

**(1999) 10 AHC CK 0049**

**Allahabad High Court**

**Case No:** Testamentary Suit No. 1 of 1998

Smt. Lakshmi Devi

APPELLANT

Vs

Smt. Lata Singh and another

RESPONDENT

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**Date of Decision:** Oct. 12, 1999

**Acts Referred:**

- Allahabad High Court Rules, 1952 - Rule 35, 39, 5, 6
- Arbitration Act, 1940 - Section 20, 20(2)
- Civil Procedure Code, 1908 (CPC) - Order 4 Rule 1, 10, 151
- Succession Act, 1925 - Section 276

**Citation:** (2000) 1 AWC 4160 : (2000) 1 AWC 160

**Hon'ble Judges:** Sudhir Narain, J

**Bench:** Single Bench

**Advocate:** J. Nagar, K. M. Sinha and P. K. Ganguly, for the Appellant; Virendra Kumar Srivastava, Jayant Banerji and Gopal Das Sinha, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Sudhir Narain, J.

Smt. Lakshmi Devi has filed this petition for grant of letters of administration to her in respect of the estate of the deceased Lal Bahadur Singh on the allegation that she is widow of Lal Bahadur Singh who expired on 20.8.1996 leaving behind her and Rajendra Singh, his son. Lal Bahadur Singh was having illicit relationship with one Lata Singh who was a teacher in the Institution where the deceased was Principal and out of this relationship one son, namely, Amit Kumar Singh and one daughter, namely, Km. Vijai Shri Singh were born. Lata Singh filed a caveat. She alleged that Lakshmi Devi is not widow of Lal Bahadur Singh but, in fact, she is wife of one Hanuman Prasad and the caveator was legally married to Lal Bahadur Singh. He died leaving behind him, his only son Amit Kumar Singh. The deceased had executed a Will on 11.10.1995 whereby he bequeathed all his properties, both

moveable and immovable, to his son Amit Kumar Singh.

2. On the pleadings of the parties, six issues were framed on 2.4.1998 by this Court. The defendant filed an application for amendment of her written statement alleging that she had filed original suit No. 480 of 1997 on 9.5.1997. Lata Singh and Km. Vijai Shri Singh v. Sanyukt Sanchalak, Zila Vidyalaya Nideshalaya and Smt. Dhanpatia alias Smt. Lakshmi Devi for injunction in the Court of Civil Judge (Jr. Division) II Allahabad, restraining the defendant from receiving the emoluments of Late Lal Bahadur Singh and she further filed Succession Case No. 285 of 1997, Smt. Lata Singh v. Km. Vijai SM Singh and others on 10.5.1997 claiming succession certificate in the Court of Civil Judge (Jr. Division) II Allahabad and both the suits having been filed earlier in time than the Testamentary Suit filed by Smt. Lakshmi Devi and, as such, the present proceedings for grant of letters of administration to the plaintiff be stayed u/s 10 of the Code of Civil Procedure. This amendment application was allowed by this Court and following additional issue was framed :

"Whether the proceedings of the present suit are liable to be stayed u/s 10, C. P.C.?"

It was further directed that this issue be decided as preliminary issue.

3. I have heard Shri J. Nagar, learned counsel for the plaintiff and Sri Gopal Das Sinha, learned counsel for the defendant.

4. Learned counsel for the defendant urged that the defendant No. I had filed suit No. 480 of 1997 for injunction against Lakshmi Devi on 9.4.1997 on the allegation that Smt. Lakshmi Devi is not widow of deceased Late Lal Bahadur Singh who was Principal of an Institution. After his death Lata Singh and Smt. Lakshmi Devi both claimed before the Joint Director of Education, Allahabad, family pension etc. The Joint Director of Education Allahabad in pursuance of the direction given by this Court in Writ Petition No. 28647 of 1997 to decide the representation of the petitioner, passed an order holding that Smt. Lakshmi Devi is legally wedded wife of the deceased Lal Bahadur Singh and she is entitled to the amount claimed by her. Smt. Lata Singh in the suit filed by her prayed for permanent injunction restraining Lakshmi Devi from receiving the amount of family pensions etc. She also filed the Succession Case No. 285 of 1997 on 16.5.1997 claiming the right of succession on the basis that she is widow of Late Lal Bahadur Singh. She also stated that Lal Bahadur Singh had nominated her to receive Provident Fund, the arrears of salary and pension, etc. The Testamentary case was filed by Smt. Lakshmi Devi on 12.8.1997. It is urged that this petition having been filed subsequent to the filing of the suit by the defendant in the civil court, the present proceedings are liable to be stayed.

5. There are two basic objections against the claim of the defendant for the stay of this testamentary suit. Firstly. Testamentary proceedings are not suit in a regular civil court and secondly, letters of administration cannot be granted by the civil court.

6. Section 10 of the CPC provides that no Court shall proceed with the trial of any suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties or between the parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court of India having jurisdiction to grant the relief claimed. The word "suit" has not been defined under the Code of Civil Procedure. Order IV, Rule 1 of the CPC provides that every suit shall be Instituted by presenting a plaint to the Court or such officer as it appoints in that behalf and every plaint shall comply with the rules contained under Orders VI and VII, so far as they are applicable. An application presented to a Court is not a suit. An application for probate or letters of administration is submitted to the Court u/s 276 of the Indian Succession Act, 1925 and presentation of such application in Court is not treated as Institution of suit.

