

(2001) 03 BOM CK 0042

In the Bombay High Court

Case No : Misc. Petition No. 70 of 1999 in Petition No. 915 of 1982

Ramesh Nivrutti Bhagwat

APPELLANT

Vs

Dr. Surendra Manohar Parakhe

RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Limitation Act, 1963 — Article 137

Succession Act, 1925 — Section 228, 263, 271

Citation : AIR 2001 Bom 461 : (2001) 3 BOMLR 750 : (2001) 4 MhLj 375

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : Mr. R.S. Apte and Mr. A.A. Garge, for the Appellant; Mr. N.G. Thakkar and Mr. Malcom Pereira, instructed by M/s Wilfred Pereira and Co., for the Respondent

Final Decision : Dismissed

Judgement

A.B. Palkar, J.—Petitioner Ramesh Nivrutti Bhagwat seeks revocation and cancellation of Letters of Administration granted to respondent Dr. Surendra Manohar Parakhe on 24.11.1994 in Petition No. 915 of 1982 pursuant to the Probate of the last Will of deceased Mrs. Antoinette Bendre Bhagwat. To appreciate the controversy, the following facts are material :

2. One Bhagwant Balaji Bhagwat was husband of Antoinette Bendre Bhagwat. Both of them were permanent residents as well as citizens of the State of California. Bhagwant Balaji Bhagwat died on 5.1.1980. He bequeathed all his property to his wife Antoinette. She died on 23.1.1981 at Alhambra, Los Angeles County, State of California. U.S.A. She left her last Will dated 24.6.1977 whereby she bequeathed her properties to her husband. However, husband had predeceased her. In case of such contingency provision in the Will was that the property should go to an Inter vivos Trust created by herself and her husband by declaration of trust deed dated 24.6.1977. The Executor had filed a petition for probate bearing Probate Case No. 662463 in the Superior Court of the State of

California for Los Angeles County, and the Will was probated on 26.2.1981. On 2.11.1982 Dinkar Sambhaji Patole as Constituted Attorney of successor of original executor filed Petition No. 915 of 1982 in the High Court of Bombay for Letters of Administration with authenticated copy of the Will annexed to the petition in respect of the property and credit of the deceased in the State of Maharashtra. On 15.3.1992 petitioner Dinkar Sambhaji Patole died and the petition was continued by Dr. Surendra Manohar Parakhe who was duly brought on record.

3. The present petitioner Ramesh Nivrutti Bhagwat claims to be a relative of the husband of Antoinette Bendre Bhagwat. Earlier, he had taken out Notice of Motion bearing No. 912 of 1997 in Petition No. 915 of 1982 which was allowed to be withdrawn with liberty to take out appropriate proceedings. According to the petitioner, neither he nor his father nor any other family members had any notice of the petition. Respondent Dr. Surendra Manohar Parakhe submitted an application for mutation of name of Rural Gospel and Medical Mission of India on the basis of the Letters of Administration issued by this Court in the aforesaid Petition (No. 915 of 1982). Petitioner came to know about it after making inquiries in the office of the High Court. Petitioner also learned that the respondent had obtained Letters of Administration in respect of the Will of Bhagwant Balaji Bhagwat by filing another Petition No. 914 of 1982 on 2.8.1995.

4. According to petitioner, the respondent has not complied with the direction of the Court granting Letters of Administration by making inventory of the property and credits within six months. He has not rendered accounts of the property and credits within one year. Letters of Administration were obtained by suppression of material facts and by misleading the Court. Petitioner's uncle Bhagwant Balaji Bhagwat had established Bhagwant Mukti Ashram and the name of the Ashram was mutated in the revenue records in respect of the property. The Will of the petitioner's uncle Bhagwant as well as Will of his wife Antoinette clearly shows that the intention was to use the property for charitable purposes. The Superior Court of California granted Probate to John Graf Klotzle who was named as the successor by the earlier Executor named in the Will Carl Kinsinger and the said Executor appointed respondent as his Attorney for obtaining Letters of Administration. Thus respondent was not appointed executor by the Will.

5. The probate was obtained from the Superior Court of California without notice to the petitioner or his father or any other relative. Respondent is misusing the Letters of Administration as is clear from the Caveat filed with the Asstt. Charity Commissioner. The probate on the basis of the present Letters of Administration, was secured in proceedings which were opposed to the principles of natural justice. It was obtained by fraud and suppression of material facts and the said decision is given contrary to and ignoring the law in force in India.

