd. and Sawai Madhopur Lodge Pvt. Ltd. (hereinafter referred to as the "companies") was dismissed. Vehement submissions have been addressed by both the parties.

2. On behalf of the petitioner, it is pointed out that the succession certificate issued by a competent Court of jurisdiction on 19.02.2009 was a conclusive piece of evidence on the basis of which the petitioner group had sought a rectification in the share register of the company; after the death of Jagat Singh, Maharani Gayatri Devi had on 19.02.2009 withdrawn her probate petition; it had been agreed that the shareholding of Jagat Singh would be divided equally between the three legal heirs namely Maharani Gayatri Devi, Dev Raj and Lalitya Kumari; succession certificates to the said effect had been issued; there were joint succession certificates in favour of Dev Raj, Lalitya Kumari and Maharani Gayatri Devi. The succession certificates dated 08.05.2009 are documents which are a prima-facie proof of title of the petitioners to the shareholding of Jagat Singh. The company refusing to enter the names of the petitioner group inspite of notice had compelled to the petitioner to file a petition u/s 111 of the Companies Act before the CLB. The CLB has not appreciated the controversy in the correct perspective; the said order is liable to be set aside. Further submission being that after the death of Maharani Gayatri Devi by virtue of her Will (dated 10.05.2009) her legal estate including her 1/3rd shareholding in the respondent company has also been bequeathed equally to Dev Raj and Lalitya Kumari. The respondent group has no locus to challenge the Will of Maharani Gayatri Devi and the CLB having returned a finding that because of the pendency of the aforementioned objections to Maharani Gayatri Devi's Will, the shareholding could not be transferred by the company in favour of the petitioner group suffers from another infallibility and on this second count also the order of the CLB is liable to be set aside.

3. On behalf of the respondent company, arguments have been addressed by learned senior counsel Mr. U.K. Chaudhary. Attention has been drawn to the prayers made in Co. A.(SB) No. 25/2011 as also in Co. A. (SB) No. 27/2011; submission being that these prayers cannot even otherwise be allowed; there is dispute about the title of the shareholding and admittedly there being inter-se litigations pending between the parties, the CLB in its impugned order has rightly concluded that complicated question of fact cannot be gone into in a petition u/s 111 of the Companies Act; in this background, the impugned order calls for no interference. Reliance has been placed upon M/S. Ammonia Supplies Corporation (P) Ltd. Vs. M/S. Modern Plastic Containers Pvt. Ltd. and Others, ; submission being that the connotation of the word "rectification" has been adjudicated upon by the Supreme Court wherein it has been noted that a rectification is the failure on the part of the company to comply with the directions under the Act; it is reference to an error which has been committed and something which ought not to have been done was done which requires a correction; submission being that in this case because of the raging controversy pending in the various inter-se litigations between the parties, the CLB had rightly concluded that the rectification application of neither party can be allowed; the companies in these circumstances could not have rectified the share register. Further submission of the learned senior counsel being that the letter which had been sent by the

petitioner group seeking a rectification of the share register was not accompanied with the requisite documents and this was replied by the company in its communication dated 22.07.2009; the petitioner group still chose not to file requisite documents which included the succession certificates. There is no fault on the part of the company.

4. Corroborative arguments have also been addressed on behalf of respondent No. 3/Prithvi Raj. Attention has been drawn to the order of the High Court dated 20.08.2008 passed in W.P. (C) No. 7524/2008; submission being that the order passed by the trial Court on 19.02.2009 inspite of having knowledge of the stay order passed by a higher Court operating against it is a nullity; it is non-est; such a defect cannot be cured. Reliance has been placed upon Kiran Singh and Others Vs. Chaman Paswan and Others, to support a submission that such a defect in no scenario can be cured; this fact was rightly noted by the CLB while returning a finding that in these circumstances, the rectification of the members register could not be permitted in favour of the petitioner.

