(2008) 04 JH CK 0021

Jharkhand High Court

Case No: None

Faiz Murtaza Ali		APPELLANT
	Vs	
Syed Askari Hadi Ali Augustine Imam and Another		RESPONDENT

Date of Decision: April 2, 2008

Citation: (2008) 2 JCR 512

Hon'ble Judges: M. Karpaga Vinayagam, C.J; D.G.R. Patnaik, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M. Karpaga Vinayagam, C.J.
Faiz Murtaza All has filed a Caveat under Rules 126 and 127 of the Jharkhand High Court Rules, seeking leave to contest the probate proceedings pending. The learned Single Judge, by the order dated 4.1.2008, dismissed the same on the ground that the petitioner-appellant has no caveatable interest. This is under challenge in this Letters Patent Appeal.

2. According to the learned Counsel appearing for the appellant, the learned Single Judge has not properly considered Section 88 of the Mahomedan Law and ultimately he has given a wrong finding that the petitioner has no caveatable interest. It is contended by the learned Counsel for the petitioner-appellant that the appellant being the son of the brother of the mother of the testatrix is entitled to inherit the estate of the mother of the testatrix since the testatrix predeceased her mother and there is no one under category I and the appellant comes under category II and as such, he has interest in the property.

3. We have heard the learned Counsel for the respondents.

4. There is no dispute in the fact that the Caveator is the son of late Murtaza Fazal All, who was the brother of Syeda Mehndi Imam, the mother of the testatrix. The Will produced praying for probating would indicate that Shamim Amna Imam has

bequeathed the properties in question to Syed Askari Hadi Ali, petitioner No. 1 in the Testamentary Case, who is her own uncle and Syed Hasan Francis Imam is the son of the petitioner No. 1. It is strenuously contended by the learned Counsel for the appellant-caveator that as per Section 88 of the Mahomedan Law, caveator also has got interest in the property.

5. Let us reproduce Section 88, which is as follows:

88. Three classes of heirs by consanguinity.--(1) Heirs by consanguinity are divided into three classes, and each class is sub-divided into two sections. These classes are respectively composed as follows:

I (i) Parents;

(ii) Children and other lineal descendants h.l.s.

II (i) Grandparents h.h.s. (true as well as false);

(ii) Brothers and sisters and their descendants h.l.s.

III (i) Paternal, and (ii) maternal, uncles and aunts, of the deceased, and of his parents and grandparents h.h.s. and their descendants h.l.s.

(2) Of these three classes of heirs, the first excludes the second from inheritance, and the second excludes the third. But the heirs of the two sections of each class succeed together, the nearer degree in each section excluding the more remote in that section [Baillie, II, 276, 280, 285].

Even according to the learned Counsel for the appellant, Clause II(ii) would apply in this case. The perusal of the same would indicate that the only persons who are brothers and sisters of the testatrix and their descendants would be entitled to have interest in the property. Admittedly the appellant-caveator is neither the brother of the testatrix, nor the descendant of the brother or the sister of the testatrix. The mere fact that the testatrix predeceased her mother would not entitle the descendant of the brother of the said mother of the testatrix to have caveatable interest to implead himself as one of the parties in the probate proceedings. It is contended that several litigations are going on between the parties with regard to the properties inclusive of the properties which are the subject-matter of the Will sought to be probated in the testimony case and in those cases, the petitioner-caveator has been allowed to be impleaded. Merely because the petitioner-appellant has been impleaded or substituted in other pending suits with reference to the disputes over the properties including the properties which are the subject-matter of the Will, he cannot claim the right to have caveatable interest.

6. Learned Single Judge has dealt with this point in detail and referred to several judgments, like In Re: Late Rajo Singh Ramautar Singh alias Ganesh Shankar Mrs. Elizabeth Antony Vs. Michel Charles John Chown Lengera, ; 2007 (3) PLJR 789 Pratima Kaur v. Sardar Balwant Singh Ramuwalia. The learned Single Judge has rightly held

that the mere statement made by the petitioner-appellant that he being the legal heir and representative of the mother of the testatrix cannot establish that he is having caveatable interest. Only when the petitioner-appellant could inherit the properties which are subject-matter of the Will, even if there was no will, he will have caveatable interest. This is not established in this case.

7. When there is no material to show that he has got caveatable interest, there is no meaning in allowing the petitioner-appellant to be the Caveator in the probate proceedings. It may be true that the petitioner has been substituted in the other civil litigations pending in various Civil Courts in respect of the disputes over the properties, but in those cases the question of caveatable interest u/s 88 of the Mahomedan Law was not considered. So the fact that he has been substituted in the civil cases cannot be a ground to accept the prayer of the petitioner-appellant.

8. In view of above circumstances, we find that the order passed by the learned Single Judge is perfectly justified. The appeal is, accordingly, dismissed.

D.G.R. Patnaik, J.

9. I agree.