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(1996) 08 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1843 of 1995

Ravindra Kumar Chaturvedi APPELLANT

Vs

The Board of Revenue and Another RESPONDENT

Date of Decision : 27-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Succession Act, 1925 — Section 211, 213

Citation : (1997) 2 RLW 1004 : (1996) 2 WLN 593

Hon'ble Judges : M.G. Mukherji, Acting C.J.

Bench : Single Bench

Judgement

M.G. Mukherji, Acting C.J.

1. This writ application is directed against an order dated 6.4.95 passed by the Member, Board of Revenue.

2. The writ petitioner was making a claim for being substituted under Order 22 Rule 3 read with Section 151 CPC on the death of his maternal grant mother Smt. Jabitri Devi, who expired on 13.11.1984 at Jaipur. He claimed that by virtue of the registered will left behind by her, he is the sole legal representative of the deceased who should be brought on record and his application may be allowed. It was contested by the non applicant respondent that if the writ petitioner Ravindra Kumar Chaturvedi wanted to become a legal heir of the deceased Smt. Jabitri Devi, he had to obtain a Probate in respect of the last will and testament of Smt. Jabitri Devi, from a competent civil court because the non petitioner Smt. Kanti Devi herself happened to be a daughter of late Smt. Jabitri Devi and was claiming to be also a legal heir of the deceased.

3. It should not be lost sight of that both the daughter as well as a son of pre-deceased daughter are heirs under the Hindu law provided the mother of Ravindra Kumar Chaturvedi is dead. Even if Ravindra Kumar Chaturvedi''s mother is alive, as an executor or the beneficiary in respect of the registered Will executed by Smt. Jabitri Devi, Ravindra Kumar. Chaturvedi was entitled to carry

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on the proceedings when the other heir Smt. Kanti Devi, was already on record. The practice in Rajasthan is that unless the Will is challenged on account of its lack of execution or attestation or on the ground of there having been suspicious circumstances surrounding its execution, a registered Will is taken to be a valid peace of document without the beneficiary or the executor in the said Will being called upon to prove the same. If a challenge is made in respect of the said Will, it is indeed the correct preposition of law that the beneficiary under the Will or the executor thereof has either to obtain a Letters of Administration or a Probate in respect of the said Will. It is not very clear on what ground the respondent No. 2 Smt. Kanti Devi has challenged the said Will. Be that as it may, on account of the grounds of challenge being not very clear error, if it appears to the Court that the writ petitioner can either obtain a Letters of Administration or a Probate of the Will at a letter date, he can indeed step into the shoes of his deceased grand mother Smt. Javitri Devi. Even without obtaining Letters of Administration or a Probate, he can carry on with the present proceedings at this stage and he may merely be directed, in the event of a challenge being made as to the genuineness of the Will or there having been inhand any lack of execution or attestation in respect of the said Will or in view of there having been any surrounding circumstance which is suspicious by itself, to obtain a Probate or Letters of Administration in respect of the said Will. The carriage of the present proceedings will not be barred by the mere fact that the Probate or the Letters of Administration has not yet been obtained because the law is well recognised that even at a stage prior to the obtaining of Letters of Administration or a Probate, the beneficiary under the Will or the executor to the Will, is duly empowered to carry on the proceedings in respect of any of the properties which is subject matter of the disposition covered by the Will.

4. Let us analyse the various decisions which are well recognised for the present purpose. We must not lose sight of the fact that an unprobated Will can be used for collateral purposes. An executor under it can deal with the property and give perfectly a good title though it may be that in order to complete the title, it requires probate to be taken out at a later date, vide AIR 1924 Madras 67. A suit for pecuniary legacy unconnected with the immovable property is maintainable without a Probate, vide N. Namberumal Chetti Vs. Veeraperumal Pillai and Others, An unprobated Will can be looked into for collateral purposes as has been held in Jogendranath Banerjee Vs. Makhan Lal Banerjee and Others, u/s 213 of the Indian Succession Act, it has to be borne in mind that the grant of a Probate is not a condition precedent to institution of the suit, but an executor or legatee will not be entitled to a decree unless Probate is granted to him before passing of the decree as was held in Ajit Kumar Hazra and Others Vs. Rathindra Nath Roy, So long as compliance with Section 213 is prior to the decree, the fact that it was obtained after the institution of the suit is immaterial, as was held in 1938 Ind App 7 , which was followed in Nawab Khajeh Habibullah and Others Vs. Babu Ananga Mohan Roy and Others, In Arjun Prasad and Others Vs. Biteshwar Singh, it was held that a legatee, upon prima facie proof that he is a legal

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representative is entitled to be substituted as a legal representative in place of the deceased testator, whose legal representative he claims to be under the Will, even if the Probate or the Letters of Administration has not been granted in respect of the Will. In a case where suit is commenced without necessary Letters of Administration or Probate, the Court may grant a conditional decree, suspending its operation until the Letters of Administration or Probate has been obtained, as was held in AIR 1930 Rang 218 .

5. In (1950) 54 Calcutta Weekly Notes 263 at page 264, it was held that a suit by a legatee without filing the Probate or the Letters of Administration is not barred by Section 213 where validity of the Will is not questioned and a Probate of the Will has in fact been taken though it has not been filed.

6. In AIR 1954 Patna 175, it was held that it is Section 211 and not Section 213 which deals with the vesting of the property of a deceased person. The right to sue for recovery of possession under the Will accrues to the executor, when after the execution of Will the testator dies and not when the probate is actually granted to him by the Court. It is, therefore, sufficient for the purpose of Section 213 if the Probate is obtained before the passing of the decree.

7. With these guidelines being delineated as above, Board of Revenue is directed to carry on the proceedings for a contested hearing of the matter on its merits with the question of obtaining the Probate or Letters of Administration of the Will being left to the writ petitioner at the appropriate stage, subject to the findings made by the Revenue Authorities.

8. The writ application stands disposed of accordingly.

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