

(2017) 04 CAL CK 0045

In the Calcutta High Court

Case No : 242 of 2011?A P O No 243 of 2011

**Smt. Priyamvada Devi Birla, deceased?And?Harsh Vardhan Lodha & Ors.
Vs Ajay Kumar Newar & Ors.**

Date of Decision : 28-04-2017

Acts Referred:

Code of Civil Procedure, 1908, Order 14Rule 2 -
Succession Act, 1925, Section 295 -
Procedure in contentious cases
Limitation Act, 1963

Citation : (2017) 04 CAL CK 0045

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : Anindya Kumar Mitra,?Pratap Chatterjee,?Malay Kumar Ghosh, ?
Abhrajit Mitra, ?Debanjan Mandal, ?Sanjiv Kumar Trivedi, ?Jishnu Chowdhury, ?
Soumya Ray Chowdhury, ?Sarvapriya Mukherjee, ?Satadeep Bhattacharya, ?
Aritra Basu, ?Samaraditya Pal

Final Decision : Dismissed

Judgement

1. These appeals are directed against the judgment and Order passed on 21st April, 2011 in G.A. No. 2444 of 2010, G.A. No. 2525 of 2010, G.A. No. 2909 of 2010 and G.A. No. 2911 of 2011. Since common questions of fact and law are involved in these appeals, they have been heard together.

2. The facts relating to these appeals are as follows: Mutual Wills were executed on 13th July, 1982 by Madhav Prasad Birla (hereinafter referred to as the MPB) and his wife, Priyamvada Devi Birla (hereinafter referred to as the PDB). Each of them nominated four executors of their respective Wills, one of whom was the spouse. Two executors, Kashinath Tapuria and Pradip Khaitan, were common in both the Wills. MPB nominated Krishna Kumar Birla as the fourth executor while PDB nominated Ganga Prasad Birla.

3. MPB died on 30th July, 1990.

4. The appellants contend that on 18th April, 1999 PDB executed another Will which was registered. The executor and beneficiary of that Will was one Rajendra Singh Lodha. A Codicil was executed by PDB on 15th April, 2003. A year later, on 3rd July, 2004 PDB expired. On 12th July, 2004, the heirs of PDB learnt about the new Will executed by her on 18th April, 1999. Caveats were filed by Laxmi Devi Newar and Radha Devi Mohatta, the sisters of MPB. Caveats were also filed by Ganga Prasad Birla (GPB), Yashovardhan Birla, Krishna Kumar Birla (KKB) and Basant Kumar Birla. A probate petition was filed by Lodha on 19th July, 2004 being P.L.A. No. 204 of 2004 for grant of probate of the last Will and testament of PDB i.e. 18th April, 1999.

5. It appears that probate petitions were filed on 17th August 2004 in respect of the mutual Wills of 1982 of MPB as well as of PDB being P.L.A. No. 241 of 2004 and P.L.A. No. 242 of 2004, respectively, by the executors, Kashi Nath Tapuriah and Pradip Kumar Khaitan. On 18th August, 2004 Tapuriah affirmed two petitions on behalf of, Krishna Kumar Birla, Ganga Prasad Birla and Pradip Kumar Khaitan in the probate proceedings of the mutual Wills of 18th July, 1982 for leave to accept the petitions with a notarised copy of the Wills. By an order passed on 11th March, 2005 reported in AIR 2006 Cal 6 the caveats filed by Basant Kumar Birla, Krishna Kumar Birla and Yashovardhan Birla were discharged. The caveat of Ganga Prasad Birla was retained as he was one of the executors of the Will of PDB dated 13th July, 1982. Appeals were preferred by Krishna Kumar Birla, Basant Kumar Birla and Yashovardhan Birla against the judgment and Order dated 11th March, 2005. The appeals against this judgment and Order were dismissed by the Division Bench of this Court on 21st September, 2006 and the order discharging the caveats was affirmed. Appeals preferred by the aggrieved persons before the Supreme Court met with the same fate. However the Civil Appeal filed by Lodha challenging the appointment of Yashovardhan Birla as an executor of the Will of MPB of 1982 in place of PDB after her death was allowed. The decision of the Supreme Court dated 31st March, 2008 is reported in Krishna Kumar Birla Vs. Rajendra Singh Lodha and Ors. [(2008) 4 SCC 300].

