

## Laxminarayan Vs Dr. Ganeshmal

**Court:** Rajasthan High Court

**Date of Decision:** Nov. 11, 2003

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 195  
Succession Act, 1925 â€” Section 383

**Citation:** AIR 2005 Raj 105

**Hon'ble Judges:** N.P. Gupta, J

**Bench:** Single Bench

**Advocate:** N.S. Acharya and S.G. Ojha, for the Appellant; Himanshu Maheshwar, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

N.P. Gupta, J.

This appeal has been filed by the appellant, against the Order of the learned District Judge, Churu, passed on the

application filed on 25-8-1992, u/s 383 of the Indian Succession Act, revoking the Succession Certificate dt. 14-7-1992, granted in favour of the

present appellant.

2. The facts as appearing from the impugned Order are, that late Shri Phoos Das Swami was resident of Sardar Sahar, who had made a Fixed

Deposit in the State Bank of Bikaner and Jaipur, Branch Sardar Sahar, for the sum of Rs. 30,000/- vide Fixed Deposit Receipt 34843, which was

to mature on 26-9-1992, the original receipt was given to the present respondent. Likewise, the deceased had one Saving Bank Account No.

5095, having balance of Rs. 3750.16, and he was having original Pass Book. It Was also alleged, that the present respondent was the adopted

son of Phoos Das, and he is the real son of the elder brother of the deceased and that the wife of Phoos Das and the applicant"s (present

respondent) mother are real sisters. Continuing the allegations, it was alleged that the present appellant obtained an ex parte Succession Certificate

without even mentioning the applicant"s relation, and forcibly took over the possession of the house, and also instituted a separate proceedings for

possession. Inter alia, on these applications it was prayed that the Succession Certificate granted be revoked, and present appellant be prosecuted

by taking necessary proceedings u/s 195, Cr. P.C.

3. This application was contested. The parties led evidence, and the learned trial Court, vide impugned judgment dt. 12-2-1999, allowed the

application, and revoked the Succession Certificate, and declared the present respondent, to be the heir of the deceased Phoos Das, for the

purpose of receiving the amount of Fixed Deposit, and the amount lying in the Saving Bank Account.

4. Appeal against this Order was filed in this Court on 22-3-1999, and came up for admission on 30-3-1999, on which date nobody appeared,

whereupon the case was adjourned, to be listed after four weeks. However, it was again listed on 9-4-1999, before the same Hon"ble Bench,

after per mission, and on that date show cause notice was ordered to be issued, and in the meanwhile the operation of the impugned Order was

ordered to be stayed. Then the matter again came up on 13-5-1999, on which date Mr. Maheshwari appeared for the respondent, and submitted

that he had already appeared as caveator, and has not been supplied copy of the memo of appeal, and stay application, therefore, it was directed

to be supplied. Then the matter was again listed on 16-1-2001, on which date it was adjourned. Then on two more occasions it was adjourned.

Thereafter the matter came up before me on 18-10-2002, on which date application came to be filed, for recalling the Order dt. 9-4-1999;

alleging inter alia, that the present appellant, on 8-3-1999, submitted an application before the learned trial Court, for postponing implementation of

the impugned order, on the ground that the appellant had preferred an appeal before this Court, which was scheduled to be heard on 11-3-1999,

whereas as per the office record, the appeal was filed on 22-3-1999. It was also stated in the application, that the respondent has already put in

appearance by way of caveat, and relying on the facts disclosed in the application, the learned trial Court passed the order, directing the

respondent, not to withdraw the amount from the Bank without furnishing undertaking. Certified copy of the order, so also of the application was

produced along with the application. Since a perusal of the certified copy of the application, annexed with the application, showed that the

application was moved on the basis of the information received by the appellant from Shri Thakur, . and Shri Thakur, who was also present in the

Court on that day, was served with a copy of the application, and was given time to file reply. Thereafter the matter came up on 15-11-2002, by

which time Mr. Thakur had filed reply, controverting the allegations. Perusing the application and the reply, and Order was passed, directing the

learned District Judge, to enquire into the matter. The precise direction given was as under :--

Before taking any serious action in the matter, I think it appropriate to direct the learned District Judge, Churu to get the matter investigated

threadbare by holding inquiry, or getting investigated through competent police agencies including interrogation of all litigants and lawyers

concerned, and submit a report to this Court as to who are the persons, which according to him, are the authors of the episode.

