

(2012) 11 DEL CK 0123

In the Delhi High Court

Case No : Regular First Appeal (OS) 107 of 2012

Shivraj Gupta

APPELLANT

Vs

Deshraj Gupta and Another

RESPONDENT

Date of Decision : 16-11-2012

Acts Referred:

Hindu Succession Act, 1956 — Section 25

Citation : (2013) 4 AD 814 : (2013) 196 DLT 14

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Vikas Dhawan and Mr. Abhimanyu Mahajan, for the Appellant;

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 19121/2012

Allowed, subject to all just exceptions.

RFA(OS) 107/2012

1. Suit filed by the appellant has been held to be barred by limitation at the preliminary hearing itself. Late Lala Hans Raj Gupta took the A train to heaven on July 03, 1985 and was survived by his wife Ms. Angira Gupta who has since expired and four sons named Deshraj Gupta, Shivraj Gupta, Rajendra Kumar Gupta and Mahendra Kumar Gupta as also two daughters Shashi Jai Krishna and Pratibha Khandelwal. His son Deshraj Gupta propounded a will stated to have been executed by late Lala Hans Raj Gupta on May 28, 1985 and sought probate thereof vide Test. Cas. No. 62/1985 which will was supported by Mahendra Kumar Gupta but opposed by Shivraj Gupta. The challenge succeeded when a learned Single Judge dismissed the probate sought vide order dated May 11, 2009 against which appeal filed registered as FAO(OS) No. 237/2009 was dismissed by a Division Bench on July 14, 2010. Deshraj Gupta took the matter

before the Supreme Court but failed when SLP(C) No. 28437/2010 was dismissed on October 25, 2010.

2. In other words, as per Shivraj Gupta, the plaintiff of the suit and the appellant before us, the estate of Late Lala Hans Raj Gupta devolved by intestacy and not testamentary disposition.

3. He filed a suit on May 10, 2012 impleading his brother Deshraj Gupta and his two sons Raviraj Gupta and Uday Gupta as also his brother Mahendra Kumar Gupta as defendants and sought a declaration that they had incurred the disqualification to inherit the estate of late Lala Hans Raj Gupta as per Section 25 of the Hindu Succession Act 1956. He alleged that his two brothers and his nephews had either murdered or actively connived in the murder of his father.

4. The suit has been held to be barred by limitation by treating that the plea that the defendants in the suit had murdered late Lala Hans Raj Gupta, who died on July 03, 1985. With reference to Article 113 of the Limitation Act 1963 it has been held that the right to sue accrued when claim was laid to the estate of the deceased by Deshraj Gupta when he sought probate of a will statedly executed by the deceased and that the right to sue did not accrue when Deshraj Gupta lost the battle with reference to the will before the Supreme Court.

5. Now, for purposes of inheritance the estate of a deceased opens on the death. There are only two modes of inheritance recognized by law : (i) intestate succession; and (ii) testamentary succession.

6. A natural heir claiming testamentary succession makes it known that he/she is laying a claim to the estate of his/her parent (the deceased) and it does not matter if the claim is opposed for the reason if the opposition is by pleading that the deceased did not execute any will, the defence itself would recognize the right of the propounder of the will to the estate of the deceased i.e. by succession.

7. If it is the case of a legal heir that some other legal heir of the deceased has suffered the disability u/s 25 of the Hindu Succession Act 1956, the said heir has to seek declaration the moment claim to the estate of the deceased is laid.

8. When does the right to sue accrue?

9. Way back in 1930, in the decision reported as AIR 1930 270 (Privy Council) , Sir Binod Mitter, speaking for the Council, with reference to Article 120 of the Limitation Act, 1908, which provision correspondence to Article 113 of the Limitation Act, 1963, stated as under:-

There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.

10. The view was cited with approval the next year in the decision reported as AIR 1931 89 (Privy Council) . It was held that the expression "right to sue"

means the right to bring the particular suit with reference to which the plea of limitation is raised and that the starting point for limitation is when the rights are invaded.

11. The aforesaid views were summed up by the Supreme Court in the decision reported as *Mst. Rukhmabai Vs. Lala Laxminarayan and Others*, in the following words:-

The legal position may be briefly stated thus: the right to sue under Art. 120 of the Lim. Act accrues when the defendant has clearly and unequivocally threatened to infringe, the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.

12. Aforesaid three decisions were noted with approval by a Division Bench of this Court in the decision reported as AIR 1985 Del 358 *Shah Construction Company Ltd., Bombay v. Municipal Corporation of Delhi*.

13. In paragraph 24 of its opinion the Division Bench highlighted that a claim is not necessarily a difference between the parties unless that claim is disputed. Cause of action would therefore arise when the claim of one party, when it arises, is denied or there is a threat to deny. Only in that event it becomes a dispute and cause of action arises from that date.

14. Learned counsel for the appellant had relied upon the decision reported as *Raj Kumar Jain and Others Vs. Smt. Jagwati Devi and Others*, to urge that the right to sue would accrue when issue of succession under a will attained finality.

15. The facts in *Raj Kumar's* case (supra) were that the estate of one Jagmandar Das was inherited by his sole legal representative, his sister Ram Katori on his death in the year 1954 and on the death of Ram Katori succession was claimed on a will statedly executed by her. Probate was granted. The plaintiffs who were in possession of the subject property sued claiming that Ram Katori had a life interest in the property left by her brother and could not execute a will in relation thereto. It is in this context that the law declared in the said decision on the right to sue accruing has to be considered for the reason if the challenge to the will statedly executed by Ram Katori succeeded, there would not have been any threat to the possessory rights of the plaintiff as also to the reversionary right claimed. But upon the will succeeding, and since issues of title cannot be gone into in a probate proceedings, the threat became real when probate was granted.

16. In the instant case the right of inheritance was propounded, albeit under the will when late Lala Hans Raj Gupta died in the year 1985 and whether or not the propounder of the will succeeded, right in the property on succession would any case have been there and it is in this context we can safely say that the cause of

action accrued to the appellant to sue for the declaratory relief prayed for in the instant suit when the first defendant propounded the will and sought to assert his rights under the will. Suffice would it be to state that if the defendants in the suit had incurred the disability alleged and yet they were asserting a right to the property of the deceased, there was a clear threat to the right of the appellant to succeed to the estate of his father to the exclusion of the defendants.

17. Before concluding we may note that it is not the case of the appellant that any FIR was lodged pertaining to the homicidal death of his father and thus no investigation has been carried out and nobody has been charge-sheeted for the homicidal death of late Lala Hans Raj Gupta.

18. We concur with the view taken by the learned Single Judge and thus we dismiss the appeal in limine. No costs.