5. Vehement submissions have also been addressed on behalf of respondent no. 2 Urvashi Devi. It has been pointed out that the order of the CLB holding that complicated questions of fact cannot be gone into in a petition u/s 111 of the Companies Act suffers from no infirmity; there are various litigations pending interse between the parties and it was keeping in view this gamut of the litigations that the CLB had returned the aforementioned finding. Suit No. CS (OS) 496/2010 has been filed by Urvashi Devi for cancellation of the succession certificate dated 08.05.2009; CS (OS) 870/1986 has been filed by Jagat Singh seeking a partition of the properties of the family wherein the defence of the respondent group is that Jagat Singh has already been given in adoption to Maharaj Bahadur Ji on 02.12.1957. Even presuming that he had bequeathed his property to his mother Gayatri Devi in terms of Will dated 23.6.1996; Gayatri Devi could not have passed on these properties to Dev Raj and Lalitya Kumari who were no longer in the line of inheritance as Jagat Singh had gone outside the family in terms of his adoption on 02.12.1957. Probate petition qua the will of Maharani Gayatri Devi is also pending; the objector/respondent having raised an objection that the said will as forged and fabricated; submission being reiterated that complicated questions of fact relating to the properties of Jagat Singh and Gayatri Devi are yet alive. Further submission being that the Will of Jagat Singh (dated 23.6.1996) had surfaced for the first time in 2006; this Will had dis-inherited his two children Dev Raj and Lalitya Kumari; the intent of the testator had to be honoured; by an indirect mode Maharani Gayatri Devi entering into a settlement thereby bequeathing the properties of Jagat Singh in favour of Dev Raj and Lalitya had gone against the intent of the testator which is not permissible. Reliance has been placed upon Raghbir Singh and Others Vs. Budh Singh etc., ; submission being that the intention of the testator has to be given effect to, which has to be gathered from the context of the reading of the whole Will which in this case clearly intended to disinherit Dev Raj and Lalitya Kumari. In fact the intent of a Will is to interfere with the normal line of inheritance where

the testator was desirous of it. For this proposition, Mathew Jacob Vs. Ms.Salestine Jacob and another, and Uma Devi Nambiar and Others Vs. T.C. Sidhan (Dead), have been relied upon. Attention has been drawn to the stay order passed by the Bench of the High Court on 20.8.2008 in Writ Petition No. 7524/2008; vehement argument being that when a stay order is operating and the High Court having categorically directed the proceedings in the Succession Case No. 134/1988 to be stayed; the settlement recorded by the Civil Judge on 19.02.2009 between Gayatri Devi, Dev Raj and Lalitya Kumari in the aforementioned succession case is an order which is void and a nullity; it has no value in the eyes of law; it necessarily has to be ignored. Submission being that this argument of the respondent had also been noted by the Writ Court while disposing of the writ petition on 18.01.2011; this issue had been kept alive granting permission to the appellant to take appropriate legal recourse which was further endorsed by the Division Bench of the High Court on 17.02.2011. Reliance has been placed upon Mulraj Vs. Murti Raghonathji Maharaj, to support this submission. Reliance has also been placed upon Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, to support the same submission. Reliance has also been placed upon Motiram Roshanlal Coal Co. (P) Ltd. Vs. District Committee and Others, ; it being reiterated that the legal position is well settled that an order of a superior Court staying further proceedings in the Court below becomes operative the moment it is made which suspends the power of the lower Court to continue in proceeding with such a case; such an order if passed would be illegal and void; there being a total prohibition. Even otherwise the proceedings pending before the Probate Court were qua probate of a Will; it was beyond the jurisdiction of the said Court to have recorded a compromise on the Will. Reliance has been placed upon Bishunath Rai Vs. Sarju Rai and Others, as also another judgment of the Kolkata High Court reported as Sushila Bala Saha Vs. Saraswati Mondal, ; submission being that the provisions of the Succession Act do not admit the incorporation of private terms into the division of estate of the testator. The only order which could have been passed by the said Court was either to allow the petition or to dismiss it. No order in between i.e. an order of compromise could have been recorded; for the said reason also the order dated 19.02.2009 is liable to be set aside; the undisputed position at law being that a judgment pronounced in probate petition is a judgment in rem; it can be challenged by any third person. Reliance has been placed upon Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, as also another judgment of the Apex Court reported as Basanti Devi Vs. Raviprakash Ramprasad Jaiswal, to support this submission. Further submission being that in fact a suit for declaration seeking a declaration of the succession certificate (issued on 18.02.2009) to be declared null and void had been filed by the respondent i.e. Suit No. 32/2010 and this issue is yet sub-judice. Yet another submission being that admittedly two joint succession certificates had been issued on 19.02.2009 and Maharani Gayatri Devi having since expired, the certificate has become inoperative; the validity of the certificate which is now in the names of Devraj and Lalitya Kumari is also questionable. To support this submission reliance has been placed upon Sukumar

Deb Roy and Another Vs. Parbati Bala and Others, ; submission being that a fresh certificate will now have to be obtained. Argument being that in this background the CLB not entertaining the application of Dev Raj and Lalitya Kumari u/s 111 of the Companies Act in no manner suffers from any infirmity.