5. Pursuant to this order, the learned District Judge purportedly enquired into the matter. Recorded the statement of four witnesses, being that of

Shri Anand Balan, the counsel for the present appellant in the Court below, Shri Anant Ram Soni, who was the counsel for the present respondent

in the Court below, the present appellant, and Shri K. L. Thakur, and submitted the report to the effect, that the appellant is responsible for making

false averments in the application dt. 8-3-1999, and sent the report. For this purpose, the learned District Judge believed the statement of Shri K.

L. Thakur.

6. After receipt of the report, the case was listed in the Court on 3-1-2003, on which date, learned counsel for the parties prayed for time to study

the matter, and argue the matter. Then on 6-3-2003, the appellant sought time to file objection against the report. Then on 7-4-2003, Mr. Acharya

again sought time to argue the matter, so far as the report of the District Judge is concerned. Thereafter the matter went on being adjourned, for

amicable settlement between the parties outside the Court.

7. In the meantime, an application has been filed on 1 -5-2003 by the appellant, tendering unconditional apology, and contending, that due to

misunderstanding, and misconception on the behalf of his colleague, he gave a statement before the Court, and he will not repeat the mistake in

future. This apology was supported by the affidavit of the appellant. Simultaneously the appellant also filed yet another application, giving out, that

the appellant does not want to press the appeal, and praying the same to be dismissed.

8. It is in this sequence, that ultimately on 3-11-2003, when it finally transpired, that for one reason or the other, the amicable settlement between

the parties, outside the Court, could not be arrived at, the matter was argued, and during the arguments, so far the appellant is concerned, all that

was submitted was, that he has already moved the application for dismissing the appeal as not pressed, and therefore, the same be dismissed as

not pressed, while the learned counsel for the respondent submitted, that pressing, or not pressing of the appeal is the choice of the appellant, but

then as found by the learned District Judge, the appellant is responsible for making a wrong statement before the learned trial Court, and obtaining

the interim Order on that basis, vide application dated 8-3-1999, and for that the appellant is required to be adequately punished.

9. In that view of the matter, since the appellant does not press the appeal, the same is, therefore, dismissed as not pressed.

10. Now, I am to concentrate on the request of the learned counsel for the respondent, as to how the appellant is required to be dealt with, for

having moved the application dated 8-3-1999, before the learned Trial Court, giving false facts.

11. At the out-set it may be observed, that filing of the application dated 8-3-1999, passing of the Order thereupon by the learned trial Court,

postponing the implementation of the impugned order, so also the date of the filing of the present appeal, are not in dispute. In that view of the

matter, so also in view of the application of the appellant dated 1-5-2003, it is no more in dispute that, the application came to be filed before the

learned trial Court on 8-3-1999, giving wrong facts, and the Order was obtained on that basis, from the learned trial Court.

12. But then, still more important question, that remains is, as to whether the appellant is to be held guilty for it, and if so what consequences are to

ensue.

13. In this regard a perusal of the application dated 8-3-1999, shows, that it was alleged therein, that on that morning he had talked to his

Advocate Shri K. L. Thakur on telephone at Jodhpur, and learnt that the appeal is fixed for hearing on 11 -3-1999, and the respondent has

entered caveat. According to the statement of Anand Balan. recorded during enquiry, the appellant came to him on 8-3-1999, and delivered him

the application, and gave out that he had delivered the papers to his counsel earlier for filing appeal, who has informed him that appeal has been

filed and fixed for hearing on 11-3-1999. Likewise the appellant has also deposed, that on 8-3-1999 he appeared in the Court of District Judge,

Churu, and filed the application, and in the morning he talked to advocate Shri K. L. Thakur on telephone No. 32358, who informed that appeal

has been filed, and fixed for hearing on 11-3-1999, and respondent has entered caveat, while Shri K. L. Thakur had deposed, that on 8-3-1999

he never gave any such information to the appellant on Telephone No. 32358, and that he never had any dialogue with the appellant, and he even

does not know him, and has never seen him at all.

