

Beni Chand Vs Smt. Kamla Kunwar and Others

Court: Allahabad High Court

Date of Decision: Sept. 13, 1972

Acts Referred: Constitution of India, 1950 " Article 133(1)

Citation: AIR 1973 All 9

Hon'ble Judges: Satish Chandra, J; N.D. Ojha, J

Bench: Division Bench

Advocate: J.N. Chandra and Gopal Behari, for the Appellant; V.K.S. Chaudhary and L.P. Singh, for the Respondent

Final Decision: Allowed

Judgement

N.D. Ojha, J.

This is an application for certificate under Article 133(1)(a) (b) and (c) of the Constitution of India. Smt. Kamala Kunwar

respondent No. 1 made an application for probate of a will executed by one Smt. Jaggo Bai on October 26, 1961. Beni Chand entered a caveat

and filed a written statement contesting the claim of Smt. Kamla Kunwar. The application was dismissed by a learned Single, Judge, but on special

appeal by Smt. Kamala Kunwar the order of the learned Single Judge was set aside and probate of the will was granted to her by a Bench of this

Court. Now Beni Chand has filed this application for certificate. In paragraph 21 of the affidavit filed in support of the application for certificate it

has been stated that ""a decision has been recorded in favour of the applicant Kamala Kunwar who has been held entitled to a grant of probate and

the property worth Rs. 1,86,799.14 according to the plaintiff and Rs. 5,90,000/- according to the defendants case covered by the will has been

held to pass to the plaintiff, Kamala Kunwar,"" A counter-affidavit has been filed by one Raman Lal as Pairokar of Smt. Kamala Kunwar but the

aforesaid assertion made in paragraph 21 of the affidavit has not been specifically denied except making a bald statement in paragraph 11 that the

contents of paragraph 21 of the affidavit were incorrect. In the rejoinder-affidavit the facts stated in the original affidavit were reiterated. We have

perused the application for probate filed by Smt. Kamala Kunwar. Annexure I to the said application contains the details of the property in respect

of which probate was sought for. Certain amendments were made in the list of properties and the total valuation of the properties after amendment

is shown as Rs. 2,00,299.14 np. In this view of the matter there seems to be no doubt that the properties in respect of which probate was sought

for were and still are valued at a sum of more than Rs. 20,000/-.

2. It was, however, contended by the learned counsel for the respondent that the subject-matter of the proceedings for probate was the question

as to whether the will in respect of which probate was asked for was the last will of Smt. Jaggo Bai and was duly executed by her in accordance

with law. It was urged that the grant of a probate per se did not confer any title in respect of the properties which were bequeathed under the will

and, therefore, the value of the properties could not be the subject-matter of the dispute within the meaning of Clause (a) of Article 133(1) of the

Constitution. Respondent's learned counsel further contended that even Clause (b) of Article 133(1) would not be applicable inasmuch as in order

to attract the said clause the property respecting which the claim or question arises must be property in addition to or other than the subject-matter

of the dispute. Reliance was placed upon the following observations made in the case of Chhitarmal Vs. Shah Pannalal Chandulal,

The variation in the language used in Clauses (a) and (b) of Article 133 pointedly highlights the conditions which attract the application of the two

clauses. Under Clause (a) what is decisive is the amount or value of the subject-matter in the court of the first instance and "still in dispute" in

appeal to the Supreme Court; under Clause (b) it is the amount or value of the property respecting which a claim or question is involved in the

judgment sought to be appealed from. The expression "property" is not defined in the Code, but having regard to the use of the expression

"amount" it would apparently include money. But the property respecting which the claim or question arises must be property in addition to or

other than the subject-matter of the dispute. If in a proposed appeal there is no claim or question raised respecting property other than the subject-

matter Clause (a) will apply; if there is involved in the appeal a claim or question respecting property of an amount or value not less than Rs.

20,000 in addition to or other than the subject-matter of the dispute Clause (b) will apply.

In our opinion learned counsel for the respondent is right in so far as he contends that in proceedings for grant of a probate the property

bequeathed is not the subject-matter in dispute and Article 133(1)(a) will not be attracted, but we are unable to agree with the submission that

even Clause (b) will not apply. Smt. Kamala Kunwar respondent has been mentioned as the executrix of the will and administratrix of the property

and is also one of the legatees. Bent Chand has been given nothing under this Will. Once probate is granted to her she becomes entitled to the

properties bequeathed to her and will continue to be so entitled to the same unless any contrary decision is given by a competent court of law on a

suit for declaration of title. In this view of the matter the order granting probate involves claim respecting property of a value of more than Rs.

20,000/-. These properties are other than the subject-matter of the dispute. The judgment against which an appeal is sought to be filed in the

Supreme Court is at variance and Article 133(1)(b) is clearly attracted.

3. In *Smt. Jasodabai and Smt. Ramchandrabai Vs. The State of Maharashtra and Another*, a writ petition was filed praying that certain notices

issued for declaration of lands in excess of the ceilings as surplus and requiring that they be surrendered, be quashed on the ground that the

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 was unconstitutional. The properties which were affected by the notices in

question were more than Rs. 20,000/- and a certificate under Article 133 was prayed for but refused by the High Court. In that connection the

Supreme Court held:

The appellants before the High Court were attempting to save their property by challenging the validity of the Act and the decision of the Court

that the Act was valid directly affected the civil rights of the parties in properties well over the mark in value. In these circumstances, the High

Court could not refuse the certificate.

It will be noticed that in *Jasodabai's* case the properties which were sought to be declared as surplus were not the subject-matter of the dispute in

the writ petition. The subject-matter in dispute in the writ petition was the notices issued under the impugned Act which were sought to be quashed

on the ground that the Act was unconstitutional. Obviously, therefore, Article 133(1)(b) was in contemplation of their Lordships when they held

that the High Court should have granted certificate under Article 133 inasmuch as its decision affected the properties valued at more than Rupees

20,000/-.

4. In *Central Talkies and Another Vs. Lala Dwarka Prasad*, a Bench of this Court while considering the scope of Article 133(1)(b) held that if a

will is declared to be invalid the result would be that the entire properties covered by the aforesaid document will be affected and, therefore, in

determining whether the decision affects the property of Rs. 20,000/- or more, the value of the entire property should be taken into consideration.

5. In view of the aforesaid discussion the petitioner, in our opinion, is entitled to a certificate under Article 133(1)(b) of the Constitution.

6. In so far as the prayer for a certificate under Article 133(1)(c) is concerned we are of the opinion that no substantial question of law of general

importance is involved inasmuch as the finding recorded by this Court that the will in question had been executed and attested in accordance with

law and at the time of such execution the testator had sound disposing mind is a finding of fact.

7. We accordingly grant a certificate under Article 133(1)(b) of the Constitution. The petitioner will be entitled to his costs.