

Mrs. Arzan Rameshwar Rikhye Vs Symphony Co-op. Hsg. Soc. Ltd.

Court: Bombay High Court

Date of Decision: Sept. 4, 2012

Acts Referred: Succession Act, 1925 & Section 237, 248, 254, 269, 269(1)

Hon'ble Judges: Roshan Dalvi, J

Bench: Single Bench

Advocate: Manek J. Kalyaniwalla instructed by Mulla and Mulla and Craig Blunt and Caroe, for the Appellant; M.S. Delhvi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mrs. Roshan Dalvi, J.

The petitioner is the estranged wife of the deceased. The respondent is a co-operative society in which the

deceased had a residential flat. The deceased left behind only the petitioner and her daughter as his heirs and legal representatives. The deceased

executed a will dated 14th June, 1999 and a codicil dated 6th March, 2003. He appointed 3 executors. Under the will the deceased has

bequeathed all his estate to charity except making specific bequests to his wife, daughter, son-in-law and grand daughter of Rs. 2 lac, Rs. 2 lac,

Rs. 2 lac & Rs. 1 lac respectively and with the allowance for pension to his wife. He has directed his executors to pay the remainder of his estate

to a Family Trust created by the deceased under which his entire estate was to be given to the "poor and needy people of India" as per the specific

mandate in clause 9 of the will.

2. All the three executors are shown to have renounced the executorship. The petitioner, who is one of the 2 heirs of the deceased, has applied for

the probate of the copy of the will and the codicil of the deceased. She claims that one of the executors gave her a copy of the will and codicil. She

claims to be entitled to proceed in the probate petition upon the copy of the will and codicil u/s 237 of the Indian Succession Act.

3. She has taken out this Notice of Motion for rather strange reliefs. She claims possession of the keys of the flat to be handed over to her and to

allow her to break open the lock of the entrance door of the flat and enter the same and to make an inventory of the flat, to open the cupboards by

breaking them open, to allow her to enter upon and remain in flat ostensibly to maintain the flat and to permit her to put her lock on the said flat.

The society has opposed. It is due to this position that the estate of the deceased has been so far secured. It would have to be secured by the

Court for carrying out the will of the deceased and to cause the charity to the poor and needy people of India to be effectuated.

4. The petitioner has taken out this Notice of Motion for entering upon the flat as aforesaid on the premise that she does not have full particulars of

the estate which could be obtained only upon entering the suit flat to answer the request of the office of the Prothonotary and Senior Master of this

Court for the grant of probate. Counsel on behalf of the petitioner drew my attention to the schedule annexed to the petition which is stated to

contain certain blanks which could be filled only upon entering into flat breaking open its lock and breaking open lock of the cupboard. I have seen

the schedule. The petitioner has given detailed description of all the fixed deposits, bank balances, share and securities and bonds of the deceased.

In the schedule certain particulars of the immovable property being the aforesaid residential flat are not given but left blank. These are particulars of

CTS number, share certificate number and the distinctive numbers of the shares of the flat. The society can be requested to give all these

particulars which appears to have been done. Counsel on behalf of the society agrees to give those particulars to the petitioner. The petitioner shall

fill in the blanks in schedule I of Exhibit D to the petition.

5. The petitioner also requires the keys of the locker to be taken by breaking open the keys of the cupboard. It would be easier to break open the

keys of the locker themselves in deserving cases. That is done in numerous matters. Orders in that behalf can be passed by the Court. This does

not require an order to break open the cupboard after breaking open the main door of the flat.

6. The peculiar facts of this case which cause a specific problem relating to the preservation and protection of the estate of the deceased meant for

charity being ""poor and needy people of India"" requires serious thought because of several conjoint circumstances. The deceased and his wife

were estranged. The deceased and his daughter were also not very close though the deceased provided for his wife a separate flat at Malbar Hill,

Mumbai where his daughter also resides whilst in India, she being settled in N.S.W., Australia. The deceased has specified this fact in his will

which is corroborated by the address shown by the petitioner as also her daughter in their respective affidavits filed in this petition. The deceased

has given specific bequests to his own family and excluded his brother's family. Aside from the specific bequests to the petitioner and his daughter,

who are only the heirs and legal representatives, the deceased has specified that they would get nothing else. The petitioner had earlier created a

trust on 9th August, 1991 called Rikhye Family Memorial Trust to which all his estate is directed to be given to be utilized for the poor and needy

people of India. The trust itself was to the same end. The petitioner, as the settlor, was the first trustee along with 4 other trustees, one Mr. & Mrs.