6. In rejoinder, the learned senior counsel for the petitioner has relied upon State of Punjab and Others Vs. Gurdev Singh, to support his submission that an order of a Court even presuming it is not made in good faith is capable of all legal consequences; it is valid unless it is set aside or quashed; this proposition has been cited to answer the argument of the respondent that although the said order dated 20.08.2009 staying the proceedings in the succession Court had been passed by a higher Court yet this order had admittedly been passed at the behest and at the asking of Maharani Gayatri Devi; she was the sole beneficiary of this order; it was not adversarial to any other person; in these circumstances, the trial Judge having recording the common order of settlement in the succession case and the probate case giving effect to the compromise/arrangement arrived at between Maharani Gayatri Devi and her two grand children Dev Raj and Lalitya Kumari and noting her submission that she is not pressing her probate petition; both the succession case and the probate case having disposed of by a common order, in this factual scenario suffers from no infirmity.

7. At this stage, a specific query has been put to the learned counsel appearing for the respondent group i.e. Prithvi Raj, Urvashi Devi and Jai Singh as to how the counter appeals filed by them lie as they are seeking a rectification of the share register of the companies in their favour when admittedly they have not filed a single document in support of this claim and their whole case is otherwise bordered on a submission that objections qua the Will of Gayatri Devi are yet pending and the respondent group themselves being the objectors in the said probate petition (qua the Will of Gayatri Devi), it does not now lie in their mouth to expound such an argument. There is no answer to this query.

8. Arguments have been heard and appreciated.

9. Record shows that Sawai Man Singh had three wives. Murdhar Kanwar was his first wife from whom he had one son Lt. Col. Sawai Bhawani Singh and a daughter Prem Kumar. Smt. Prem Kumar had one daughter Urvashi Devi who is a respondent in the present case. Second wife of Sawai Man Singh was Kishore Kumari. She had two sons Jai Singh and Prithvi Raj. In this petition they have also joined hands with Urvashi Devi to contest the petition of Devraj and Lalitya Kumari. The third wife of Sawai Man Singh was Gayatri Devi. She had one son Jagat Singh. Present appellants Devraj and Lalitya Kumari are the only two children of Jagat Singh.

10. It is not in dispute that 99% of the shareholding of the company was owned by Jagat Singh; only 1% of the shareholding of the company was in the name of Prithvi Raj. Jagat Singh died on 05.02.1997. He had left a Will dated 23.06.1996.

This document is reproduced herein as under:-

My dear Mummy,

As you are aware, I have not been keeping too well. I telephoned Devraj and Lalitya but as usual they refused to speak to me. I am very disturbed by the childrens' attitude, no doubt influenced by their mother. I know that Priya will try to grab my property through the children.

Therefore, on my demise, I hereby disinherit my children Devraj and Lalitya from getting/claiming any part of my estate. I hereby bequeath all my moveable and immoveable properties and assets to you solely.

My signatures is witnessed by the two signatories below.

11. This was in the form of a letter addressed by Jagat Singh to his mother Gayatri Devi where the concern of the testator was that his estranged wife Priya should not be able to grab his property through his children; in these circumstances, he had expressed his intention to disinherit his children Devraj and Lalitya Kumari from getting any claim over his estate which was accordingly bequeathed solely to his mother Gayatri Devi.

12. Succession case i.e. LA No. 134/1998 was filed by Gayatri Devi seeking letter of administration qua the estate of her deceased son Jagat Singh. In 327/2006 i.e. almost 10 years after the date of demise of her son a probate petition was filed by her before the Court of the Additional District Judge. Thereafter W.P. (C) No. 7524/2008 was filed by Maharani Gayatri Devi in the High Court seeking a consolidation of the aforementioned succession case i.e. LA No. 134/1998 with the probate petition No. 327/2006. Her two grandchildren Devraj and Lalitya Kumari were arrayed as respondents. On 20.08.2008 which was the first date of hearing, the following order was passed by the High Court:-

Heard. Learned counsel for the petitioner.

The learned counsel for the petitioner has moved an application for grant of interim stay order on the ground that this Court was pleased to issue notice to show-cause to respondents on 05th August, 2008, returnable within four weeks; and, thereafter they moved an application in the trial Court to adjourn the hearing or to grant one month time to enable the petitioner to bring stay order from the High Court but the said application has been rejected by the District Judge, Jaipur City, Jaipur vide order dated 08.08.2008. He further submits that the case was fixed today and the same has been adjourned for final arguments to be taken tomorrow and in case the further proceedings of the trial court are not stayed then this writ petition would become infructuous.

After considering the submissions of the leaned counsel for the petitioner, it is directed that further proceedings of Succession Case No. 134/1998, pending in the Court of District Judge, Jaipur City, Jaipur shall remain stayed till further orders.

The application dated 18.08.2008 stands disposed of.

13. On 19.02.2009, statement of Gayatri Devi was recorded before the District Judge, Jaipur that she (Gayatri Devi) does not press her probate petition which was accordingly disposed of.