6. By an Order dated 9th September, 2004, P.L.A. No. 204 of 2004 filed by Lodha being a contentious cause was converted into a Testamentary Suit (TS No. 6 of 2004).

7. Tapuriah and Khaitan jointly filed an application for being added as parties to the Testamentary Suit being G.A. No. 1960 of 2005. This application was opposed by Lodha.

8. Lodha expired on 3rd October, 2008. His heirs filed an application for converting the probate petition in respect of the Will of 1999 executed by PDB into one for a petition for grant of Letters of Administration with Will annexed being G.A. No. 3434 of 2008.

9. Tapuriah filed G.A. No. 3867 of 2008 in the Testamentary Suit for leave to intervene and for appointment of Administrator pendente lite. The application

filed by Tapuriah and Khaitan for being added as a party to the Testamentary Suit being G.A. No. 1960 of 2005 was decided by an Order dated 16th January, 2009. The learned Single Judge passed an order concluding that the probate proceedings had "abated wholly and that the lis does not survive" on account of death of Lodha. Appropriate steps were directed to be taken by the parties. An application was filed on 2nd February, 2009 by Tapuriah for deleting the name of Khaitan from G.A. No. 1960 of 2005 since Khaitan did not want to be associated with the original application i.e. G.A. No. 1960 of 2005. The amendment was allowed on 20th February, 2009.

10. The application filed by Lodha's heirs for conversion of the probate petition to one for a petition for grant of Letters of Administration with Will annexed was allowed on 5th February, 2010 by a judgment reported in (2010) 2 CHN 157. By an Order dated 12th February, 2010 in G.A. No. 1960 of 2005 i.e. the G.A. filed by Tapuriah and Khaitan jointly for being added as parties to the Testamentary Suit, was disposed of. The application of Tapuriah was rejected as he had neither lodged a caveat nor filed an affidavit in support of the caveat and was waiting for the fate of the caveat lodged by Ganga Prasad Birla. The Court observed that Tapuriah could not be permitted to be added as a party only because Ganga Prasad's claim for lodging the caveat was accepted. However, the Court permitted Tapuriah to file a fresh application in case Ganga Prasad Birla was not willing to contest the Testamentary Suit or was unable for any reason to do so. No appeal was preferred from this judgment by either party. Ganga Prasad Birla expired on 5th March, 2010. On 11th March, 2010 it appears that the Birla group filed Company Petition No. 1 of 2010 before the Company Law Board against Birla Corporation Ltd. and others complaining of oppression and mismanagement. An affidavit was filed by Khaitan in that Company Petition pleading inter alia that the estate of PDB had irrevocably vested in 5 trusts prior to the execution of the Will of 1999.

11. G.A. No. 2444 of 2010 was filed by Tapuriah on 27th July, 2010 for being added as a party defendant in TS No. 6 of 2004. Khaitan filed G.A. No. 2525 of 2010 for accepting his caveat along with affidavit in support and in the alternative for being added as a party in the Testamentary Suit. These applications were opposed by Lodha's heirs i.e. Harsh Vardhan Lodha and others, the appellants herein, on various grounds. The applications were allowed by the impugned Order dated 21st April, 2011. However, although they were directed to be impleaded as parties in TS No. 6 of 2004, they were not permitted to file Additional Written Statements.

12. The present appeals have been filed by the appellants against the aforesaid Order of 21st April, 2011. Cross objections have been filed by Khaitan and the other defendants.

13. Mr. Anindya Mitra, appearing for the appellants has principally argued that since Khaitan and Tapuriah had not filed any caveat, they could not be permitted to participate or be added as parties in the testamentary proceedings, even

assuming they had a caveatable interest. The learned Counsel pointed out that Khaitan had withdrawn his earlier application being G.A. No. 1960 of 2005 for adding himself and Tapuriah as parties to the proceedings. That application was allowed and he had not sought for leave to file an application later or to file the caveat. Therefore, the learned Counsel urged, that the application filed by Khaitan being G.A. No. 2525 of 2010 had been allowed by the learned Single Judge without considering these factors. The learned Counsel also argued that the application was barred by limitation under Article 137 of the Limitation Act as it had been made 6 years after the death of PDP i.e. on 3rd July, 2004. He further submitted that both Tapuriah and Khaitan had raised an adverse claim to the estate of the testatrix and therefore was disentitled to contest the testamentary suit in view of the decision of this Court in *Abhiram Dass Vs. Gopal Dass* reported in (1890) ILR 17 Cal 48.

