(1993) 10 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 694 of 1993

Balbir Singh Wasu		APPELLANT
	Vs	
Lakhbir Singh Wasu and Others		RESPONDENT

Date of Decision: Oct. 5, 1993

Acts Referred:

- Government of India Act, 1915 - Section 107
- Probate and Administration Act, 1881 - Section 34
- Succession Act, 1925 - Section 247, 273, 295, 307, 307(2)

Citation: (1994) 1 ILR (P&H) 289

Hon'ble Judges: S.D. Aggarwala, J; J.L. Gupta, J

Bench: Division Bench

Advocate: J.S. Wasu, for the Appellant; R.S. Cheema V.K. Suri, for Respondent No. 1, Major Manmohan Singh, for Respondent Nos. 2 to 5, Vinod Suri and Party-in-Person, for the Respondent

Final Decision: Dismissed

Judgement

S.D. Aggarwala, J.

This is a Letters Patent Appeal arising out of an Order dated 6th of September, 1993, passed by the learned Single Judge of this Court in Probate case No. 2 of 1993 in the goods of late Harnam Singh Wasu, Senior Advocate, Chandigarh, permitting the Executor of the Will of late Harnam Singh Wasu to disburse the cash amount to the heirs of the deceased in the manner specified in the Wall.

2. Briefly, the facts giving rise to the present appeal are as follows:

3. Hamam Singh Wasu was a Senior Advocate practising in the High Court of Punjab and Haryana at Chandigarh, He executed a Will on 5th of July, 1992. He died on 8th of February, 1993 at Chandigarh at the ripe old age of about 90 years. Harnam Singh Wasu had six children; three sons, namely, Balbir Singh Wasu, Lakhbir Singh

Wasu and Gurcharan Bir Singh Wasu and three daughters, namely, Mrs. Surinder Kaur, Mrs. Jatinder Kaur and Mrs. Bhupinder Kaur, who are all married. Gurcharan Bir Singh Wasu had settled in England. He met his tragic death in a car accident there on 16th of September, 1991, leaving behind his wife Shrimati Kulwant Kaur Wasu and children. At the time of death, consequently, Harnam Singh Wasu (hereinafter to be referred to as the deceased) had two living sons, one wife of a pre-deceased son and three daughters.

4. The deceased had 7/12th share in House No. 15, Sector 9-A, Chandigarh. He was the sole owner of House No. 1185, Sector 8-C, Chandigarh. Besides two houses, the deceased had also certain amounts deposited in Public Provident Fund, Unit Trust of India, National Saving Certificates and other saving accounts.

5. By the Will dated 5th July, 1992, the deceased had demised his property to the heirs. This Will is a registered document and its one of the attesting witnesses is Shri Justice Harbans Singh, former Chief Justice of this Court. In the Will, one of the sans of the deceased, namely, Lakhbir Singh Wasu, Advocate was appointed as Executor of the Will.

6. On 23rd of May, 1993, the Executor Lakhbir Singh Wasu filed Probate case No. 2 of 1993 u/s 273 of the Indian Succession Act praying for grant of probate of the Will in respect of the property of the deceased. During the pendency of these proceedings before the learned Single Judge, the Executor moved an application on 25th of August, 1993 that the sum of the 6,56,614.29 belonging to the deceased and received by him as nominee be distributed as per terms of the Will. This application was opposed by Balbir Singh Wasu, the other son of the deceased. He had also challenged the validity of the will. On this application, the learned. Single Judge on 6th of September, 1993 permitted Executor Lakhbir Singh Wasu to disburse the amount mentioned in the Will to the heirs in the manner specified in the Will. It is this order which is the subject matter of the present appeal.

7. It may be noted here that Appellant Balbir Singh Wasu is an Advocate of this Court. Lakhbir Singh Wasu, the Executor, is also an Advocate of this Court. This appeal was filed) on 13th of September, 1993 and notice of motion was issued for 22nd September, 1993. On 22nd of September, 1993, the pasties aggrieved that the appeal itself be heard. In the circumstances, we are. deciding the appeal itself on merits.

8. We have heard learned Counsel for the parties. Learned Counsel for the Appellant has urged that till the probate proceedings are not finalised and the Will is held to be a valid Will in the eye of law, the learned Single Judge erred in distributing, the cash amount received by the Executor in terms of the Will to the helps of the deceased. Learned Counsel for the Respondents has controverter this submission and has further taken the preliminary objection that the appeal against an interlocutory order passed by the learned Single Judge is not maintainable.

