Ramendra Nath Mukherjee and Others Vs Sm. Shibarani Debi and Others

Court: Calcutta High Court

Date of Decision: Sept. 4, 1961

Acts Referred: Succession Act, 1925 â€" Section 229, 235, 283

Citation: 67 CWN 715

Hon'ble Judges: P.N. Mookerjee, J; Amaresh Roy, J

Bench: Division Bench

Advocate: Syama Charan Mitter, for the Appellant; J.K. Sen Gupta and Asok Kumar Sen Gupta for Opposite Parties 1 and 2 and Sibkali Bagchi for Opposite Parties 3 to 5, for the Respondent

Judgement

P.N. Mookerjee, J.
This Rule was obtained by the petitioners whose caveat (written statement) in the instant probate proceeding, pending

before the learned District Judge, was rejected in limine upon the finding that, on the objection, taken in the said caveat, the petitioners had no

locus standi as caveators. The probate proceeding in question relates to the Will of late Tarak Nath Mukherjee of Uttarpara. In the caveat filed by

the predecessor of the present petitioners, and adopted and pressed by them, an allegation was made inter alia as follows: ""That the deceased did

not leave any assets and the list of property, moveable and immoveable furnished in the affidavit of assets, does not comprise his property. These

are property in which the deceased had only a limited estate in terms of the deed of settlement dated the 27th October, 1913, executed by Raja

Peary Mohan Mukherjee in favour of the deceased and as such the petition for grant of probate does not lie and the petition should be dismissed

[Vide paragraph 5 of the above written statement (caveat) of the present petitioners].

2. Upon the above objection, the learned District Judge has held that the petitioners, as caveators, were trying to set up an adverse title to the

deceased (testator) and were really denying the deceased"s title to any property, which may be covered or affected by the Will, and, under the

uniform decisions of the different High Courts, such a caveat was not maintainable in law. The learned District Judge referred, in particular, to the

decision of this Court in Nabeen Chandra Sil v. Bhobosoondari Debee, (1) ILR 6 Cal. 460, and to its later decision reported in Abhiram Dass v.

Gopal Dass, (2) ILR 17 Cal. 48. The learned District Judge also referred to the several cases, cited on behalf of the petitioners, namely, Brindaban

Chandra Saha v. Sureswar Sinha, (3) 10 C.L.J. 263, Nabin Chandra Guha v. Nibaran Chandra Biswas, (4) 36 C.W.N. 635. As, however, he

was of the opinion that, under none of those decisions, and, particularly, in view, inter alia, of the decision of this Court in (2) ILR 17 Cal. 48

supra, and the recent decision, reported in Southern Bank Ltd. v. Kesardeo Ganeriwalla and others, (5) 62 C.W.N. 444, a caveat, containing an

allegation of the type, set out above, cannot be entertained and the caveator would have no locus standi on such allegation to object to the grant of

probate or to intervene in the probate proceeding, he discharged the petitioners'' caveat.

3. About the law on the point, there can be little doubt or dispute. It is beyond controversy that a person, seeking to deny the title of the deceased

in the estate, purported to be dealt with by the Will or affected by the Will, could not maintain a caveat and would not have locus standi, as a

caveator in the relative probate proceeding. This, indeed, is settled law [Vide, in this connection, Paresh Chandra Das v. Bidhu Bhusan Banerjee,

(6) ILR (1955) 1 Cal. 429].

4. The instant case, upon the present materials, is plainly of a caveat wherein the testator''s title to deal with the estate purported to be dealt with by

the Will, was denied. In no view and under no authority or decision would such a caveat be maintainable and the so-called caveator or caveators

would have no locus standi to dispute the Will in question, as, obviously, upon their own showing and on their own case, their interest, if any, in the

disputed properties, would not and could not be affected by the said Will.

5. The learned District Judge, therefore, was entirely right in rejecting the petitioners'' caveat upon the ground that they (the petitioners) had no

locus standi in the matter. His order, accordingly, must be affirmed and this Rule must fail and it must be discharged.

6. Before us, Mr. Mitter submitted that his clients and their predecessor appear to have been labouring under a misconception and the above

caveat was filed and pressed on a wrong view of their rights and in the above objectionable form on account of that misconception and erroneous

impression. It is not for us to say anything on this point or to express any opinion on the correctness or otherwise of Mr. Mitter''s above

submission, but, in the circumstances of this case, we would only say that, if really there was a misconception or error on the part of Mr. Mitter''s

clients as to their legal rights or as to the testator''s rights in respect of the disputed property or estate, nothing said or done in the present

proceeding up to this stage would stand in the way of their filing a proper caveat according to law and, if any such caveat is filed, the learned

District Judge will consider the same in accordance with law.

7. To facilitate, however, such future consideration, if any, we would add a few words on the difficult and none too clear position of the law of

locus standi of a caveator under the Indian Succession Act. That Act contains no specific provision on the point. It, no doubt, provides for citation

[Vide Sec. 283, which, in its relevant part, -- Sub-sec. 1(c) -- provides for general citation, and Sections 229 and 235, which provide for special

citation] but the right to file a caveat and oppose the grant of probate may not, necessarily, depend on the right to receive a citation and may not,

therefore, necessarily require a claim, on the caveator''s part, of an interest in the estate of the deceased (testator) [Vide Southern Bank Ltd. Vs.

Kesardeo Ganeriwalla and Others, explaining inter alia and applying Sarala Sundari Dassya v. Dinabandhu Roy Brajaraj Saha (Firm) (7) 71 I.A.

1].

8. Whether the above means a change of law on the point may well be a matter for consideration as a large mass of earlier decisions, too well-

known and too numerous to mention, proceeded upon the view that a caveator must claim an interest in the estate of the deceased. What, again,

the expression ''interest in the estate of the deceased'' means has been the subject of keen and acute controversy, it having been sometimes held

that the test in this connection would be whether the probate would displace any right (to the disputed estate or property), to which the caveator

would otherwise be entitled (Vide M.K. Sowbhagiammal and another v. Komalangi Ammal and another, (8) AIR 1928 Mad. 803, and

Swatantranandji v. Lunidaram Jangaldas, (9) AIR 1937 Bom. 397), not involving necessarily a claim through the deceased (testator), while, in

others, such a claim was held to be necessary for the caveator''s locus standi (Vide e.g., (2) ILR 17 Cal. 48 supra, and Pirojshah Bikhaji & Ors. v.

Pestonji Merwanji, (10) ILR 34 Bom. 459). The broader test again would perhaps, equate the three rights, namely, the right to receive citation, the

right to lodge caveat and the right to apply for revocation and may thus be opposed to the point of view, adopted in, inter alia, Southern Bank Ltd.

v. Kesardeo Ganeriwalla and others (5) 62 C.W.N. 444 supra, unless a distinction is made between claim to an interest or the possibility of an

interest in the deceased''s estate and claim to a right or the possibility of a right, involving or concerning the said estate. If, again, the broader test

applies, a person claiming independently of or outside the Will but not adversely to the testator, may well have the locus standi to file a caveat

which would probably mean a modification of the law as stated in Gopal Chandra Bose v. Ashutosh Bose (11) 20 I.C. 342.

9. The above discussion is not necessary for purposes of the present case, as it stands now, we have appended the same so that the different

aspects of the matter may be considered by the court below at the time of further consideration, if any, in terms of this order. It must be distinctly

understood, however, that we are expressing no opinion on the validity or otherwise of any of the above differing points of view. We have merely

posed the questions for answer on an appropriate occasion.

10. Subject as above, this Rule fails and it is discharged. There will be no order for costs in this Rule.

Amaresh Roy, J.

I agree.