14. In this background, a look at the record of this appeal shows, that the affidavit filed in support of the stay application is sworn in at Jodhpur on

8-3-1999, and the Court-fees Stamp for the appeal are purchased on 9-3-1999, and the appeal has been filed on 22-3-1999. The Vakalatnama

filed along with the appeal, bears the rubber stamp mentioning the names of two lawyers, being Kanti Lal Thakur and S. G. Ojha, as the lawyers,

having been engaged, and the Vakalatnama is signed by Shri Sarvan Ojha only. In these circumstances, it is absolutely clear, that on 8-3-1999 the

appellant was not at Jodhpur, to swear in the affidavit filed in support of the stay application, and as deposed by him, during enquiry, that he had

earlier delivered the papers to the Advocate, which version is consistent with the sequence of events.

15. It is comprehending these circumstances, that while passing the Order dt. 15-11-2002, it was perceived, that may be that, Mr. Thakur may

not have passed on the information as contained in the application, but then since the affidavit was sworn in, in support Of the stay application on

8-3-1999, while the appellant himself had filed the application before the learned trial Court on 8-3-1999, obviously the appellant had handed

over the papers for filing the appeal prior to that, and there was no occasion for the appellant to dream, that the appeal has been filed, and is fixed

for hearing on 11-3-1999, and the respondent has entered caveat. Obviously, therefore, this information must have been conveyed to the

appellant, may be by Shri Sarvan Ojha, the Advocate who is representing the appellant in appeal, or may be by any other inmate of the office of

the lawyers at Jodhpur, which might have been perceived by the appellant to be conveyed by his counsel, whom he took to be K. L. Thakur, and

therefore, while ordering enquiry, it was expressly directed "".....to get the matter Investigated threadbare by holding inquiry, or getting Investigated

through competent police agencies including interrogation of all litigants and lawyers concerned, and submit a report to this Court as to who are the

persons, which according to him, are the authors of the episode. Notwithstanding detailed, express and positive direction, the learned District

Judge has casually, simply purported to complete the formalities of the enquiry, by recording the statements of the two counsels for the either side,

appearing in the learned trial Court, that of the appellant, and that of Shri K. L. Thakur, and has simply reported, by believing the statement of Shri

Thakur, that the appellant is guilty of the act, which on the face of above sequence of events, cannot, at all be accepted. Since the learned District

Judge has not investigated the matter thoroughly, to, find out as to how the appellant received the information, I am at a loss to identify the person,

and fix the liability in that regard.

16. In that view of the matter, I do not feel inclined to make any direction against the appellant, in the matter of his filing the application before the

learned trial Court on 8-3-1999, and getting Order thereon.

17. There is yet another aspect of the matter, which also requires to be considered, at this stage itself, viz. that the caveator had entered

appearance in this Court, by filing caveat, and after passing of the Order dated 9-4-1999, on 13-5-1999 the learned counsel Mr. Maheshwari had

appeared, and asked for being supplied the copy of the memo of appeal etc. Thereafter the matter came up before the Court on number of

occasions, till before filing of the application dated 18-10-2002, and significantly the certified copies, filed along with the application dated 18-10-

2002, show that, they have been obtained way back on 5-5-1999, itself. Notwithstanding this, the respondent also kept silent over the matter,

practically for more than three years.

18. It is well-nigh possible, that since by Order dated 9-4-1999 only show cause notice had been issued, and thereafter, for one reason or the

other, the matter was not heard for admission, the respondent might be feeling aggrieved of the interim stay order, and chose to resort to filing the

application dt. 18-10-2002, but then in the application, the title given was ""Application for recalling the Order dated 9-4-1999"". and it is also

alleged in the application, that the appellant got managed interim order, and significantly has not supplied copy of the memo of appeal deliberately,

which conduct of the appellant is the game of hide and seek. With this pleading, it was prayed that the Order dt. 9-4-1999 be recalled, and the

appellant be suitably punished. Thus basically, the application was for recalling the Order dt. 9-4-1999, and as such also, I do not feel it to be

expedient in the interest of justice, to carry the matter any more against the appellant.

19. The sequence of events, of the entire episode, however, does not leave a good taste; rather leave a bitter taste in the mouth.

20. As a result of the aforesaid discussion, the appeal stands dismissed as not pressed, pursuant to the application of the appellant. And no further

action is required to be taken against the appellant, for his having filed application before the learned trial Court on 8-3-1999, and having obtained

interim Order thereon.