7. Chapter 30 of the High Court Rules provides the procedure for grant of probate and letters of administration. The application is to be filed in the manner provided under Rule 5 and the application for letters of administration as provided under Rule 6 of Chapter 30 of the High Court Rules. Rule 35 provides that any person intending to oppose the issuing of grant of probate or letters of administration must either personally or by his Advocate file a caveat in the Court in the prescribed form. An objection must be supported by an affidavit. Rule 39 provides that upon an affidavit in support of caveat being filed, the proceedings shall be numbered as suit in which the petitioner for probate or letters of administration shall be the plaintiff and the caveator shall be the defendant, the petition for probate or letters of administration being registered is deemed as a plaint filed against the caveator, and the objection filed by the caveator being treated as written statement in the suit and the procedure in such suit shall as nearly as may be according to the provisions of the Code. This conversion of the application into suit under Rule 39 is only for the limited purpose that the procedure as provided in the CPC as far as may be made applicable in deciding the contested application. The matter was considered AIR 1940 113 (Oudh) The contention raised therein was that the proceedings in relation to the grant of probate be stayed u/s 10 of the CPC as the similar proceeding was pending between the same parties before the Calcutta High Court. The Court relying upon decisions in *Ramani Debi v. Kumud Bandhu Mookerjee* (1910) 14 CWN 924 ; [Abhoya Charan Basak Vs. Srimati Saroja Sundari Basak](#) ; *Radhashyam Dasya v. Ranga Sundari Dasya*. AIR 1920 Cal 743 : *Chotelal Chunilal v. Bai Kabubai* ILR 1898 22 Bom 261 ; *Venfdas Nemchand u. Champabai* AIR 1930 Bom 29 ; *Shut Nath Pal v. Chandra Benode Pal*. (1912) 16 CLJ 34 : *Maung Tun Tin v. Ma Sein Yin* AIR 1923 Rang 9 ; *Ko Maung Gyi u. Daw Tok* AIR 1928 Rang 249 ; [Bohra Kanhaiya Lal and Others Vs. Gendo](#) ; *Sundrabai u. Collector of Belgaum* ILR (1909) 33 Bom. 256 and AIR 1930 272 (Oudh) , held that applications for probate or grant of letters of administration under the provisions of Succession Act are not suits even though the provisions of Code of Civil Procedure. 1908 as nearly as may be, have been made applicable to the proceedings under the Succession Act, 1925. Section 10, CPC is, therefore, not

strictly applicable. Mere registration of an application as a suit itself does not make it a suit within the meaning of Code of Civil Procedure.

8. An application filed u/s 20 of the Arbitration Act, though it is numbered and registered as a suit, between one or more parties, as plaintiff and the other as defendant, does not become a suit. The matter was considered in detail in *Gurubaksh Singh v. Sant Ram* AIR 1929 Lah 533 and it was held that Section 10 did not apply to an application under Para 20 Schedule 2, C.P.C. as it is not a plaint though it has to be numbered and registered as suit. This decision was followed in *Indra Pal Singh v. Hassan Walia* ; [Usha Rani and Others Vs. Indermal and Sons and Others](#), holding that an application u/s 20 of the Arbitration Act, 1940 cannot be treated as suit though u/s 20(2) of the Act, it shall be numbered and registered as suit.

9. Secondly, the civil court has no jurisdiction either to grant probate or letters of administration. This can be granted by the Court having jurisdiction to entertain application u/s 276 of the Indian Succession Act. The defendant has filed Civil Suit for injunction in the Court of Civil Judge (Jr. Division) Allahabad and the Succession suit also in the same Court. The said Court has no jurisdiction either to grant probate or letters of administration in those suits. Section 10 of the CPC specifically provides that "such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed."

10. In [Sankhla Industries Vs. Hiralal Pukhraj](#), wherein the previously Instituted suit, the prayer was for rendition of account whereas in the subsequently instituted suit, the plaintiff claimed a consolidated sum, It was held that the Court where the suit was pending for rendition of account had no jurisdiction to grant the relief claimed in the subsequent suit, the subsequent suit cannot be stayed u/s 10 of the Civil Procedure Code. In [Minocher Behramji Damanial Vs. Hema N. Dadachanji and Others](#), , it was held that the proceedings u/s 10, CPC cannot be stayed merely because identity of subject-matter of two suits are the same but the Court in earlier suit should have also the jurisdiction to grant relief prayed in subsequent suit. The earlier suit having been filed in Small Causes Court, for declaration that the plaintiff is tenant, the civil court has no jurisdiction to stay subsequent suit filed for possession by the other party on the ground that the defendant is a trespasser.

11. There is one more aspect in the case. The defendant No. 1 has filed written statement alleging that the deceased had executed Will in favour of Amit Kumar Singh on 11.10.1995 whereby the deceased had bequeathed his moveable and immovable properties in his favour. This Court had framed issue Nos. 2 and 3 in regard to the execution of the said Will. This Court can examine the question of execution of the said Will by the deceased before granting relief, if any, to the plaintiff.

12. Learned counsel for the defendant contended that even though Section 10 of the CPC may not be applicable, the proceedings should be stayed by this Court under its inherent power conferred upon this Court u/s 151 of the Code of Civil Procedure. He has placed reliance upon [Ramji Dayawala and Sons \(P\) Ltd. Vs. Invest Import](#). The Court has, however, to exercise its inherent power keeping in view all the facts and circumstances of the case. The plaintiff has filed application for letters of administration. The issues have been framed in the suit. The defendant has filed suit before the civil court for permanent injunction challenging the decision of the Joint Director of Education whereby the plaintiff has been permitted to receive the amount of pension, etc. One of the pleas of the defendant is that the deceased had executed a Will in respect of his moveable and immovable property in favour of her son and that question is to be decided in this case. Considering the facts and circumstances of the case, I do not find that it is a fit case where the Court should exercise its inherent jurisdiction u/s 151 of the CPC to stay the present proceedings.

13. Issue No. 7 is, accordingly, decided in negative against the defendant.