

(1950) 01 KAR CK 0001
In the Karnataka High Court
Case No : Appeal No. 147 of 1946-1947

Rukn-ul-Mulk S. Abdul Wajid and Others	APPELLANT
Vs	
Gajambal Ramalingam and Others	RESPONDENT

Date of Decision : 06-01-1950

Acts Referred:

Evidence Act, 1872 — Section 41
Probate and Administration Act, 1881 — Section 50
Succession Act, 1925 — Section 263

Citation : AIR 1950 Kar 57

Hon'ble Judges : Mallappa, J; Balakrishnaiya, J

Bench : Division Bench

Advocate : S.V. Subramanyam, for the Appellant; Venkatanarasimhiya, for the Respondent

Judgement

Balakrishnaiya, J.—This is an appeal by the plaintiffs as executors of a will who applied to the Court of the District Judge, Bangalore, for grant of Letters of Administration with an authenticated copy of the will annexed in respect of the schedule assets belonging to deceased V. Ramalingam. The respondents are the wife and children of the testator. The plaintiffs filed O.S. No. 4 of 1943 in the Court of the District Judge, Civil Station, Bangalore. The suit was decreed granting probate in respect of the deceased's properties within the jurisdiction of that Court. Against that judgment R.A. Nos. 1 and 2 of 1944 were filed by the respondents, the wife and children of the deceased in the Court of the Hon'ble the British Resident in Mysore at Bangalore and the said appeals were dismissed on 5th July 1944. Against the appellate judgment, the respondents preferred an appeal to the Privy Council which was pending on the date of the judgment of the lower court. The executors also filed O.P. No. 45 of 1944 in the High Court of Judicature at Madras against the respondents praying for grant of probate of the said will and codicil and that Court granted probate on the basis of the will proved in the Court of the District Judge, Civil Station, Bangalore, in respect of the properties within its jurisdiction. Thus, the executors have obtained probates

of the last will dated 10th September 1942 and the codicil in two Courts. The learned District Judge after consideration of all aspects, held that the judgments of the District Court Civil Station, Bangalore, operated as judgments in rem and the plaintiffs are entitled to the grant of letters of administration, but owing to the fact that the respondents had taken up the judgment of the Hon''ble the Resident's Court in appeal to the Privy Council, the learned District Judge passed a decree granting letters of administration to the plaintiffs with an authenticated copy of the last will and codicil of the said Ramalingam in respect of the plaintiff schedule properties subject to the result of the appeal by the respondents before the Privy Council against the decree in R.A. Nos. 1 and 2 of 1944 on the file of the Hon''ble the Resident in Mysore, Bangalore. Against this judgment, the plaintiffs filed the appeal under consideration and the respondents entered cross objections.

2. The main ground of appeal in this Court is that plaintiffs are entitled to an unconditional grant of letters of administration with an authenticated copy of the will attached and the condition attached is unsound and erroneous. This appeal came up for hearing on a number of occasions and on the representation of both the parties that the appeal pending before the Privy Council was likely to be disposed at an early date, the hearing of the appeal was postponed from time to time by consent of parties.

3. It is brought to the notice of parties, that the Privy Council has disposed of the appeal on 12th December 1949 and the appellants thereupon filed a memo on 14th December 1949 submitting that they do not press the above appeal and it may be dismissed. Apparently, they claim that the conditional grant has been automatically resolved by the disposal of the appeal by the Privy Council. There is no objection to comply with the prayer of the appellants. Sri Venkatanarasimhiah, learned Advocate for the respondents, submitted that he would press the cross objections and desired to argue the respondents' case in spite of the decision of the Judicial Committee. A proof copy of the judgment of their Lordships of the Privy Council is also filed which shows that the Judicial Committee have expressed the view that they have no jurisdiction to entertain the appeal. Sri Venkatanarasimhiah urged that the matter in appeal to the Privy Council has not been finally disposed of inasmuch as their Lordships have held that they had no jurisdiction to entertain the appeal implying thereby that the respondents might have remedies elsewhere open to them. That matter is of no concern in the decision of this appeal. The relevant point for consideration is whether the judgments of the Court of the Hon''ble the Resident in Mysore have become final so as to operate as judgments in rem. As the Privy Council have rejected the appeal, the subject matter in appeal is no longer sub judice and the judgments of the Court of the Hon''ble the Resident in Mysore are rendered final. A judgment of a Court of Probate which confers the status of administrators of the estate is on the face of it is judgment in rem which will not only be binding between the parties but upon all other persons and on all Courts regarding the legal character invested. This Court has laid down in 5 Mys. L.J. 107 thus:

"Under Section 41, Evidence Act, the final judgment of a Probate Court granting probate is a judgment in rem and is conclusive so far as the question of genuineness and validity of the will on which the probate is granted is concerned."

Hence the judgments are conclusive and binding till they are set aside.

4. It is further contended that the District Court, Civil Station, is a foreign Court and the judgment of a foreign Court is not deemed to be binding on the Mysore Courts. Judgments of the foreign Courts are not excluded from the operation of Section 41, Evidence Act provided they are competent to pronounce a judgment as contemplated by that section. If the Courts are so competent, the judgment is conclusive against the whole world as to the status or title which it establishes. In 49 Mys. H.C.R.. 188, where a will under the Indian Succession Act has been proved and deposited in a Court of competent jurisdiction beyond Mysore and the executor named in the will applied in Mysore for an ancillary grant, it is laid down the letters of administrations which partake the nature of a probate could be granted in Mysore. In that case, the probate of the will was granted by the High Court of Justice in England and it was deemed to be a judgment in rem binding on the Courts.