14. In response, Mr. Sarkar, the learned Counsel appearing for Khaitan has pointed out that although two prayers were made before the learned Single Judge in G.A. No. 2525 of 2010 by Khaitan, only the prayer for adding him as a party defendant in T.S. No. 6 of 2004 has been allowed. He submitted that A.P.O. No. 243 of 2011 arising from this application should be dismissed as no prejudice would be caused to the appellant if Khaitan is added as a party to the suit.

15. Mr. Sarkar then submitted that the law does not require that a person desiring to contest a Will must file a caveat as a condition precedent. According to him, the purpose of filing a caveat is no more than to give notice to the Court not to proceed with the matter without informing the Caveator. He further submitted that Rule 24 of Chapter XXXV of the Original Side Rules does not prescribe any period of limitation for filing a caveat. Furthermore, according to him, for being added as a party defendant to a testamentary suit a person is not required to file a caveat as a pre-condition. The learned Counsel then submitted that the application for grant of probate has been converted to a testamentary suit being T.S. No. 6 of 2004 on 9th September, 2004 and therefore the question of filing a caveat at this stage does not arise. As regards the submission that no leave was granted to Khaitan to file a fresh application after the earlier application for being added as a party was withdrawn by him, the learned Counsel submitted that the Supreme Court in its judgment in *Krishna Kumar Birla Vs. Rajendra Singh Lodha and Ors.* reported in (2008) 4 SCC 300 had recognized the right of Ganga Prasad Birla (GPB) who was one of the executors of the mutual Will of MPB along with Tapuriah and Khaitan, to file a caveat. It was only because of GPB's advanced age that Khaitan and Tapuriah made an application for being added as parties being G.A. No. 1960 of 2005. The learned Counsel then pointed out that G.A. No. 1960 of 2005 was continued alone by Tapuriah and was finally disposed on 12th February, 2010 by the learned Single Judge of this Court holding that as long as GPB represented the joint executors contesting the grant it was not necessary to allow any other executors of PDP's 1982 Will to appear as he was being represented by GPB. The Court held that Tapuriah would have an opportunity to file a fresh application if it was found that

GPB was not willing to contest or for any other reason was unable to contest the proceeding. The learned Counsel submitted that by implication the right of the other coexecutor i.e. Khaitan was kept intact in equal measure. It was only on the death of GPB on 5th March, 2010 that Khaitan decided to file the application being G.A. No. 2525 of 2010 for being added as a party to the testamentary suit. The learned Counsel then submitted that the Probate Court is a court of conscience and equity and therefore the learned Single Judge cannot be faulted for adding Khaitan as a defendant.

16. On considering the judgments cited at the Bar and the judgment impugned in the appeals, we do not find any reason to differ with the view of the learned Single Judge that Khaitan should be added as a party defendant to the testamentary suit. His right was the same as GPB who died on 5th March, 2010. It is only on account of his death that Khaitan had stepped in and applied for being added as a party defendant. His right is the same as Tapuriah's. No prejudice would be caused to the appellants if Khaitan who stands on the same footing as Tapuriah is permitted to contest the suit. Tapuriah had been permitted to withdraw his earlier application and to file a fresh one in the event GPB was unable to contest or did not contest the testamentary suit for any reason whatsoever. His right therefore crystallized after the death of GPB, just as Khaitan's right. It is well settled that where there are co-executors of a Will it is sufficient if one of them propounds the Will. Apart from this, in K.K.Birla (supra), the Supreme Court had recognized the right of GPB to contest the Will of PDB of 1999. After his death obviously the other two executors would be entitled to contest the testamentary suit. We have no reason to interfere with the decision of the learned Single Judge to allow the application being G.A. No. 2525 of 2010 and G.A. No. 2444 of 2010.

17. The contention of the learned Counsel for the appellant that the applications filed by Tapuriah and Khaitan are barred by limitation is without merit. As stated earlier their right accrued after the death of GPB in the year 2010 after which they filed their respective applications for being impleaded as defendants to the Testamentary Suit.

18. It must be noted that although Khaitan had filed cross-objections, the main contention was that he should have been permitted to file an independent affidavit in support of his statements regardless of the fact that GPB as co-executor had already filed a written statement. On the basis of the judgment in Midgley Vs. Midgley reported in (1893) 3 Ch 282 (CA), it was argued that each co-executor is entitled to plead different defences and the Court must choose the one which would be most beneficial to the testator's advantage.