6. Petition is opposed on various grounds. However, material grounds which are required to be considered in the present petition are that the petition is barred by law of limitation, inasmuch as such applications are covered by Article 137 of

the Limitation Act and the petition ought to have been presented within three years. Even if the period of pendency of notice of motion is excluded the present petition is barred by time. Petitioner has no locus standi to apply for revocation of the grant. He had no interest in the estate of the deceased on intestacy. Moreover Letters of Administration granted by this Court is merely an ancillary grant under sections 228 and 271 of the Indian Succession Act and is not liable to be revoked as long as the original grant is subsisting. The Superior Court of California before which Will was probated had followed the necessary procedure. Moreover the grant of probate having become final cannot be challenged in the present proceedings. The present petition or Bhagwant Mukti Ashram is neither a legatee nor beneficiary under the last Will of the deceased. They were not entitled to any citation in the probate proceedings before the Superior Court of California for Los Angeles County.

7. In view of the fact that there is no dispute on facts, parties have not led any oral evidence and argument of the learned Counsel appearing for the parties were heard at length. The following points alone are required to be decided in order to dispose of the present petition :

(1) Whether the petition for revocation of ancillary grant is maintainable when the principal grant is subsisting?

(2) Whether the petition is barred by law of limitation ?

(3) Whether the petitioner has any locus standi to file the present petition?

My findings on the above points are as under :

(1) Petition for revocation of ancillary grant is not maintainable when the main grants is subsisting.

(2) Petition is barred by law of limitation.

(3) Petitioner has no focus standi to file the present petition.

7. So far as point No. 1 is concerned, the matter stands concluded by a decision of the Division Bench of this Court in Rohini Damji Sipra v. Mrs. Freny Damji Sipra and Anr.,. Point No. 1 framed in the appeal by the Division Bench was, "whether the present petition for revocation of Probate by this Court is maintainable when the original probate granted by the High Court at Uganda is still subsisting". The Division Bench referred to a Judgment of the Supreme Court reported in (1985) 1 SCC 144 : (AIR184 SC 1866) Smt. Rukmanidevi v. Narendra Lal Gupta, in which the Supreme Court held as under :

"2. If the appellants did not contest the proceedings for grant of probate, can they now be permitted to question the validity of the Will by a collateral attack in different proceedings. 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."

It needs no elucidation to point out that the grant of probate by competent Court is judgment in rem. So long as that order remains in force it is conclusive as to the due execution and validity of the Will unless revoked in appropriate proceedings. It binds not only the persons who are parties but also binds others who are not parties to the proceedings whether they had notice or not. The probate granted by competent Court is conclusive on the validity of the Will unless revoked in accordance with law and no evidence can be admitted to impeach it except in the proceedings for revocation.

8. It is obvious that the original probate granted by the Superior Court of California is not challenged by appropriate proceedings. The same being in force, there is no question of revoking an ancillary grant which was merely to give effect to the original probate of the Will granted by the said Court. The original probate being a judgment in rem is binding on the petitioner. Moreover the learned Counsel for the respondent brought to my notice the fact that the citation was duly published and notices were served and the Court was satisfied regarding the legality and validity of the service before granting the probate of the Will. Even otherwise the learned Counsel for the petitioner could not point out any provision of law to show that either the petitioner was entitled to citation or any person so entitled was not served with citation.

9. The Letters of Administration were granted in ancillary proceedings by this Court on 25.11.1994. The present petition for revocation of the said grant has been filed on 21.7.1999. In the above referred judgment of the Division Bench of this Court, it is also held that the application for revocation of grant is covered by Article 137 of the Limitation Act, 1963, which requires the application to be filed within 3 years from the date when right to apply accrues. The period spent the notice of motion from 29.3.1997 to 1.4.1998 even if excluded from consideration, the present petition is filed beyond the period of three years from 25.11.1994 as three years period expired on 24.11.1997 and the present petition is filed on 21.7.1999. The period of seven months and two days spent in pursuing the remedy of notice of motion even if excluded, the petition is hopelessly barred by time.

10. Petitioner is admittedly not the heir of the deceased. In the affidavit-in-rejoinder petitioner has admitted this fact. Petitioner claims to be a member of the Trust known as Bhagwant Mukti Ashram. The trust has not taken any steps. Petitioner has no locus standi to seek revocation of the Letters of Administration granted as petitioner would not be entitled to the estate of the deceased in case of intestacy. Petitioner has failed miserably to show as to how he has any interest in the property of the deceased by virtue of which he is entitled to seek revocation of the Letters of Administration, I am therefore convinced that the petition deserves to be dismissed and is hereby dismissed with costs.

11. Certified copy expedited.