14. The order dated 19.02.2009 reads as under:-

19.20.2009

On behalf of petitioner Rajmata Gayatri Devi Sh. G.K. Garg on behalf of respondents No. 2 & 3 Sh. D.K. Malhotra, Advocate present.

On behalf of the petitioner Rajmata Gayatri Devi Sh. Vijay Singh Sharma, Advocate file vakalatnama.

On behalf of respondent Devraj one application of compromise and copy of settlement was filed on 07.02.2009. On behalf of petitioner Rajmata Gayatri Devi today a reply to the same has been filed, in which she has submitted for acceptance of the prayer of Sh. Devraj and has admitted the compromise & settlement dated 14.11.2008 arrived between the parties. According to reply keeping in view the compromise/settlement, petitioner does not press the petition for grant of letter of administration which may be disposed.

Sh. G.K. Garg, Advocate, present on behalf of petitioner, seeks permission to withdraw his vakalatnama, which is granted to him.

I have considered the settlement dated 14.11.2008 between the parties and also the application. In the settlement 1st party is Rajmata Gayatri Devi and 2nd party are Maharaj Devraj and Rajkumari Lalitya. It has been settled between the parties that they are ready to divide amongst themselves the estate of late Maharaj Jagat Singh equally in 1/3rd share each and Rajmata Gayatri does not claim any relief/claim/probate of the disputed Will dated 23.06.1996. In view of the settlement between the parties, the petition NO. 327/2006 regarding letter of administration is hereby dismissed consigned to record room.

19.02.2009

On behalf of petitioner Rajmata Gayatri Devi Sh. G.K. Garg on behalf of respondents No. 2 & 3 Sh. D.K. Malhotra, Advocate present. For Sh. Bhawani Singh, Sh. Ramesh Sharma Advocate is present..

On behalf of the petitioner Rajmata Gayatri Devi Sh. Vijay Singh Sharma, Advocate file vakalatnama.

On behalf of petitioner Devraj one application of compromise and copy of settlement was filed on 07.02.2009 and the original settlement has been filed today. On behalf of petitioner Rajmata Gayatri Devi today a reply to the same has been filed, in which she has submitted for acceptance of the prayer of Sh. Devraj and has admitted the compromise & settlement dated 14.11.2008 arrived between the parties. According to reply keeping in view the compromise/

settlement, petitioner does not press the petition for grant of letter of administration which may be disposed.

Sh. G.K. Garg, Advocate, present on behalf of petitioner, seeks permission to withdraw his vakalatnama, which is granted to him.

In this regard petitioner Rajmata Gayatri was examined before Commissioner on dated 26.04.2005, in which has admitted the shares in the properties of late Maharaj Jagat Singh of herself, of her grandson Rajkumar Devraj and of granddaughter Rajkumai Lalitya to the extent of 1/3-1/3 equally.

I have considered the settlement dated 14.11.2008 between the parties and also the application. In the settlement 1st party is Rajmata Gayatri Devi and 2nd party are Maharaj Devraj and Rajkumari Lalitya. It has been settled between the parties that they are ready to divide the estate of late Maharaj Jagat Singh amongst themselves equally in 1/3rd share each and Rajmata Gayatri does not claim any relief/claim/probate of the disputed Will dated 23.06.1996. Keeping in view the settlement arrived between the parties it is ordered that on filing of by all three applicants in accordance to the rule judicial fee to extent of their 1/3-1/3 share in the estate mentioned in the petition succession certificate be issued in their favour to extent of 1/3-1/3 share each....

15. This order was passed in the probate petition and the succession case in terms of the aforementioned settlement recorded between the parties in terms of which 1/3rd of the estate of Jagat Singh would devolve on each of the three parties i.e. Gayatri Devi, Devraj and Lalitya Kumari. The Court recorded the statement of Gayatri Devi to the effect that she does not claim any relief/claim/probate of the disputed Will of Jagat Singh dated 23.06.1996. On the same day i.e. on 19.02.2009 orders were passed both in the succession case as also in the probate petition; both of which were disposed on 19.02.2009. On the same day two succession certificates were issued in the name of the aforementioned three applicants. These certificates dated 08.05.2009 were in the joint names of Maharani Gayatri Devi, Dev Raj and Lalitya Kumari.