19. We are not impressed by the argument of the learned Counsel. The coexecutor's interest had been protected by GPB and it was only after his death on 5th March, 2010 that it became necessary for Khaitan and Tapuriah to file their independent applications for being added as party defendants to the testamentary suit. Therefore once he steps into the shoes of GPB who

represented the executors of the mutual Wills for all purposes, he cannot claim the liberty to file a separate written statement. He must stand by what has been stated in the written statement of GPB. Besides, it would only protract the litigation even further if such liberty were to be granted, prejudicing the beneficiaries under Wills.

20. Mr. Anindya Mitra then argued that the caveats filed by the defendant/respondent Nos. 1(a), 1(b), 1(c), 1(d) and 2 should be discharged. G.A. No. 2909 of 2010 which had been filed by the appellants before the learned Single Judge for discharge of the caveat lodged by the original defendant No. 1 and deletion of the names of her substituted heirs and executors was dismissed and only the name of defendant No. 1(a) i.e. Ajay Kumar Newar was deleted. The others, namely, Arvind Kumar Newar and Nand Gopal Khaitan were continued as party defendants. The main ground urged in the aforesaid application before the learned Single Judge was that since the defendant Nos. 1(a) to 1(d) and 2 had claimed an adverse interest in the property of PDB, they were not entitled to contest the testamentary suit. This argument was squarely applicable to Khaitan and Tapuriah also according to the learned Counsel. He urged that a party who sets up an adverse title is not entitled to contest testamentary proceedings in respect of the same property.

21. Mr. Samaraditya Pal, the learned Counsel appearing for defendant Nos. 1(a), 1(b) and 1(c) pointed out that they are the heirs of Laxmi Devi Newar. She and Radha Devi Mohta were the sisters of MPB. He pointed out that they are heirs on intestacy of PDB in accordance with the provisions of the Hindu Succession Act, 1956. Both the sisters of MPB were cited by Lodha as the intestate heirs of PDB in his application for probate being P.L.A. No. 204 of 2004. Special citations were issued to them. Both the sisters filed caveats and affidavits in P.L.A. No. 204 of 2004 opposing the grant of the probate of the Will of PDB of 1999. The probate application was converted to a contentious cause and numbered as T.S. No. 6 of 2004 with Lodha as the plaintiff and Laxmi Devi Newar and Radha Devi Mohta as the defendants in terms of Rule 28 of Chapter XXXV of the Original Side Rules. The learned Counsel pointed out that on 23rd May, 2005 Laxmi Devi Newar expired leaving behind a Will. Her son, Arvind, one N.G. Khaitan and D.K. Mantri are the executors, while her sons, Ajay and Arvind were the beneficiaries under her Will. By an order dated 24th June, 2005 Ajay, Arvind, N.G. Khaitan and D.K. Mantri were substituted in her place as defendant Nos. 1(a) to 1(d) respectively. The learned Counsel pointed out that in view of the observations of the Supreme Court in K.K. Birla (*supra*), there can be no doubt now that Laxmi Devi Newar and her heirs and legal representatives being Ajay, Arvind and N.G. Khaitan had an interest in the estate of PDB and therefore, a caveatable interest to contest the Will of 1999. The learned Counsel then submitted that once the probate proceeding is converted to a contentious cause and transforms into a testamentary suit it is not open for the appellants to contend that the caveators have no locus standi. The learned Counsel supported this argument by relying on Banku B. Das Vs. Kashi N. Das and Anr. reported in AIR 1963 Calcutta 85.

22. While dealing with the submission of Mr. Mitra that the defendant Nos. 1(a) to 1(c) could not contest the testamentary suit because they had set up an adverse title, the learned Counsel submitted that for considering whether there is a conflict of interest or an adverse title set up by the defendants, the prerequisites are that the claimant must allege firstly, that the testatrix did not have a title to the property forming part of the estate and secondly, that the claimant had the title to the same property. The learned Counsel submitted that in none of the proceedings or pleadings of the defendant Nos. 1(a) to 1(c) have they ever contested that the testatrix did not have the title to the property forming part of the estate or that they had claimed title to the same property. He pointed out that the statements relied on by the appellant in support of this submission do not in any manner indicate that the defendant Nos. 1(a) to (c) had set up an adverse title.