9. We will now consider the preliminary objection raised be the learned Counsel for the Respondents in regard to the maintain ability of the appeal. The petition for grant of a probate has been filed u/s 273 of the Indian Succession Act (hereinafter called the Act). Section 295 of the Act provides that in any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure, 1908, is which the Petitioner for probate or letters of administration, as the case may be, shall be the Plaintiff and the person who has appeared to oppose the grant shall be the Defendant. Since the proceedings for grant of probate in the High Court are concurrent with that of the proceedings of the District Judge, the proceedings in a contentious case before the High Court also would be in the nature of a suit and proceedings shall take place as nearly as may be according to the provisions of the Code of Civil Procedure, 1908. The proceedings for grant of a probate in the High Court are in the nature of original proceedings.

10. The maintainability of the appeal would depend upon Clause X of the Letters Patent constituting the High Court of Judicature at Lahore which are applicable to the High Court of Punjab and Haryana. Clause X reads as follows:

10. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court.

This clause came up for interpretation before a full bench of (this Court in I.T.C. Ltd. v. Bhatia Brothers and Ors. 1979 PLJ 181. The Full Bench was of the view that against a stay order which involves no determination of any right or liability which may ultimately effect the merits of the controversy, no appeal lies under Clause X of the Letters Patent.

11. This Clause subsequently came up for interpretation before the Hon''ble Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, . The Hon''ble Supreme Court laid down that where a trial judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent. Every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. We are bound by the subsequent decision of the Supreme Court which has defined the word judgment in Clause X of the Letters Patent.

12. In the instant case, the proceedings for grant of probate are original proceedings. The order of the learned Single Judge permitting the Executor of the will to distribute the cash amount in his possession in accordance with the terms of the will does affect valuable rights. The order has a vital effect on the rights of the parties. It is not merely a stay order of the nature which was subject matter of the Full Bench decision of this Court but decides metered of moment. In the circumstances, in our opinion, the Principle laid clown in the Full Bench decision of this Court would not apply to the facts of the present case. On the other hand, the instant case is covered by the decision of the Hon''ble Supreme Court referred to above. We, therefore, are clearly of the opinion that the preliminary objection raised by the learned Counsel for the Respondents does not have any substance and an appeal lies against the impugned order.

13. We will now consider the contention raised by the learned Counsel for the Appellant. Learned Counsel for the Appellant in support of his submission has relied upon Section 247 of the Act and his contention is that an administrator cannot, during the pendency of any suit, touching the validity of the will, have a right or power to distribute the estate and as such the permission granted by the learned single judge is wholly illegal. There is a clear distinction between an Executor and an administrator appointed by the Court during the pendency of the suit. Section 247 of the Act deals with a situation where no Executor is appointed under the will and the Court is empowered to appoint an administrator in order to manage the estate. This is not the case here. In the instant case an Executor has been appointed under a will. The provisions of Section 247 of the Act do not apply and as such reliance cannot be placed upon them.

14. In fact Section 307 of the Act specifically provides that the Executor has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit. Sub-section 2 of Section 307 of the Act lays down circumstances in which the permission of the Court is required by the Executor before he deals with the property. In any case there is no prohibition under any provision of the Act laying down that the Court does not have the power to pass an interim order during the pendency of the probate proceedings. As we have already stated when a Will is disputed, the proceedings in the Court take the shape of civil proceedings and have to be tried as nearly as may be according to Code of Civil Procedure. Since the proceedings in contentious cases have to be tried as nearly as may be in accordance with the provisions of the Code of Civil Procedure, the Court in which such like proceedings are pending have the power to pass interim orders for the purpose of safeguarding and managing the assets which are the subject matter of the Will in question. Many situations may arise when it would become necessary in the interests of justice to pass interim orders. There may be a case where the destruction of the demised property has to be avoided. There may also be cases where the beneficiaries under the Will have to be maintained where the property is rented out, rent has to be realised and so on. It is not possible to lay exhaustively all

the possible circumstances and situations.