16. In terms of this settlement of 19.02.2009, Gayatri Devi on 27.04.2009 had further bequeathed her 1/3rd shareholding in favour of her two grand-children Devraj and Lalitya Kumari and duly signed transfer deeds were executed by her; communication to this effect had been sent by Gayatri Devi to the Board of Directors of the companies. The intention of Gayatri Devi to settle all disputes with her grand children Devraj and Lalitya Kumari is further substantiated by her Will dated 10.05.2009 wherein she had bequeathed all her properties moveable and immoveable in favour of her two grand children Devraj and Lalitya Kumari. This Will is the subject matter of challenge by the respondent group (Jai Singh, Prithvi Raj and Urvashi Devi). Their locus standi to challenge this Will is questionable. Relevant would it be to state that in the application seeking impleadment (in W.P.(C) No. 7524/2008), the claim of the aforementioned respondents was only their prayer to be declared as the legal representatives of

Gayatri Devi; it was never their case that they were the legal heirs of Gayatri Devi; their locus standi to challenge this proceeding would thus be excluded. That apart u/s 14 of the Hindu Succession Act, 1956, a female hindu inherits a full blown estate; it is not a life estate; Gayatri Devi had inherited the estate of Jagat Singh in terms of his Will dated 23.06.1996; she was fully competent to dispose it off in the manner that she chose.

17. Further submission that the settlement arrived at between Maharani Gayatri Devi and her grandchildren on 19.02.2009 was against the intent of the testator as he intended to disinherit his children is a mis-directed submission. The intent of Jagat Singh (original holder of the disputed shares) was clear and unequivocal; this has to be gathered from his desire which he had expressed in his Will dated 23.06.1996 which was in the form of a letter addressed to his mother. Intent of the testator has to be gathered from a wholesome reading of the document and the circumstances of the case. The concern of the testator was that his estranged wife Priya should not grab his property and should not be able to use their children Devraj and Lalitya Kumari as intermediaries to get hold of his property. At the time of execution of this Will, Devraj and Lalitya Kumari were only 17 years and 15 years of age respectively. Both of them were minors were under the influence of their mother which had been noted by the testator. This Will in fact reflects the anguished state of mind of the testator; he was not well and had an urgent need to address the reckonings which were going on in his mind; his desire being that his estranged wife (of more than 20 years) should not be in a position to grab his property through the device of his children. This intent was manifested in an in-direct way; his estranged wife not being permitted to obtain these properties through the medium of their children; it was this which had weighed in the mind of the testator at the time when he recorded his second paragraph in the letter; which had disinherited his children; intent gathered being to debar his wife from his inheritance; his grievance being directed against his wife Priya.

18. On 01.05.2010, a suit (bearing No. 496/2010/32/2010) for declaration was filed by the opposite group i.e. Prithvi Raj and Urvashi Devi challenging the order dated 19.02.2009 (by virtue of which the compromise/settlement had been arrived at between the Gayatri Devi and her two grand-children Devraj and Lalitya Kumari and succession certificates had been issued). This was a suit for partition, declaration and permanent injunction. In the plaint after paragraph 2 up to paragraph 9 pages are missing for reasons best known to the respondent group (who had filed this plaint in their defence). Para 12 avers that Jagat Singh inspite of his adoption continued to have cordial relations with his birth giving mother Gayatri Devi whom he always address as "mammi"; Jagat Singh accordingly willed his properties both moveable and immoveable in favour of Gayatri Devi. Thereafter in the entire body of the plaint, there is no mention of the alleged adoption. In this case for the first time Jai Singh has set up a defence that Jagat Singh was adopted by Maharaj Bahadur Ji on. 02.12.1957 and as such his children (Dev Raj and Lalitya Kumari) are not entitled to inherit his estate as

they are no longer in the line of dependency from Gayatri Devi. Relevant would it be to state that this was a defence set up by Jai Singh alone for the first time in the written statement filed by him in 2011; it was never the case of any person before this period that Jagat Singh had been adopted. This defence, whatever may be its probative value in the suit would have no bearing in this appeal. The interim application under Order XXXIX Rules 1 & 2 of the CPC seeking a staying of the implementation of the order dated 19.02.2009 was pressed. This application was disposed of on 28.07.2011. The Court had refused to grant any interim injunction in favour of the plaintiffs/Prithvi Raj and Urvashi Devi; the Court had noted that pursuant to the Will of Jagat Singh (dated 23.06.1996), Gayatri Devi was the sole beneficiary; the plaintiffs/Prithvi Raj and Urvashi Devi were not the affected parties; they were not parties in the proceedings in the probate petition; they not being the unsuccessful parties, there was no provision available to them for challenging the order of the grant of a succession certificate; prima-facie relief sought against the order dated 19.02.2009 was thus declined. Their locus to challenge a settlement (amongst Maharani Gayatri Devi and her two grandchildren) to which they were even remotely not connected was rightly dis-allowed.