Nair and one Mr. & Mrs. Vashi. At least after the death of the deceased, none has acted as trustee or taken care of the trust properties. Mr. &

Mrs. Nair are stated to be residing abroad. The petitioner has stated in a Notice of Motion that she and her daughter are not able to meet them.

Mr. & Mrs. Vashi have retired as per the letter of their Attorneys M/s. Bharucha & Partners dated 07.01.2010 addressed to the petitioner's

earlier Attorneys M/s. Amarchand Mangaldas & Suresh Shroff & Co. with a copy marked to the Charity Commissioner. They have however not

filed any change report. None of the trustees is, therefore, seen to be interested in continuation of the trust or the protection and preservation of the

trust property. It is to this trust and for the above purpose that the deceased has bequeathed the rest and remainder of his property. It is, of course,

not for the Testamentary Court to run the trust; it is certainly for this Court to preserve and protect the property of the deceased to effectuate the

will and intention of the deceased in his last will and testament which makes the bequest of the property for the poor and needy people of India and

not for the petitioner herein.

7. There are 3 executors appointed by the deceased under his last will and testament. All the 3 executors have relinquished their executorship and

stated that they do not desire to intermeddle in the estate of the deceased. Affidavits in prescribed forms have been filed. This has left the petitioner

with none to contend with except the Court. This has doubled the duty and the responsibility of the Court.

8. It is contended on behalf of the petitioner that the Court may give such direction as it deems fit to the petitioner u/s 302 of the Indian Succession

Act, 1925. Section 302 runs thus:

302. Directions to executor or administrator.- Where probate or letters of administration in respect of any estate has or have been granted under

this Act, the High Court may, on application made to it, give to the executor or administrator any general or special directions in regard to the

estate or in regard to the administration thereof.

9. Section 302 comes into effect only after probate or letters of administration is or are granted. However it is the grant of the letters of

administration which the petitioner has sought which requires the Court to exercise caution. The deceased has left a reasonably large estate even

given the valuation put by the petitioner herself. The residential premises of the deceased, which the petitioner so much requires to maintain by

residing therein is a flat of 683 sq. ft. valued at Rs. 60 lac which at least prima facie is shown to be undervalued. The entire of the property

including the other movable property of the deceased are shown to be Rs. 1,28,95,033/-. This estate and this amount rightfully belongs to the poor

and needy people of India and not the petitioner or her daughter who has consented to the grant of letters of administration with the will of the

deceased annexed thereto. There would be further assets in the 2 lockers, which have been valued at Re.1/-which would also similarly belong to

the poor and needy people of India alone.

10. It is argued by Mr. Kalyaniwalla on behalf of the petitioner that the petitioner is a legatee and hence entitled to be granted letters of

administration. However since she has been granted only a specified bequest, letters of administration may be granted to her u/s 248 of the Indian

Succession Act limited only to her share. Section 248 runs thus:

Grants for special purposes

248. Probate limited to purpose specified in Will.- If an executor is appointed for any limited purpose specified in the Will, the probate shall be

limited to that purpose, and if he should appoint an attorney or agent to take administration on his behalf, the letters of administration, with the will

annexed, shall be limited accordingly.

11. The petitioner is not appointed executrix. I do not see how this section would come into play to make any grant to the petitioner. The petitioner

has been granted a very small portion of the estate of the deceased. Though technically she would be the legatee, her interest can be preserved by

the Court even without she being appointed administrator under the letters of administration issued by the Court for the limited purpose of giving

her Rs. 2 lac out of an estate of Rs. 1.28 crores admittedly shown by her.

12. Mr. Kalyaniwalla drew my attention to 2 judgments dealing with appointment of administrator/executor of the estate of a deceased for grant of

probate/letters of administration. In the case of Rustam Ardeshir Gagrati AIR 1990 BOMBAY 111 directions u/s 302 were refused to be passed

for appointing a person not named as executor to assist the executor appointed by the testator. The reasoning in the judgment is that when an

executor is appointed, only the executor can be permitted to administer the estate and none other. However appointing another to act with him

would be to make that another be an executor though not intended by the testator. That was the case in which the executor did not refuse to act,

though the other executor had. The executor only wanted to supervise execution on account of his age. The executor was entitled to renounce the

executorship. Had he done so, letters of administration with the will annexed could have been granted to any heir or legatee and if the Court did

not deem that fit, to an administrator or an officer to be appointed by the Court instead. In view of the fact that in this case all the 3 executors have

renounced their executorship, the Court can appoint the sole legatee or the main legatee an executor. As the main legatees are ""the poor and needy

people of India"", the Court must appoint someone on their behalf as executor to obtain probate and carry out the administration of the estate of the

deceased to that end. The Court cannot appoint a specific legatee (who has only a small legacy) under the will as an executor specially because

that would go directly against the will of the deceased and who is even otherwise seen to be unfit given her surprising demands and application for

directions as set out hereinabove. The spirit of the judgment in the case of Rustam Gagrati (supra) would forbid the Court from taking that course.

