
(2007) 05 SHI CK 0004
In the High Court Of Himachal Pradesh

State of H.P. and Others

APPELLANT

Vs

Smt. Annapurna Pathak and Others

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : AIR 2007 HP 88

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—Late Rai Bahadur Pandit Sunder Lal Pathak, owned properties at many places including Solan. He had two daughters, namely, Vidyawati Pathak and Rajeshwari Rani Pathak. It appears that Rejeshwari Rani Pathak died unmarried and issueless on 3-12-1983. Her sister Vidyawati was married to Jagat Dhar Sharma Guleri. She had three sons, namely, Sharangdhar Pathak predecessor-in-interest of non-applicants 3(a) to 3(e), Shrikar Pathak and applicant Shridhar Sharma Guleri. Sharangdhar was adopted by his materrial grand-father Rai Bahadur Pt. Sunder Lal Pathak. Shridhar Sharma Guleri died on 22-2-1974. Vidyawati sister of Rajeshwari Rani Pathak had pre-deceased her and expired on 1-1-1974.

2. Smt. Rajeshwari Rani Pathak inherited some land from her father which was acquired by the State of H.P. for setting up of H.P. Agriculture University (Agriculture Complex) at Nauni later known as Dr. Y.S. Parmar University (Agriculture & Forestry), Nauni, Solan and compensation was awarded to her by the Land Acquisition Collector. Aggrieved by the said award, Smt. Rajeshwari Rani Pathak filed a land reference petition No. 45-S/2 of 1980 on 15-5-1980. During the pendency of this land reference petition, Smt. Rajeshwari Rani Pathak, expired on 3-12-1983. Shri Sharang Dhar Pathak was impleaded as the legal representative in the reference proceedings vide order dated 23-6-1984. Against the final award dated 20-2-1991, the State of H. P. had filed various

appeals. RFA No. 58 of 2002 was filed in respect of the land of Smt. Rajeshwari Rani Pathak. During the course of appeal it was transpired that in fact Shri Sharangdhar Pathak had died on 12-9-1991.

3. With the consent of the parties, Smt. Annapurna Pathak widow, Karunakar Pathak, Madhukar Pathak, smt. Ajita Sharma and Smt. Aparna Manjrekar, sons and daughters, were brought on record as legal heirs of the deceased Sharangdhar Pathak.

4. On 5-7-1993, Dr. S.K. Sharma the present applicant filed an application under Order 22 read with Order 1 CPC in which he alleged that his Aunt (Mausi) Smt. Rajeshwari Rani Pathak had executed a Will dated 11-11-1974 whereby she had bequeathed the rights in respect of the land which was the subject-matter of acquisition in his favour and in favour of late Sharang dhar Pathak in equal shares. He, therefore, claimed that he should also be impleaded as legal heir. The appeal filed by the State was dismissed on 7-7-1994 on the representation of counsel appearing for all the parties that the decision in RFA No. 81/91 State of H. P. v. Devi Chand would govern this appeal also. As far as CMP No. 356 of 1993 filed by the present applicant for being impleaded as legal heir is concerned, the Court passed the following order on 7-7-1994:

CMP (M) No. 356 of 1993:

It is seen that by an order dated 3-8-1993, passed in CMP (M) No. 341 of 1993, five persons have already been impleaded as legal representatives of deceased first respondent Shri Sharangdhar. However, in this application, Dr. S.K. Sharma has prayed that he should also be brought on record as the legal representative of Rajeshwari Rani Pathak. The application has been filed under Order 22, Rules 3, 4 and 10 and also under Order 1, Rule 10 IPC. It is also represented that certain probate proceedings are pending in relation to the Will of Rajeshwari Rani Pathak, under which some rights had been put forward by Dr. S.K. Sharma. Considering these facts, though Dr. S.K. Sharma may not be entitled to be impleaded as a legal representative at this stage, yet, in order to protect his rights, his presence would be necessary and he is therefore, impleaded as such.