19. The next argument of the respondent is pitched on the order dated 20.08.2008 passed in W.P. (C) NO. 7254/2008. This order was passed at the asking of the petitioner (Gayatri Devi). It was an ex-parte order directing further proceedings in Succession Case No. 134/1998 pending in the Court of District Judge, Jaipur City, Jaipur to remain stayed till further orders. This writ petition was finally disposed of on 18.01.2011. At that time, Gayatri Devi was also no longer alive. The application filed by Jai Singh, Prithvi Raj and Urvashi Devi seeking impleadment and to be treated as the legal representatives of Gayatri Devi had been considered. While disposing of this writ petition, the Court had noted that in this application Jai Singh, Prithvi Raj and Urvashi Devi had not claimed themselves as legal heirs of Gayatri Devi but had only made a prayer to be taken on record as legal representatives. There being a clear distinction between a legal heir and a legal representative; a legal heir is a person who is entitled to the estate of the deceased whereas a legal representative is a representative only for the purpose of representation in legal proceedings.

20. This writ petition had accordingly been disposed of noting that it had become infructuous in view of the fact that two suits i.e. Succession Case No. 134/1998 and Letter of Administration No. 327/2006 which were pending in the trial Court (of which consolidation had been sought in this writ proceeding) already stood disposed of on 19.02.2009.

21. The submission of the learned counsel for the respondent that since an ex-parte order had been passed on 20.08.2008 prohibiting the court below to proceed further in Succession Case No. 134/1998 and as such the order passed on 19.02.2009 in the said proceedings is a nullity and void is a mis-judged submission. It was at the behest of the writ petitioner (Gayatri Devi herself) that

the ex-parte order had been obtained by her in her own favour on 20.08.2008; she was the sole beneficiary of the said order. This ex-parte order was even otherwise not adversarial to any other person except the respondents i.e. Devraj and Lalitya Kumari. It was not as if any other person was affected by this order. The parties to the proceedings in W.P. (C) NO. 7524/2008 were Dev Raj and Lalitya Kumar alone; as also in the proceedings before the succession Court and the probate court where the settlement on 19.02.2009 was recorded. The respondents were not in any manner connected with any of these aforementioned proceedings.

22. In this factual scenario, the submission of the learned counsel for the respondents that the settlement dated 19.02.2009 is non-est and a nullity on this count is too far-fetched. At best it can be an irregularity which will not take away the jurisdiction of the Court which had passed this order. In facts in Mool Raj (Supra) the Supreme Court while dealing with a situation when an appellate Court has passed an order staying execution proceedings/transfer proceedings in the court below, had noted that the jurisdiction of the Court would not be ousted; it would always remain; the prohibitory order of the higher Court would only suspend the proceedings in the court below. The Court had considered the impact of action taken subsequent to the passing of an interim order in its disobedience; such a dis-obedience which was adverse to the applying party based on the principle that those who defy a prohibition ought not to be able to claim the fruits of their defiance; the party cannot be allowed to take an unfair advantage. That apart the judgment of Mool Raj and in fact all other judgments relied upon by the learned counsel for the respondents in this context relate to proceedings where the appellate court had stayed the proceedings and there was one party whose interest was prejudiced by the continuation of the proceedings in the Court below. In Manoharlal the appellant had not come to the court with clean hands and not disclosed to the Court that he had been allotted land in a commercial area by the GDA and the question that was answered was that the act of the statutory authority in contravention of the interim order of the Court could not be sustained. In Motiram, the trial Court had issued summons for a commission when it had knowledge of the stay order passed by the higher Court. The aggrieved party had approached the Court in revision. In all these cases, there was an aggrieved party who had brought this to the notice of the superior Court. In this case, there is no aggrieved party. It is but obvious that in these kinds of litigation one or the other party is prejudiced and it was in this context that the said ratio had been returned that in such an eventuality, a trial Court having knowledge of the stay order passed by the higher court when proceeded to pass an order would qualify as a non-est order. The judgment of Kiran Singh had raised a question on the construction of Section 11 of the Suits Valuation Act; the question posed before the Apex Court being that a decree passed by an Appellate Court which had the jurisdiction to entertain it, only by reason of under valuation could be set aside on the ground that on a true valuation, the Court was not competent to entertain the appeal. Question of prejudice was gone

into; no prejudice having been caused to the appellant, the appeal had been dismissed. Findings returned are inapplicable in the present scenario.

23. The facts are distinct in the present case. As noted supra, the petitioner and the anticipated parties in the writ court had settled the matter in the Court below; there was no involvement of any other person except the persons who had arrived at a settlement on 19.02.2009; all parties were, ad-idem; no party was aggrieved; the respondent group had in fact no locus-standi to challenge the settlement. It did not prejudice any other person. In this scenario, nothing prohibited Gayatri Devi from entering into a settlement with the aforementioned respondents and getting their statements recorded before the Court on 19.02.2009. This ex-parte order did not create a hurdle to the extent that it would become a non-consequential order.