23. A similar contention has been raised by the appellants against the defendant Nos. 1(d) and 2. Mr. Hirak Mitra, the learned Counsel appearing for respondent Nos. 1(d) and 2 while supplementing the arguments of Mr. Pal submitted that the pleadings relied on by the appellants to contend that statements made in the proceedings indicated the intention of defendant Nos. 1(d) and 2 to set up a title adverse to that of the testatrix is not borne out from the record. He pointed out that both the defendant Nos. 1(d) and 2 are intestate heirs, entitled to represent and contest the probate proceedings. The defendant No. 1(d) was also one of the executors to the last Will of the original defendant No. 1 i.e. Laxmi Devi Newar, a sister of MPB. He submitted that the game plan of the appellants was to ensure that the testamentary suit would go undefended so that the rights of the defendants to the suit would be obliterated. The learned Counsel asserted that in the judgments cited on behalf of the appellants, the caveators were not intestate heirs and therefore those judgments would have no bearing on the facts in this case. He further submitted that both the defendant Nos. 1(d) and 2 had expressly asserted that PDB was the owner of the estate and therefore, there was no dispute about her title to the property at all. The learned Counsel has relied on observations made by the Supreme Court in K.K. Birla (supra). He therefore submitted that it was no longer open for the appellant to question the right of defendant Nos. 1(d) and 2 to continue to contest the testamentary suit.

24. The appellants have mainly relied on certain pleadings of the defendant Nos. 1(a) to (c) to oust them from contesting the testamentary suit. These pleadings are: 4.1. Para 10 of GA No. 4376 of 2004

"10. Further, by reason of the events which had happened, the estate of the deceased now stands impressed with the trust in terms of the said mutual Will of the deceased and her husband, hence, the deceased was not competent to dispose of on her own the combined estate, by alienation or dissipation in a manner inconsistent with the tenor and terms of the said mutual Will."

4.2. Para 17 of affidavit filed on 15.06.05 in CP No. 825 of 2004

"17I say that criminal proceedings have been property instituted against the respondent and his stooges and henchmen including the respondent Nos. 3, 4 and 5. The contents of the complaint filed by R.P. Pansari before the appropriate Criminal Court are true and correct. The pleadings filed by R.P. Pansari before the Hon"ble High Court at Calcutta in C.R.R. No. 2995 of 2004 are true and correct... From such documents it Will be apparent that the deponent and respondent No.4 and the respondent No. 5 since deceased (and their henchmen) with full notice and knowledge of various Trusts created by the late Madhav Prasad Birla and the deceased have purported to negate the charitable intent....."

4.3 Para 16 of affidavit filed on 05.09.06 in CP No. 543 of 2005 and CP No. 544 of 2005

"With further reference to paragraph 15 of the affidavit, I say that criminal proceedings have been properly instituted against the respondent Nos. 2 and 4. The contents of the complaint filed by R.P. Pansari before the appropriate Criminal Court are true and correct. The pleadings filed by R.P. Pansari before the Hon"ble High Court at Calcutta in C.R.R. No. 2995 of 2004 are true and correct....."

25. On perusing these pleadings, we do not find that the defendant Nos. 1(a) to (d) and 2 have in any manner set up a title which is adverse to the testatrix. They have not denied the title of PDB to the property forming part of her estate. These pleadings only indicate that PDB was not competent to dispose of the entire estate mentioned in the mutual Will, inconsistent with the tenor and terms of the mutual Will. The title of PDB to the property has never been in question. It was only her competence to bequeath the property in 1999 Will which is in issue.

26. The judgments in the case of *In the Goods of Mrs. Lydia and Ors.; Mrs. Elizabeth Egbert Vs. A. J. Fanthome and Anr.* reported in AIR 1952 Allahabad 543, the Court held that where a caveator lays claim to a particular property and at the same time says that property does not form part of the deceased's estate, he has no locus standi to oppose the grant of probate. The Court held that it was not within the province of a Court of Probate to determine the question of title. The ratio in this case has no application to the facts before us.

27. In *Saripalli Samsundar and Ors. Vs. Saripalli Maniamma* reported in 1979 Andhra Law Times 284, the Andhra Pradesh High Court observed that if a person does not claim to have any interest in the estate of the deceased, he is not entitled to enter caveat and oppose the grant of probate. This decision has no application to the facts before us.