15. The learned Counsel for the Respondents in connection with this submission of the Appellant relied upon a decision of the Calcutta High Court in Gour Moni Dassi and Ors. v. Borada Kanta Jana AIR 1919 Cal 980. In that case Section 34 of the Probate and Administration Act, 1881 came up for consideration; which is exactly in similar terms to Section 247 of the Act. Interpreting Section 34 of Probate and Administration Act, 1881, it was held by the Calcutta High Court that the position of an administrator pendente lite in probate proceedings is closely analogous to that of a receiver in a partition suit and Section 34 of the Probate and Administration Act, 1881, gives ample power to the Court to direct the administrator pendente lite to do such acts as may be necessary in the interests of the several parties to the proceedings. We agree with the view of the Calcutta High Court. This is one of the possible situations.

16. In view of the above, we are clearly of the opinion that the learned Single Judge had the power to pass interim orders and grant permission to the Executor in contentious probate proceedings pending before him, in order to safeguard the interest of the several parties to the proceedings.

17. Learned Counsel for the Appellant has vehemently urged that the Court of probate is only concerned with the question as to whether the document put forward, as the last Will and testament of a deceased person, was duly executed and attested in accordance with law and the question as to whether the particular bequest is good or bad, is not within the purview of the probate Court. This is a well settled proposition of law. In support of his contention, the learned Counsel relied upon Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others, . The principle laid down in Ishwardeo Narain Singh''s case has been reiterated in a very recent judgment of the Hon''ble Supreme Court in Chiranjilal Shrilal Goenka (deceased) through LRs. v. Jasjit Singh and Ors. 1993 2 SCC 507. In this case it has been specifically held that the probate Court does not decide any question of title and the probate Court is only concerned with the question as to whether the document put forth before it was duly executed and attested according to law and whether at the time of such execution the testator had sound disposing mind.

18. In our opinion, the principle laid down in the case of Ishwrdeo Narain Singh''s case (supra) followed by the latest decision of the Supreme Court in Chiranjilal''s case (supra) does not in any way make the impugned order invalid. The learned Single Judge has not gone into the title of the property which is the subject matter of the Will. The learned Judge has only permitted the Executor to distribute the cash in accordance with the terms of the will so that the delay in the proceedings in Court does not prejudice the fights of the parties before the Court.

19. In the application on which the impugned order has been passed, the Executor had sought permission of the Court to distribute Rs. 6,56,614.29 which he received

as nominee of various certificates, saving bank accounts and from the Unit Trust of India etc. The cash was to be distributed initially towards meeting the expenses in connection with the funeral, Bhog ceremony, Langer and other customary expenses, expenses incurred in medical treatment, some charitable bequests, payment to the Punjab and Haryana High Court Bar Association, payment to the very old employees of the deceased who have served him etc., and the balance was to be distributed equally amongst all the heirs of the deceased who are the beneficiaries under the will.

20. The parties are agreed that after paying for the expenses etc., the maximum amount which was to be distributed to each of the heirs would be about Rs. 70,000. The Appellant is one of the heirs. He will also be getting the amount from the Executor, His case is that the property is not the self acquired property of the deceased but is ancestral property and that he filed a civil suit for that purpose in the Civil Court. Even if that be so, and the Appellant succeeds, then too, the heirs of the deceased will have a share in the property of the deceased though the question whether the property is ancestral property or not is seriously disputed by the parties.

21. It is not disputed by the Appellant that House No. 1185, situated in Sector 8 at Chandigarh is at least of the value of about fifteen lacs of rupees which is in the sole name of the deceased. Therefore, even if the Will does not exist, then too, the beneficiaries to whom the cash amount is to be distributed do have a valuable share in the immovable property mentioned above and as such the value of their shares is much larger than the amount which is to be distributed to them. No prejudice is, therefore, going to be caused to the Appellant, in case the amount is distributed to the heirs as per the terms of the Will. It cannot, therefore, be said that the learned Single Judge has erred in passing the impugned order. In fact certain urgent expenses required after death have to be met. The impugned order is in the ends of justice.

22. In the end, it may be observed that this is a very unfortunate litigation between two real brothers, who are both Advocates of this Court, in respect of the assets of the deceased, who was their father and who was also a senior Advocate of this Court and who struggled throughout his life and died at the age of 90 years. We hope that the brothers will see reason and end the litigation between them in cordial manner, keeping in mind that the Will in question is not only registered but also attested by Shri Harbans Singh, a very aminent former Chief Justice of this Court.

23. For the resons given above, we dismiss the appeal. No costs.