5. The present applicant filed an application being CMP No. 78 of 1995, praying that the entire awarded amount which had been deposited in this Court be released in his favour. On this application, (his Court was pleased to pass the following order on 22-6-1995.-

CMP 78/95

Heard.

In view of the dispute between the alleged legal heirs of sole respondent-claimant Smt. Rajeshwari Rani, it is ordered that the award amount lying in fixed deposit will continue to be invested as such, till the legal representatives get their entitlement/claim decided from the appropriate Court.

The fixed deposit receipt is ordered to be renewed, from the date of its maturity, for a further period of 37 months, on the same terms and conditions. The application stands disposed of.

6. It would be pertinent to mention that Karunakar Pathak and Madhukar Pathak sons of Shri Sharangdhar Pathak had filed a Civil Suit in this Court being civil Suit No. 53 of 1989. This suit was mainly directed against the widow and sons of late Shri Shridhar Sharma Guleri. The plaintiffs in the suit had contended that late Shridhar Sharma Guleri had relinquished his rights in the land situate in villages Padhan and Saproon in District Solan in their favour and as such they alone were entitled to the compensation payable in respect of the lands which were originally owned by Shridhar Sharma Guleri. No relief was sought against the present applicant. However, the present applicant moved an application under Order 1 Rule 10 CPC for being impleaded as party respondent. This application was later not pressed and was disposed of with the following observations:

OMP No. 424/96.

Heard. During the course of hearing, the learned Counsel for the applicant has not pressed the application, which is accordingly, dismissed.

It is, however, clarified that the decree, if any passed in this case, shall have no effect on the rights of the applicant, which he may be having or which he may claim under the alleged Will in his favour and in respect of which the probate proceedings are pending before the learned District Judge, Solan. The application stands disposed of accordingly.

7. The present applicant filed a petition for grant of probate in respect of the Will of Smt. Rajeshwari Rani Pathak in the Court of Additional District Judge, Solan on 11-6-1993. His petition was allowed and order was passed in his favour on 24-11-1999. The non-applicants 3(a) to 3(e) were all parties in this petition also. In the said probate petition, it was specifically pleaded by the present applicant who was the applicant therein that he along with Sharangdhar Pathak were entitled to the properties of Smt. Rajeshwari Rani Pathak in equal shares. A specific reference was made in the petition in respect of the land inherited by Smt. Rajeshwari Rani Pathak which was acquired for setting up of Dr. Y.S. Parmar University (Agriculture & Forestry) as Nauni. A specific plea was raised that the applicant was entitled to half share of the compensation of this acquired land.

8. The petition was contested by Smt. Annapurna Pathak widow of late Shri Sharangdhar Pathak, Karunakar Pathak and Madhukar Pathak sons of late Shri Sharangdhar Pathak. As far as Smt. Ajita Sharma and Smt. Aparna Manjrekar are concerned, they did not put in appearance and were proceeded against ex parte. The learned Court held that the Will Ex. AW/1 which was executed on 11-11-1974 and registered before the Sub Registrar, Solan is the last Will and Testament of Smt. Rajeshwari Rani Pathak daughter of Shri Rai Bahadur Pandit Sunder Lai Pathak. The objections raised by the contesting respondents were not

accepted. The Additional District Judge, Solan passed the order in question on 24-11-1999.

9. Thereafter the present application being CMP No. 329 of 2001 was filed by the applicant praying that out of the amount deposited by the State as compensation, half of the amount falling to his share as per the Will of Smt. Rajeshwari Rani Pathak, be paid to him. This application has been hotly contested by respondents 3(a) to 3(e) who are the heirs of Sharangdhar Pathak. It would be pertinent to mention that during the pendency of this application Karunakar Pathak also expired and his widow Smt. Sadhna Pathak and Arjun Pathak son, have been brought on record as legal representatives 1(d-i) to 1(d-ii). According to the respondents, the present application is not maintainable and the applicant Dr. S.K. Sharma is not entitled to any amount.