28. In *Dr. Rajaram Jaipuria & Ors. Vs. Miss Lakshmi Khanna* reported in (2004) 1 CLT 96 (HC), a landlord wanted to file a caveat with respect to the Will of a tenant claiming an interest in the tenancy right of the testator. Since the right of a landlord and tenant are adverse to each other, the Court held that the Will of the tenant cannot be contested by the landlord as he had no caveatable interest.

We do not find this judgment has any bearing on the facts in the present case.

29. As mentioned earlier, the pleadings extracted above on which basis the appellant claims that the caveat should be discharged, do not set up a title adverse to that of the title of PDB to her estate.

30. In our opinion, the contention of the appellant that the defendant Nos. 1(a) to (d) and 2 should not be permitted to contest the suit and that their caveat should be discharged is without merit. There is no doubt that they all have a caveatable interest in the estate of PDB. The pleadings extracted above do not in any manner demonstrate that an adverse title had been set up by the defendant Nos. 1(a) to (d) and 2 to the title of PDB with respect to the property which forms a part of the estate. Therefore, in our opinion, the learned Single Judge was right in dismissing G.A. No. 2909 of 2010 and G.A. No. 2911 of 2011.

31. After considering these submissions of the learned Counsel, in our opinion, the appellants have filed these frivolous appeals only with a view to delay and protract the testamentary proceedings. All these issues could have been considered when the judgment in the suit is finally pronounced. Order 14 Rule 2 of the Code of Civil Procedure read with Section 295 of the Indian Succession Act, 1925 prescribe that a Court should pronounce judgment on all issues subject to the provision of Sub-rule 2 of Rule 2 of Order 14. There is neither an issue of jurisdiction of the Court involved in this case nor a bar to the suit created by any law. Therefore, the exception in Sub-rule 2 has no application to the facts in this case. We do not find any error in the judgment of the learned Single Judge. If the learned single judge has taken a possible and plausible view there is no need for the appeal Court to overturn this assessment.

32. The defendants i.e. defendant Nos. 1(a) to (d) and defendant No. 2 had been on record for over 6 years before G.A. No. 2909 of 2010 and G.A. No. 2911 of 2011 were filed by the appellants. After the judgment in K.K. Birla (supra), it is apparent that the Supreme Court had recognized the right of the two sisters of M.P. Birla namely, Laxmi Devi Newar and Radha Devi Mohta to contest the probate proceedings with respect to the Will executed by PDB in the year 1999. Even after this observation of the Supreme Court in K.K. Birla (supra), the appellants had sought to deny the right of the heirs of Laxmi Devi Newar to contest the testamentary suit after her death. In our opinion, this is nothing but an abuse of the process of law and the applications have been filed with the aim of delaying and defeating the right of the contesting defendants to the testamentary suit.

33. A cross-appeal has been filed by Ajay, son of Laxmi Devi Newar, the defendant No. 1(a) against the decision of the learned Single Judge deleting his name from the array of defendants. Mr. Mitra, learned Counsel appearing for the appellants has pointed out that the cross-appeal has not been argued by the defendants and therefore it is not necessary for us to consider the same. In our opinion, this submission cannot be accepted. The issues which arise in the cross-

appeal are covered in the appeal itself and the arguments which were applicable for the continuance of the defendant Nos. 1(b), (c), (d) and 2 to contest the testamentary suit will automatically apply to the case of Ajay. However, since the probate of the Will of Laxmi Devi Newar has already been granted and her executors, Arvind and D.K. Mantri, are on record and are representing the estate of Laxmi Devi Newar, the learned Single Judge was right in not allowing the defendant Nos. 1(a), Ajay to continue to defend the testamentary suit. The cross appeal is therefore dismissed.

34. We have no manner of doubt that the appellants have raised a bogey regarding the right of the defendants to contest the testamentary suit only with a view to defeat and delay the proceedings. The right of Khaitan and Tapuriah also cannot be ignored as they are the executors of the Will of M.P. Birla. Their right to contest the Will of MPB of 1999 has been impliedly recognized by the Supreme Court in K.K. Birla's case. The Supreme Court had observed that G.P. Birla being one of the executors of the mutual Will of M.P. Birla could contest the 1999 Will and till he was able to do so. There was no need for the other coexecutors to contest the same or to file independent caveats before seeking impleadment as party defendants to the testamentary suit. The appeals are dismissed. Cross-objections are also dismissed.

35. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.