24. Further vehement submission of the respondents in this context being that the compromise/settlement arrived at inter-se between the parties in the pending probate proceedings on 19.02.2009 is void for the reason that in a probate petition, the Will either has to be proved or dis-proved and no other order can be passed on such an application is again a mis-argued submission. In this context, the observations made in AIR 1971 Orissa 103 Sakuntala Dasi Vs. Kusum Kumari Sarkar are useful to answer this controversy in dispute are extracted herein below:-

There is no doubt that the present petitioner who had applied in the court below for probate must be equated with that of a plaintiff in a regular suit. While it is true that in such cases where the applicant is an executor or executrix, a duty is cast on such person to have the will probated, there is no method prescribed under the law to compel such person to take steps for probating the will. The question is once she has made the application, has the position so changed that a compulsion can be attached to make her continue the proceeding? According to the learned District Judge once the proceeding has commenced, on the principle that a duty is cast on the court to determine about the due execution and attestation of the will the proceeding cannot stop and must be continued and the person who has initiated the proceeding cannot withdraw. I hardly find any support for such a proposition. If whether to apply for probate or not was within the option of the petitioner, whether to continue or not the application would be equally within her option. On the principle that the plaintiff is dominus litis in a litigation the matter must be left to his charge, otherwise the court would be assuming a burden which it would in many cases find difficult to discharge. Let us consider for instance a case where an application for probate is made. For reasons best known to the petitioner he does not continue the case. Normally such a case would go by default. But on the principle that the court has the burden to determine the genuineness of the will if the court is required to proceed and the petitioner no more appears and nobody appears to oppose the proceeding by entering caveat, in what helpless position the court would be left?

Let us also visualise another case where the petitioner no more appears though

once he had applied for the probate but certain persons enter caveat and oppose the probate. There may be also a case where the petitioner continues the proceeding ex parte. If without the assistance of any party the court is called upon to continue the determination by itself it would be an arduous job and on many occasions the conclusion is likely to be contrary to what may have appeared to be the truth if the case had been properly contested.

25. There is no dispute to the proposition that such a petition cannot be compromised; it cannot be disposed of by a compromise. There is also no dispute to the proposition that a judgment pronounced in a probate proceeding is a judgment in rem; it is binding on the world at large. However, the next principle is also clear; the plaintiff is the dominus litis in a litigation and the matter has to be left to his charge; he has to decide the fate of his case.

26. In this case, Gayatri Devi had filed the probate petition seeking probate of the Will dated 23.06.1996 of her son Jagat Singh. However, she chose not to press this petition and this is what has been recorded in the order dated 19.02.2009; either such a case would be permitted to go down in default or in terms of the statement made by the petitioner that she is not pressing her petition; she has an option to get a closure of her case which had happened vide order dated 19.02.2009. She did not press her claim qua the Will.

27. It is also a matter of record that the suit filed by Jagat Singh seeking a partition of his properties is pending. This suit was filed in the year 1986 i.e. Suit No. 870/1986. On 16.09.1998, a single Judge of this Court had allowed the application for impleadment of Dev Raj and Lalitya Kumari (as legal heirs of deceased Jagat Singh); there was no opposition to this application. On 15.12.1998, preliminary defendant No. 4 (in the said suit) had moved an application to be transposed of as a plaintiff; submission being that his rights in the suit properties are similar to those of the plaintiff (Dev Raj and Lalitya Kumari). Prithvi Raj had in fact continued to match his interest with Dev Raj and Lalitya Kumari; he had made no claim to the property of Jagat Singh.

28. Section 381 comes to the aid of the appellant. Section 381 of the Indian Succession Act reads as under:-

381. Effect of certificate.- Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

29. Admittedly a joint Succession certificate was issued on 19.02.2009 in favour of Gayatri Devi, Dev Raj and Lalitya Kumari. A succession certificate issued by the competent Court is a conclusive evidence of the fact that the person in whose favour a succession certificate has been issued is the successor of the moveable

estate of the deceased to that extent.

30. In *Ganga Prasad Vs. Mt. Saeedan and Others*, while examining the provisions of the aforementioned section, the Court had inter-alia noted as follows:-

This section, therefore, raises a conclusive presumption against the debtors that the person in whose favour a succession certificate is granted is entitled to receive the debts specified therein. The debtors cannot challenge this fact. The presumption raised by the succession certificate being conclusive and absolute it cannot be displaced even upon the ground of a previous decision to a contrary effect.

31. In another judgment of the Court of the Orissa High Court in *Kinkar Santananda Sanyasi Vs. State Bank of India and Others*, a dispute was raised about the inter-state succession of the deceased testator and the petitioner who was asked to furnish a succession certificate but he could not produce the same. The opposite party produced the said certificate; the Court had noted that the Bank had been left with no other option but to release the amount in favour of the said third party. This was a case where the Charubala Das the testator had allegedly executed a Will in favour of the petitioner; although Charubala had died in 1993 but even up to 2002 no steps had been taken by the petitioner to get the Will probated and nor any attempt had been made to obtain succession certificate. The succession certificate produced by respondent No. 3 had led to the release of the money in his favour.