10. I have heard Shri Dushyant Dadhwal learned Counsel for the applicant and Shri G.D. Verma, learned senior counsel appearing on behalf of the respondents.

11. As far as the applicant is concerned, it is contended on his behalf by Shri Dushyant Dadhwal that the amount of compensation may be paid in accordance with the Will of Smt. Rajeshwari Rani Pathak, probate whereof has been granted by the Court of Additional District Judge, Solan.

12. On the other hand Shri G.D. Verma learned senior counsel submitted that the application is not maintainable since it is only a decree-holder who is entitled to execute the decree and according to Shri G. D. Verma, the applicant S.K. Sharma is not a decree holder. It is also contended that the Will of Smt. Rajeshwari Rani Pathak does not relate to the land which is the subject-matter of acquisition to RFA No. 58 of 1992. Shri G.D. Verma has also argued that the learned District Judge had neither the pecuniary nor the territorial jurisdiction to entertain and decide the probate petition, therefore, the order dated 24-11-1999 is not legal and valid. It is also contended that the learned Additional District Judge being a Delegate of the District Judge was not entitled to grant probate of a Will in contentious matter. On merits, it was contended that the Will set up was obviously false and fake one since applicant S.K. Sharma had not made any attempt to be brought on record as the beneficiary under the Will in the land acquisition proceedings right from the death of Smt. Rajeshwari Rani Pathak on 3-12-1983 till he filed the application for probate on 11-6-1993 and filed the application in this Court on 5-7-1993.

13. As far as the first contention is concerned, I feel that the same is without any merit whatsoever. It is contended that since Dr. S.K. Sharma is not a decree holder as he was not impleaded as legal representative of the deceased, he cannot execute the award and, therefore, also cannot apply for release of the amount.

14. This objection is totally misconceived. From the perusal of the facts noted above, it is clear that during the pendency of the appeal Dr. S.K. Sharma has moved this application with a prayer that he may also be impleaded as legal

representative of Smt. Rajeshwari Rani Pathak. When this Court disposed of the appeal, it also passed an order on the same day impleading the applicant Dr. S.K. Sharma as legal representative in the case. This order was never challenged and has attained finality. He, therefore, also is a decree-holder.

15. I am also of the view that if in a suit a few persons are impleaded as legal representatives, it does not mean that they alone are entitled to inherit the entire subject-matter of the litigation. The legal representatives are brought on record to represent the estate of the deceased. The question of inheritance is not decided and it is only a question of representation of estate which is decided under Order 22 of the CPC. Therefore, a person who represents the estate acts on behalf of the entire body of people who inherit the estate. As such, when after the death of Smt. Rajeshwari Rani Pathak, Dr. S.K. Sharma was impleaded as her legal representative, he represented the estate of the deceased late Smt. Rajeshwari Rani Pathak and it was not decided that he was the sole heir. The application, in my view, is maintainable and this contention is rejected.

16. The next contention raises challenge to the order of the learned Additional District Judge, Solan dated 24-11-1999 whereby he has granted probate in respect of the last will and testament of Smt. Rajeshwari Rani Pathak, is also totally ill founded. The contesting non-applicants in this application were all the parties before the probate Court. They objected to the grant of probate. They raised various defences and finally the probate Court rejected their objections and granted probate. In case they were aggrieved by this order, they could have challenged the same by filing an appeal. They chose to remain silent and accepted the order of the probate Court. Now they cannot be heard to say that the said order is without jurisdiction. The main objection to jurisdiction is that the learned Additional District Judge did not have the pecuniary jurisdiction to hear the matter. Such an objection has to be raised at the earlier available instance.

17. Section 21(2) of the CPC reads as follows:

Section 21, Objection to jurisdiction -

(1) xx xx xx (2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Courts unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement and unless there has been a consequent failure of justice.