13. In the case of Annopurna Dasi Vs. Kallayani Dasi (1894) ILR 21 Cal 164 the grant of letters of administration with conditions attached thereto

in joining other heirs who oppose the grant made by the District Judge came to be set aside by the Division Bench of the Calcutta High Court. The

Court considered Sections 23 & 41 of the Probate and Administration Act, 1881 which was the Act with regard to law of succession prevailing in

India prior to the Indian Succession Act. u/s 23 of the Act administration of the estate could be granted to the person entitled to the whole or part

of the estate of the deceased. Section 23 ran thus:

To whom administration may be granted. 23. When the deceased has died intestate, administration of his

estate may be granted to any person who, according to the rules for

the distribution of the estate of an intestate applicable in the case of

such deceased, would be entitled to the whole or any part of such

deceased's estate.

When several such persons apply for administration, it shall be in

the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the

deceased.

14. The wife of the deceased in the case of Annopurna Dasi (supra) applied for being granted administration. The daughter and one grandson of

the deceased opposed it on the ground of maladministration of the estate of the deceased since the death of the deceased prior to the application

for the grant rendering the estate heavily indebted - to the extent of Rs. 25,000/- in 1893. The District Judge allowed her to be appointed

administrator clogged with the condition that her daughter or grandson should be joined in the grant. The Calcutta High Court held that that need

not be. It observed that the Court was entitled to grant letters of administration to the whole or part of the estate. Hence the wife was entitled to be

granted letters. The Judge could have refused the grant upon sufficient cause, but the Judge did not do so and instead granted it upon condition that

she joined the other heirs who opposed the grant. It was held that this could not be done u/s 23 of the Act of 1881. The condition was stated to be

put by the District Judge u/s 41 of the Act of 1881. Section 41 of the Act of 1881 is identical to Section 254 of the Indian Succession Act, 1925

which is its successor legislation relating to the law of succession and which shall be dealt with presently. Suffice it to say that when a person is

appointed administrator he should not be jointly appointed with another. The case of Annopurna Dasi (supra) further held that if for some just

cause the person who is legally entitled to letters of administration ought to be superseded, grant may be made to some other person. However

there was no authority for saying that the Court had the authority u/s 41 to direct somebody else who then had no interest in the estate to be

associated with the person who was legally entitled to the letters of administration. In that case there was no bequest to charity. The heirs alone

succeeded to the estate. The widow was the lawful heir.

15. This is the case where the wife of the deceased is not the main heir. She is only a legatee of a specific bequest of a very small amount. The real

legatees are the poor and needy people of India for whom the estate has to be protected, preserved and to whom it has to be handed over.

16. It would not permit the conscience of the Court to allow an estranged wife to obtain the grant of the Court to administer the estate of the

deceased even as per the directions of the Court.

17. u/s 273 of the Indian Succession Act letters of administration once granted would have effect over all the property and estate, movable and

immovable, of the deceased in the State and be conclusive as to the representative title of the holder of the grant against all. It would be outside the

limits of the supervision of the Court to require the petitioner to inform the Court of the grant once she obtained representative title to the estate of

the deceased. It would, therefore, be prudent in the interest to the poor and needy people of India, for whom the Court must collect, protect,

preserve and distribute the estate not to grant the letters of administration to the petitioner.

18. Once that aspect is confirmed, the grant of the unusual reliefs sought for in this Notice of Motion would be settled. None of the reliefs as

prayed for can be granted to the petitioner. The specific bequests of all the legatees including the petitioner under the will of the deceased must

however be allowed to the extent granted under the will, but without the exertion by the administration of the estate of the deceased by the

petitioner.

19. The administration must be granted to a specified officer appointed by the Court as an administrator under Sections 254 & 269 of the Indian

Succession Act which run thus:

254. Appointment, as administrator, of person other than one who, in ordinary circumstances, would be entitled to administration.- (1) When a

person has died intestate, or leaving a Will of which there is no executor willing and competent to act or where the executor is, at the time of the

death of such person, resident out of the State, and it appears to the Court to be necessary or convenient to appoint some person to administer the

estate or any part thereof, other than the person who, in ordinary circumstances, would be entitled to a grant of administration, the Court may, in its

discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint

such person as it thinks fit to be administrator. (2) In every such case Letters of administration may be limited or not as the Court thinks fit.