32. The judgment of *Sukumar Deb Roy and Anr. (supra)* relied upon by the respondent is wholly inapplicable. This was a case where one Mrinalini had died leaving behind two married daughters and four unmarried daughters. Kamala applied for a succession certificate qua the properties left by her mother. A joint succession certificate was issued to three daughters. Thereafter Kamala died leaving behind her husband and two sons who applied to the concerned Court at Faridpur for succession certificate in respect of 1/3rd share of the estate belonging to Mrinalini which had devolved upon their mother Kamala. Objection taken was that a succession certificate already having been issued in respect of the properties left by Mrinalini, no fresh certificate could be granted. The facts of this case are wholly distinct and inapplicable to the present situation.

33. The Articles of Association of the company have also been perused. Articles 16 & 18 clearly stipulate as under:-

16. On the death of a member, the survivor or survivors, where the member was a joint-holder, and his legal representatives where he was a sole holder shall be the only persons recognized by the Company as having any title to his interest in the shares.

18(i) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time be required by the Board and subject to hereinafter provided,

elect, either:

- (a) To be registered himself as holder of the share; or
- (b) To make such transfer of the share as the deceased or insolvent member could have made.

34. The company was bound by its own Articles and could not have taken a plea contrary to what is contained therein. On the death of the original shareholder Jagat Singh, in view of his Will dated 23.06.1996 and the subsequent settlement arrived at between Gayatri Devi and Dev Raj & Lalitya Kumari on 19.02.2009, 1/3rd shareholding of Gayatri Devi vested in each of the aforementioned persons and thereafter after the death of Gayatri Devi on 20.09.2009 pursuant to her Will dated 10.05.2009, the shareholding then devolved upon the petitioner group i.e. Dev Raj and Lalitya Kumari who admittedly had a succession certificate from a competent Court of law recognizing them as holders of the aforementioned shares of the original holder Jagat Singh. In terms of Section 381 of the Companies Act this evidence was conclusive for the transmission of shares of the companies in favour of the petitioner group.

35. All objections raised by the respondents are worth of no merit.

36. Reliance by the learned counsel for the respondent on the judgment of Ammonia Supplies Corporation is misplaced. The Apex Court has held that in matters of rectification, it is the company Court alone which will have jurisdiction; all the issues peripheral to rectification would come within the domain of the company court; it would be the court of exclusive jurisdiction in so far as the rectification is concerned. It is only where fraud or forgery in holding the shares or fraud or forgery qua the title to the said shares is alleged and prima facie established only then the said issue will go beyond the jurisdiction of the Company Judge and would have to be decided by a civil forum. It is the nature of the allegations made in each case which will answer the question as to whether the rectification is permissible by the Company Law Board u/s 111 of the Companies Act or not.

37. Having considered carefully, the facts of the present case and the nature of the allegations made by the respondents, it is clear that the alleged disputes raised by the respondent group in so far as the rectification issue is concerned are all illusory. Admittedly these shares were in the name of Jagat Singh who had bequeathed them to his mother Maharani Gayatri Devi and she in terms of a settlement arrived at between her grandchildren followed by her Will had bequeathed the said share holding thereafter in favour of her grandchildren i.e. the petitioner group. The respondents who were the cousins of Jagat Singh are not even claiming as legal heirs of Jagat Singh but only in their capacity of his legal representatives; these allegations do not in any manner affect the title of the shareholding of Jagat Singh. There is no involvement of any fraud or forgery. Petition u/s 111 of the Companies Act was well maintainable.

38. The CLB returning a finding apposite has committed an illegality which is liable to be set aside. It is accordingly set aside. The order dated 16.3.2011 is set aside; the member register of the companies be rectified in the name of the petitioner group and the petitioners i.e. Dev Raj and Lalitya Kumari be substituted in lieu of Jagat Singh.

39. As noted Supra, the appeals filed by the respondent group are infructuous; they have supported the order of the CLB, their prayer in the appeal that the shares register be rectified in their favour as necessarily to be dismissed as even as per their own statement, they do not have any document to support their submission that they are entitled to the rectification of the member register qua these shares of Jagat Singh in their favour.

40. Accordingly CA (SB) Nos. 25/2011, 49/2011 and 50/2011 are allowed.

41. Co. Appeal (SB) Nos. 27/2011, 75/2011 & 76/2011 are dismissed. Costs are quantified at Rs. 25,000/-.