5. It is next contended by the respondents' Advocate that the plaintiffs had undertaken in the lower Court to prove the will and the codicil in the common form for the grant of letters of administration and not for the grant of letters of administration, with the copy of the authenticated will attached, and the application was not made u/s 5, Probate Act. The appellants explain that Section 25 entered in the application was clearly a mistake for Section 25 deals with the grant of a probate of the copy of the draft of a lost will. The application is obviously not based on the copy or draft of a lost will. In their reply, the appellants have unequivocally prayed for the grant of letters of administration on the basis of the will proved and have also produced the judgment of the Hon'ble British Resident in Mysore confirming the judgment of the District Judge, Civil Station. They further pleaded that the judgment of the Probate Court constituted a judgment in rem binding on the parties and consequently they are entitled in law to the grant of the letters of administration without any contest, on the basis of the will proved in a Court of competent jurisdiction; Section 5, Probate Act, relates to the grant of letters of administration with the copy of the will annexed based on a will proved in a Court of competent jurisdiction situated beyond the limits of Mysore. In these circumstances the explanation of the appellants that the provision of law cited is due to a mistake appears to be not unfounded. Moreover, the parties and the Court have proceeded on the basis that the suit is for the grant of the letters of administration which would necessarily fall u/s 5. As the parties are not misled and no prejudice is caused to the respondents we are inclined to accept the contention of the appellants that the proceedings were understood and conducted by the parties u/s 5 and not u/s 25, Probate Act.

6. The respondents further argued that they have raised a new point which has

the effect of invalidating the last will which is said to have been proved and the trial Court has not recorded any finding thereon. The respondents entered a caveat to the petition of the appellants attacking the validity of the will and praying that the proceedings may be stayed till the disposal of the appeal in the Privy Council. After the petition was registered as a suit, the respondents in their written statement raised the new plea that the last will of the deceased testator was revoked just before his death and an issue touching the revocation of the will was also raised by the lower Court; but in the view the lower Court took that the judgments of the Probate Court operated as judgments in rem binding on the parties, the Court appears to have felt it unnecessary to decide that issue. The new objection amounts to the plea that will proved has become inoperative as it was revoked by a subsequent will.

7. Section 50, Probate Act, provides for the revocation of the probate on the availability of a "just cause". The revocation of the last will, if proved, may amount to a "just cause" entitling them to get the probate also revoked. The question then is the procedure to be followed in the matter of revocation of probates; the appellants contend that the respondents are not entitled to raise such an objection in a suit for the grant of letters of administration on the basis of a will proved. This contention appears to be not entirely devoid of force. The probate jurisdiction is exclusive jurisdiction and the judgment of the Probate Court is rendered a judgment in rem u/s 41, Evidence Act. As observed by Mukherji J. in *Rani Hemangini Debi and Others Vs. Sarat Rundari Debya and Others*, .

"It is an elementary rule that where a judgment operates as a judgment in rem, it is not subject to any kind of collateral attack; while it remains in force it is conclusive not only on the persons who are parties to the judgment, but upon all persons and on all Courts."

It is undeniable that the judgment has not ceased to be operative; if so, the objection raised is no better than a collateral attack. In *Komollochun Dutt v. Nilruttan Mundle* 4 Cal 360 : 4 CriLR 175, it is laid down that:

"The grant of probate is the decree of a Court, which no other Court can set aside, except for fraud or want of jurisdiction. Where it has been alleged that probate has been wrongly granted, the proper course to be pursued is to apply to the Court which granted the probate to revoke the same."

Following this Calcutta decision, the Lahore High Court in *Mt. Dropti v. Mt. Santi* AIR 1929 Lah. 483 : 116 IC 452 has laid down that u/s 263, Succession Act (corresponding to Section 5 Probate Act) thus:

"Where it is alleged that letters of administration have been wrongly granted, the proper course is to apply to the Court which granted the letters to revoke the same. The grant of letters of administration so long as it subsists conclusive evidence as regards the proper execution of the will and the legal character conferred on the administrator."

The Calcutta High Court, in a later decision has affirmed the decision in *Komollochun Dutt v. Nilrutton Mundle* 4 Cal. 360: 4 CLR 175. In *Rai Br. Pannalal and Others Vs. Lala Hansraj Gupta and Others*, where a suit was filed for declaration that the will was a forgery and the grant of probate which was obtained fraudulently should be revoked, Panckridge J. expressed the view that Section 264(1), Succession Act empowers the District Judge to grant or revoke probates thus:

"No civil suit lies to revoke a probate on any ground for it was the intention of the Legislature that the exclusive remedy in every case should be an application u/s 263. Jurisdiction to revoke probate is limited to the probate Court within the meaning of Section 264(1)."

Ordinarily, the last will together with codicil, if any, should be proved at one and the same time. The respondents; contention that the revocation was not known to them at the time of the previous proceedings and it was only subsequently that it was discovered even if true, will not entitle them to raise an objection that the probate is void in subsequent proceedings. It is observed by Amir Ali J. in *In Re: A.E. Forbes (deceased), O.V. Forbes*, that:

"Where the probate of a will is already granted and a codicil subsequently discovered vitally changes the will, the grant of the probate of the will and codicil together is in effect a new grant necessitating revocation of the probate of the will."

His Lordship further states that:

"A subsequently discovered codicil must be proved at a place where the will is sought to be proved."

Applying the principle enunciated in the cases cited, I have no hesitation in holding that the Probate Courts are invested with exclusive jurisdiction and the Legislature has prescribed a special procedure for the revocation of probates and a probate granted can be impugned only in the Court that originally granted the same and that no civil suit lies to challenge the judgment of a Probate Court, nor could any objection be raised in derogation of the will probated in any other proceeding as the judgment of a Probate Court will be binding on the parties, and all Courts.

8. In this view, affirming the judgment of the learned District Judge, the appeal and the cross-objections are dismissed without costs.

9. Appeal dismissed.