

(2018) 10 BOM CK 0049

In the Bombay High Court

Case No : Testamentary Petition No. 644 Of 2018, Miscellaneous Petition (L) No. 1554 Of 2018

Sidney Francis Gomes

APPELLANT

Vs

Maureen Therese Gonzales @ Ivan Blaise Rodrigues
(Deceased)

RESPONDENT

Date of Decision : 11-10-2018

Acts Referred:

Indian Succession Act, 1925 — Section 57, 213, 213(2) 218, 219, 264, 301

Citation : (2018) 10 BOM CK 0049

Hon'ble Judges : G.S. Patel, J

Bench : Single Bench

Advocate : Ravi R Gadagkar, Usha R Gadagkar, Glen A Lobo

Final Decision : Dismissed

Judgement

1. Testamentary Petition No. 644 of 2018, which seeks Letters of Administration with a copy of a Will and a copy of Codicil annexed, is entirely

misconceived and not maintainable. It is, in fact, barred by the provisions of the Indian Succession Act, 1925. Miscellaneous Petition (L) No. 1554 of

2018 which seeks removal of the executor under Section 301 of the Indian Succession Act 1925 (which is by consent taken on board) is equally

without merit and not maintainable.

2. The Petitioners are one Sidney Francis Gomes (â??Sidneyâ?) and Cynthia Desouza (â??Cynthiaâ?). They claim that one Maureen Therese

Gonzales (â??Maureenâ?), an Indian Christian who died on 8th June 2006 left a Will dated 26th October 2002 and a Codicil dated 11th November

2005. They say under this Will Maureen appointed two persons, Ivan Rodrigues and Mrs June Miranda (â??June Mirandaâ?) as her executors. Ivan

Rodrigues passed on. June Miranda is the surviving executor. Sidney and Cynthia claim to be entitled to demand that June Miranda must explain to

them how she has administered Maureen's estate. They also ask that she be removed as an executor.

3. The question, however, is this: Exactly who are these two Petitioners in relation to the deceased Maureen? It turns out they are nobodies in relation

to her estate. They are not her heirs, at least not under any known provision of law. Sidney and Cynthia are, and there is no gentler way to put this,

rank outsiders to the entire estate. They are the assignees or transferees of the heirs of a lessee of a property which Maureen owned and of which

she was the lessor. That is the whole of it. Their entry into Maureen's universe is on the basis, first, of a document dated 4th October 1991. This

was made by one Etty Netto (Etty) on one hand and Sidney and Cynthia on the other hand. Etty was the widow of one Merwin Netto

(Merwin), a person to whom Maureen leased a property in Manori described in a schedule to that document under an Indenture of Lease dated

5th March 1990. Merwin died intestate on 9th July 1986. He was survived by Etty and their three children. Etty then purported to make an assignment

or an agreement of assignment of this lease in favour of Sidney and Cynthia. Maureen, the testator and lessor, was not a party to this document,

though alive at that time. Her name appears nowhere on it. There was then a Deed of Confirmation of 25th June 1992. Again this was between Etty

on one hand and Sidney and Cynthia on the other. Mr Gadagkar says that Maureen signed this Deed of Confirmation as a witness and, therefore,

is a party to the Deed of Confirmation and, therefore, Sidney and Cynthia are her heirs. The submission is without merit. By signing a

document as a witness, no signatory becomes a party to that document. Then Mr Gadagkar draws my attention to another Deed of Assignment dated

24th June 1992 at Exhibit F at page 60 between the Netto family and Sidney and Cynthia and to which Maureen was apparently a signatory and

a confirming party. All that this will do is to serve to pass title to Sidney and Cynthia. It will not make them her heirs or beneficiary under a Will or

Codicil or to make them persons entitled to any form of representation to her estate. Indeed the document at page 60 itself defeats the purpose of the

whole Petition because on the Petitioners' own showing, during her lifetime, i.e. inter vivos, Maureen confirmed the transfer or assignment of

leasehold rights in favour of Sidney and Cynthia. Mr Gadagkar says that there is a clause in the Will by which Maureen said that any lessees of her

property would be owners. That, again, is a question of title, not of succession. If there is any threat to the title Sidney and Cynthia claim to have

acquired, they have the 1992 document and a copy of the Will to fall back on and certainly there are remedies available in any civil proceedings. A

testamentary proceeding at their instance is thus entirely misconceived and I see no reason why the docket of this Court should be clogged for years

together in the futile pursuit of the unattainable and on which relief can ever be granted.

