

(2005) 07 GUJ CK 0043
In the Gujarat High Court
Case No : First Appeal No. 983 of 2005

Rameshchandra Gaurishankar Gupta	APPELLANT
Vs	
Maheshkumar Gaurishankar Gupta	RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Gujarat Civil Courts Act, 2005 — Section 15, 30(3)
Succession Act, 1925 — Section 299

Citation : (2005) 07 GUJ CK 0043

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Mehul H. Rathod, for the Appellant; None, for the Respondent

Judgement

A.L. Dave, J.—Present appeal arises out of a judgment and order passed by learned Civil Judge (S.D.) Palanpur on 13th August, 2004 in Civil Misc. Application No. 28 of 1987. The said application was preferred for obtaining probate in respect of will of Gaurishankar Sonopal Gupta dated 21st April, 1984. By the impugned judgment and order, learned Civil Judge (S.D.) Palanpur dismissed the said application. Hence, this appeal.

2. The question that arises for preliminary determination of this Court is, whether this appeal would be maintainable before this Court. In this regard, it would be appropriate to record that the judgment and order under challenge is rendered by learned Civil Judge (S.D.) Banaskantha at Palanpur (now nomenclatured as Senior Civil Judge).

2.1 By virtue of coming into force of the Gujarat Civil Courts Act, 2005 with effect from 9th May, 2005, appeals from the decree and orders passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature, shall lie to the Court of District Judge of the district when the amount or value of the subject matter of the original suit or proceedings is less than five lakhs of rupees or such other sum as the High Court may, from time to time, specify [Section 15(2)(a)].

3. In the instant case, the judgment is rendered in an application for probate in respect of property indicated in Schedule-A to the application and as per the case of the applicant ? appellant, value of property after deducting 1/3rd thereof being gifted portion, would be Rs.1 lakh approximately. Differently put, the total value of the property can be Rs.1,50,000/-.

4. As such, by virtue of the new Act coming into force, the matter shall have to be transferred to District Banaskantha at Palanpur for disposal in accordance with law.

5. However, since the appeal arises out of a Civil Misc. Application for probate which is under Indian Succession Act and Section 299 of the Indian Succession Act provides for the forum of appeal, it would be appropriate to examine the issue from that angle.

6. Section 299 of the Indian Succession Act, 1925 reads, thus :

"Section 299

Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure,1908, applicable to appeals.

Thus, the Section provides that the appeal lies to the High Court in accordance with the provisions of Code of Civil Procedure, applicable to appeals. Section 96 of the Code of Civil Procedure,1908 provides, thus :

"Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

6.1 Therefore, an appeal from a decree passed by a Court exercising original jurisdiction will lie to the Court authorized to hear appeal from the decision of such Court and Section 15 of the Gujarat Civil Courts Act,2005 provides that an appeal from decrees or orders passed by a Court of Senior Civil Judge in original suit or proceedings of civil nature shall lie to the Court of District Judge, if the value of the subject matter of original suit or proceedings is less than five lakhs rupees.

7. It would also be appropriate to observe that Section 299 refers to order made by a District Judge which would be appealable to High Court and not an order that may be passed by an subordinate Court to the District Judge. Apart from this, fact remains that Section 299 confers right of appeal against the decision of the Trial Court but, the forum is to be governed in accordance with the Code of Civil Procedure,1908, applicable to appeals (Uttamlal Jethalal Shah v. Baluchand Tarachand and Ors. XIII GLR 452) and as discussed above, the appeal, therefore, would lie before the District Court and not this Court.

8. There is one more relevant aspect which needs consideration. The application

before the Civil Court for probate is preferred on a fixed court fee stamp of Rs.12.50 in light of Schedule-II, Article 18 (b) of the Bombay Court Fees Act. The petition is not valued for the purpose of jurisdiction and, therefore, the decision rendered in Ramjibhai Lalbhai Patel Vs. Shantaben, can be very well referred to, where the principle adopted is that the petition under Hindu Marriage Act was not valued for the purpose of jurisdiction and where the petition for divorce was decided by Extra Assistant Judge, and it was held that the appeal therefrom would not lie to the High Court but, to the District Judge in light of the provisions contained in Bombay Civil Courts Act (Old).

9. Viewed from any angle, this appeal would lie before District Court.

10. In light of provisions contained in Section 30(3) of the Gujarat Civil Courts Act, 2005, all suits, appeals and proceedings connected therewith pending before any Court would stand transferred to such other Court having jurisdiction as per Section-15 of the said Act. This appeal, therefore, will have to be transferred to the Court of District Judge Banaskantha at Palanpur for disposal in accordance with law.

11. Registry is directed to transfer the appeal at the earliest along with R & P of the Trial Court, if lying before this Court for disposal in accordance with law. For the purpose of this Court, the appeal stands disposed of.