

(2002) 04 SC CK 0017
In the Supreme Court Of India
Case No : Civil Appeal 5431 of 1999

Shanta G.Z. Mehta (dead) by LRs.

APPELLANT

Vs

Sarla J. Mehta and Others

RESPONDENT

Date of Decision : 30-04-2002

Acts Referred:

Citation : (2003) 4 ALLMR 344 : (2002) 3 BLJR 2153 : (2002) 1 JT 590 Supp : (2002) 10 SCC 730

Hon'ble Judges : Y. K. Sabharwal, J;U. C. Banerjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Record depicts that a notice of motion was taken out by the appellants herein for a direction to treat the probate proceedings as non-contentious proceedings with an additional prayer to grant probate, as prayed for. The factual score further depicts that the appellant plaintiff being the widow of the deceased testator, had filed the present appeal for probate of the Will executed by her husband, Jhaverchand Mehta. According to the appellant, her husband who executed the Will dated 10th March, 1989 died on 16th March, 1989 and she, being the sole legatee under the Will, prayed for grant of the probate. The respondents who happened to be the widowed daughter-in-law and grand daughters of the plaintiff, did file caveat opposing the grant of probate. Their main defence been denial of execution of the Will by the deceased.

2. Subsequently, however, as record depicts, the respondents took out a chamber summons for amendment of their affidavit in support of the caveat so as to take an alternative plea that the deceased did not have the competence to execute the Will since the properties happened to be joint family properties. It is at this stage, the appellant had taken out a notice of motion that by reason of the specific stand denying the title of the testator and assertion made about the factum of the property being joint family property in nature, the caveator had no right to file the caveat and hence the caveat ought to stand rejected and the

proceedings should also be treated as non-contentious. It is on this score that the learned single judge dealt with the matter in extenso regarding his reasons for rejection of the same. For convenience sake paras 5 and 6 of the decision as rendered by the learned single judge are set out here in below so as to appreciate the reasonings :

5. There is a dispute about the question of law that the caveator who denies the title of the testator has no right to contest the Will and his remedy is to approach the civil court to agitate the question of title. The learned counsel for the plaintiff invited my attention to a number of decisions on this point, where it has been uniformly held that the caveator who denies the title of the testator has no right to contest the probate proceedings. He has relied on AIR 1932 Patna 89 Eruch Rustom Irani Vs. Limji Kaikashroo Pandey, (Eruch Rustom Irani v. Limji Kaikashroo Panday); AIR 1941 Patn 475 (Kashi Nath Singh v. Dulhin Gulzari Kuer); and some other decisions where it has been uniformly held that if the caveator disputes the title of the testator, he has no right to lodge the caveat and the caveat has to be rejected. As already stated, there cannot be any dispute about this proposition of law.

6. It may also be noted that In most of the cases cited above, the caveator had no personal interest in the property as an heir. In the present case the respondents are daughter-in-law and grand children of the deceased testator. If the Will is not in existence or the Will is proved to be not genuine then there can be no dispute that the respondents are entitled to a share in the property of the testator. Therefore, the respondents being heirs are directly interested in challenging the execution of the Will.

As could be seen from the affidavit filed in support of the caveat, the respondents have taken number of pleas challenging the execution of the Will.

It is only recently they have amended an affidavit to take one more plea that the testator had no competence to execute the Will in respect of the joint family property. It may be that the testamentary court has no jurisdiction to go into the question of title. A mere fact that the caveators have taken an alternative plea and that too "without prejudice" to other contentions their caveat cannot be rejected as contended on behalf of the plaintiff. In none of the decisions relied on by the learned counsel for the plaintiff, there is a case similar to the one before us, where the main defence is one of denial of execution of the Will and an alternative prayer and that too "without prejudice" is taken subsequently challenging the competence of the testator. Therefore, in my view none of the decision relied on by the learned counsel for the plaintiff are applicable to the facts of the present case. Here the respondents being the natural legal heirs of the deceased along with the plaintiff are entitled to challenge the execution of the Will. The mere fact that they have now taken up a new and additional plea as an alternative plea and without prejudice to the earlier contentions cannot take away their defence. Hence, I am not impressed by the contention urged on behalf of the plaintiff that the caveat is liable to be rejected and the proceedings

should be treated as non-contentious.

3. Be it placed on record that the notice of motion was dismissed and as against thereto the appeal by the present appellant before the High Court also stood dismissed. The appellate bench of the High Court in our view, very rightly recorded that for the reasons recorded by the learned single judge, no interference was called for. The reasons stated by the learned single judge, as noticed hereinabove, are not assailable and we also do feel it expedient to record our concurrence therewith. During the course of hearing, the learned advocate appearing in support of the appeal placed very strong reliance on three several decisions. Firstly, however, reliance was placed on Ramyad Mahton Vs. Ram Bhaju Mahton, , Vol. X, 812 wherein the decision of the Calcutta High Court in Abhiram Dass v. Gopal Das (1889) ILR 17 Cal. 48 has been taken recourse to. There was, however, a specific finding that since the objector had no interest in the estate of the, deceased, question of any locus standi to participate at the probate proceeding would not arise. There cannot possibly be any dispute as regards the proposition of law as settled therein. But the situation presently under consideration does not so reflect and as such the decision does not lend any support to the contentions raised in the matter. Similar is the situation in the second and the third decisions vide Mahanth Ram Das v. Prem Das [I.L.R. (1931) Patna], Vol.X,p.817 and In Re: N. Narasimhan and Another, . The decisions, thus, in our opinion are of no relevance in the contextual facts and as such no reliance can also be placed thereon.

4. The learned single judge has categorically stated, as noted above, that in most of the cases the caveator has no personal interest in the property as a heir but, in the instant case, the respondents are daughter-in-law and the grand children of the deceased testator, as such having a right to enter into a caveat and object to the grant of probate, and this grant of probate, by reason of the subsequent alternative plea or additional plea does not alter the situation neither takes away the contentions of the caveator. The objector to the grant of probate cannot be non suited by reason therefore.

5. On the wake of the aforesaid, this appeal is dismissed with costs, which is assessed at Rs.5,000/-.