4. Even if there are provisions in the Will in favour of subsequent lessees, there are no statements in the Will specifically in the name of either Sidney

or Cynthia. They certainly have no right to demand administration, accounts and for example in that course to ask whether June Miranda has paid

amounts to St Andrews Church, Bandra and the Chartered Accountants and so on.

5. Mr Gadagkar now says that Index II in respect of the sold property in question is in the name of the executor. I should have thought it obvious that

if a party has obtained title to a property during the lifetime of the deceased is entitled to apply to every land Registry for an updating of the land

records on production of certified copies of the transactions or documents. Instead these two Petitioners seem to think that they are entitled to grant of

Letters of Administration which, as we have seen, is wholly and utterly misconceived.

6. Here are the statutory provisions in question:

Section 57 â?" Application of certain provisions of Part to a class of wills made by Hindus, etc.

The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, applyâ?

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the

said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of

Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far

as relates to immoveable property situate within those territories or limits;and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):

Provided that marriage shall not revoke any such Will or codicil.

Section 213 "Right as executor or legatee when established

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

(2) This section shall not apply in the case of Wills made by Muhammadans or Indian Christians, and shall only apply :

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57;

and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession

(Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the [ordinary original civil jurisdiction] of the High Courts at

Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits.

Section 218 "To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jain or exempted person

(1) If the deceased has died intestate and was a Hindu, Muhammad an, Buddhist, Sikh or Jain or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

Section 219 "Where deceased is not a Hindu, Muhammadan, Buddhist, Sikh, Jain or exempted person If the deceased has died intestate and was

not a person belonging to any of the classes referred to in section 218, those who are connected with him, either by marriage or by consanguinity, are

entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated, namely:

(a) If the deceased has left a widow, administration shall be granted to the widow, unless the Court sees cause to exclude her, either on the ground of

some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations

(i) The widow is a lunatic or has committed adultery or has been barred by her marriage settlement of all interest in her husband's estate. There is

cause for excluding her from the administration.

(ii) The widow has married again since the decease of her husband. This is not good cause for her exclusion.

(b) If the Judge thinks proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the

administration if there were no widow.

(c) If there is no widow, or if the Court sees cause to exclude the widow, it shall commit the administration to the person or persons who would be

beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

Provided that, when the mother of the deceased is one of the class of persons so entitled, she shall be solely entitled to administration.

(d) Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

(e) The husband surviving his wife has the same right of administration of her estate as the widow has in respect of the estate of her husband.

(f) When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and Willing to act,

they may be granted to a creditor.

(g) Where the deceased has left property in India, letters of administration shall be granted according to the foregoing rules, notwithstanding that he

had his domicile in a country in which the law relating to estate and intestate

succession differs from the law of India.

Section 264 â?" Jurisdiction of District Judge in granting and revoking probates, etc.

(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

(2) Except in cases to which section 57 applies, no court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay, where the

deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until

the State Government has, by a notification in the Official Gazette, authorised it so to do. Â (Emphasis added)

7. Section 57 read with Section 213(2) makes it evident that probate to a testamentary instrument by a Christian is never compulsory or mandatory.

Section 219 and its sub-sections then tells us who, in the case of a person other than a Hindu, Jain, Sikh, Buddhist, or Muhammadan, is entitled to apply

for Letters of Administration; and there is a hierarchy provided. It begins with marriage and consanguinity, and goes on down the line to include those

beneficially interested in the estate as heirs, then kindred of equal standing, and finally creditors. Sidney and Cynthia stand in none of these categories.

They have absolutely no right in law to even apply for Letters of Administration in respect of any testamentary writing said to have been made by

Maureen. They most certainly have not the slightest vestige of a right to demand accounts from her executor, June Miranda, to know whether or not

she has paid Maureenâ??s accountant, donated to the St Andrewâ??s Church and so on. They cannot question any legacies, nor can they question

the administration of that Will or Codicil. They are, as we have seen, merely successors-in-title in regard to some immovable property. They can get

no supervening right in relation to the estate on account of that title having passed â?" and especially not since that title is, even according to them, one

that passed in Maureenâ??s lifetime.

8. The Testamentary Petition No. 644 of 2018 is, thus, thoroughly misconceived. It cannot proceed to a grant. Such an order would be contrary to law.

It is, therefore, dismissed. Consequently, the Miscellaneous Petition will not survive and is dismissed as infructuous. No costs.

9. All rights of the Petitioners are kept open for appropriate civil proceedings,

should that need arise.

10. There will be no order as to costs.