18. This section clearly lays down that the objection with regard to the pecuniary jurisdiction of the Court must be raised at the earliest possible opportunity and in all cases where issues are settled at or before such settlement. A perusal of the order of the probate Court clearly shows that no objection with respect to the pecuniary jurisdiction of the Court was ever raised. It is true that an objection was raised that probate Court had no jurisdiction to hear the matter but that objection was on the ground that the Will in question is the subject matter of

some other legal proceedings. This issue was also decided against the non-applicants. There is no manner of doubt that the non-applicants cannot raise objections to the jurisdiction of the Additional District Judge to hear the matter in collateral proceedings.

19. In the present case, it is not the case of the respondents that the Court of the Additional District Judge lacked inherent jurisdiction to hear the matter. It is his pecuniary jurisdiction which has been challenged. This could have been challenged before him or in an appeal but definitely cannot be challenged in collateral proceedings.

20. Similarly, the objection raised that the petition for grant of probate has not been filed within the period of limitation cannot be entertained in these proceedings. No objection was raised before the probate Court and in these proceedings the non-applicants cannot be permitted to challenge the order of the probate Court which has attained finality.

21. Another objection raised is that the learned Additional District Judge was acting as a Delegate of the District Judge and, therefore, had no jurisdiction to decide a contentious case. Reference is made to Section 286 of the Indian Succession Act which provides that the District delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court. Reliance is also placed on the judgment of this Court rendered in *Atma Ram Vs. Smt. Janki and Others*, wherein this court held that the Senior Sub Judge in his capacity as District Delegate has no jurisdiction to decide a contentious case.

22. In my considered view, this objection is also without any merit. The learned Additional District Judge is not a delegate of the District Judge. The Additional District Judge exercises all the powers of the District Judge. In my opinion, the objectors cannot be permitted to raise this objection. No such objection was raised when the matter was pending before the learned Additional District Judge. The parties willingly submitted to the jurisdiction of the Additional District Judge and cannot at this belated stage, be permitted to challenge his jurisdiction. Even otherwise, I am of the view that the Additional District Judge exercises the same powers of District Judge and cannot be termed as a District delegate. It is when the powers are vested in an inferior officer such as Senior Sub Judge that such officer is called District Delegate and is only authorized to hear the non-contentious matters.

23. While taking the view that the respondents cannot be permitted to challenge the jurisdiction of the learned Additional District Judge (Probate Court), I am fortified by the changes in law. Section 21 of the CPC was amended w.e.f. 1-2-1987 and provides that no objection as to the place of suing or the pecuniary jurisdiction of the Court shall be allowed by any Appellate or Revisional Court unless such objection was taken in Court of first instance at the earliest possible

opportunity and in all cases where issues are settled at or before such settlement of issues and also that there must be a consequent failure of justice.

24. In the present case, the respondents voluntarily submitted to the jurisdiction of the probate Court. They raised no objection with regard to the pecuniary jurisdiction or on the ground that the probate Court was a Delegate Judge. The idea of making amendments in the CPC was that a judgment should not be set aside on the technical ground of lack of territorial or pecuniary jurisdiction. Both the parties have submitted to the jurisdiction of the Court which was otherwise competent to hear the matter. The non-applicants have failed to point out as to how there has been a consequent failure of justice.

25. Parties were duly represented before the probate Court, They led evidence. After evidence was led, the matter was decided and the non-applicants accepted the order of the probate Court. This has to be seen in conjunction to the order passed by this Court asking the parties to get their dispute regarding inheritance of the rights of Smt. Rajeshwari Rani Pathak decided before the Competent Court. In the petition before the probate Court, specific reference has been made to the land acquisition proceedings and the regular first appeal pending in this Court. The respondents were well aware that this probate had been filed specifically in regard to the rights of Smt. Rajeshwari Rani Pathak in the acquired lands.

26. For the reasons stated above, I am of the view that the application has to be allowed which is accordingly allowed and the applicant Dr. S.K. Sharma is held entitled to 50% of the total compensation payable in respect of the acquired lands belonging to Smt. Rajeshwari Rani Pathak in terms of her last Will and testament.