269. When and how District Judge to interfere for protection of property.- (1) Until probate is granted of the Will of a deceased person, or an

administrator of his estate is constituted, the District Judge, within whose jurisdiction any part of the property of the deceased person is situate, is

authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all

other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he thinks fit, to appoint an

officer to take and keep possession of the property.

(2) This section shall not apply when the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, nor shall it apply to

any part of the property of an Indian Christian who has died intestate.

20. In this case the Court's continuous directions for the protection of the property would be most essential. This is the case in which the deceased

left the will appointing 3 executors, none of whom is willing to act as such, so that the appointment of an administrator is imminent to administer the

estate rather than allow the administration to the petitioner who would have otherwise been entitled to do so. The officer of this Court who would

regularly report to Court would ensure the safety of the estate of the deceased to ensure that it would be properly administered. Such letters of

administration can be granted upon the specific condition that the administrator reports to the court regularly and until the estate shown in the will of

the deceased is collected, invested and handed over to the specific legatees and to the poor and needy people of India as per the specific

directions of this Court.

21. Further u/s 269(1) since the estate is not excepted u/s 269(2) as the deceased has not died intestate, this Court would require to interfere for

the protection of the property at each stage of the collection, investment and ultimate handing over of the property which would otherwise be lost

or damaged and not reach the ultimate beneficiaries who cannot even approach this Court for relief, redress or remedy.

22. Consequently the directions and orders sought in the Notice of Motion by the petitioner which are upon the premise that she is the rightful heir

entitled to be granted the letters of administration upon the renunciation by the executors appointed under the will need not be granted since it

would be neither appropriate, nor proper, nor safe, nor prudent to grant her the letters of administration themselves. Hence the directions for

appointment of administrator/officer of this Court to be granted letters of administration and to administer the estate of the deceased under the

directions of the Court to effectuate the bequests made under the will more specially the main bequest to the poor and needy people of India and

for the protection and preservation of the estate need to be passed as follows:

The orders and directions prayed for by the petitioner are not granted.

(1) The Associate of this Court, Mrs. Rekha Rane is appointed officer/administrator of the Court to administer the estate of the deceased Captain

Rameshwar Lal Rikhye as per the directions which shall be passed by the Court hereunder and further directions that shall be passed by this Court

from to time hereinafter.

(2) The Chairman/Secretary of the respondent-society shall, within 1 week from today, hand over the keys of the suit flat initially to the

Prothonotary and Senior Master of this Court who shall hand over the keys to the officer/administrator as and when directed by this Court.

(3) The officer/administrator shall cause 2 bank lockers mentioned in the schedule, Exhibit D to the petition, to be opened in the usual mode before

another officer of this Court to make an inventory of the articles contained therein, value the articles and reseal the lockers and make a report to

the Court about contents and valuation within 4 weeks from today.

(4) The officer/administrator shall write to all the banks and companies in which the fixed deposits, bank accounts, shares and securities and bonds

of the deceased are invested calling upon the banks and companies to deposit the receipts of the fixed deposits, bank statements, shares and

bonds.

(5) The administrator/officer shall make a report to Court of the letters sent and responses received on the first day of each month until the entire

amount of the fixed deposits, bank balance, shares, securities and bonds are received.

(6) The officer/administrator shall open an account in the name of ""Administrator - Estate of Captain Rameshwar Lal Rikhye"" and deposit the

amounts which are sent by the banks and companies to the administrator pursuant to her letters.

(7) The administrator/officer shall take further directions of the Court after the amounts are received and after the valuation of the articles in the

lockers is done.

(8) The officer/administrator shall obtain the valuation of the residential premises of the deceased in the respondent-society.

(9) The administrator shall similarly report to the Court about that valuation and obtain further directions thereon from the Court.

(10) Once the entire estate is collected, further directions in administration shall be passed.

(11) Until such time as any further orders are passed, the office of the Prothonotary and Senior Master, High Court, Bombay shall not proceed

with the above Testamentary Petition No. 466 of 2011.

(12) Notice of Motion is adjourned to 1st November, 2012 for further directions upon the administration carried out by the Administrator in terms

of paras 3, 4, 5, 6, 8 & 9 above.