Asim Kumar Chattaraj and Another Vs Sankar Prasad Chattaraj and Others

C.O. 2292 of 2006

Court: Calcutta High Court

Date of Decision: June 20, 2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 151#Constitution of India, 1950 â€" Article 141, 227#Succession Act, 1925 â€" Section 283, 283(1), 284

Citation: (2011) 5 CHN 52

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: B.K. Banerjee II, for the Appellant;Partha Pratim Roy, for the Opposite Party No. 3, for the Respondent

Final Decision: Dismissed

Judgement

Dipankar Datta, J.
Smt. Rajlaxmi Devi before her death had executed a will. She had bequeath all her immovable properties in favour of

the two Petitioners, her close relatives. One Sri Nirmal Kumar Chattaraj was appointed as executor. The will was duly registered. The executor

died on December 15, 1986 before he could apply for grant of probate. The Petitioners being the beneficiaries of the said will applied for grant of

letters of administration, giving rise to Misc. Case No. 87/2001 which is pending consideration before the learned Civil Judge, Lalbagh,

Murshidabad. In the said Misc. Case, the Petitioners impleaded the opposite parties 1 and 2 as well as opposite parties 4 and 5 as Respondents.

After service of process, they have entered appearance but have not filed their respective objections to the application for grant of letters of

administration.

2. On or about February 17, 2003, the opposite party No. 3 filed an application for addition of party under Order I Rule 10(2) of the CPC

(hereafter the Code) read with Section 151 thereof praying for his impleadment as Respondent in the said misc. case. It was alleged therein that he

had acquired some interest in the estate of the testatrix by way of purchase from the opposite party No. 2 and one Sri Aditya Kumar Chattaraj

and, therefore, he ought to be heard before the Court grants relief as prayed for, if at all. According to him, the contents of the will were not

explained to the testatrix and without understanding the same, she had been compelled to execute it in the presence of the attesting witnesses. It

was further averred in the application for addition that the opposite party No. 3 has filed a suit for declaration and permanent injunction before the

learned Civil Judge (Junior Division) at Lalbagh, Murshidabad against, inter alia, the Petitioner No. 1 herein as principal Defendant and the State of

West Bengal being the proforma Defendant and that the Petitioner No. 1 being the Defendant No. 1 in the said suit is contesting the same by filing

his written statement.

3. The learned Judge upon hearing the parties, vide order No. 15 dated July 2, 2005, allowed the application for addition based on his opinion that

the opposite party No. 3 had substantial interest in the property that was the subject of the said misc. case by dint of purchase. Relying on the

decision of the Supreme Court reported in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, , the learned Judge

was further of the view that opposite party No. 3 is a proper party and if he is not allowed to be impleaded, his interest is likely to be affected by

the result of the said misc. case.

4. This order is under challenge in this revisional application under Article 227 of the Constitution of India.

5. Mr. Banerjee, learned advocate appearing for the Petitioners contended that the suit instituted by the opposite party No. 3 is admittedly pending

where he sought for declaration and injunction in respect of the property allegedly purchased by him and the trial Court, upon consideration of the

rival claims, would be in a position to decide the claim regarding his title. It was further contended that having regard to the settled law that while

deciding whether probate or letters of administration is to be granted or not the Court examines the testamentary capacity of the testator and does

not decide the question of title, the opposite party No. 3, who is a stranger to the proceedings of the misc. case, cannot have any caveat able right.

According to him, the opposite party No. 3 was neither a necessary nor a proper party who could have set up a valid claim for his impleadment as

Respondent in the said misc. case. In any event, having regard to the fact that the suit for declaration filed by him is pending where the contentious

issue raised by the parties relating to title could be thrashed out, the Court ought not to have allowed the application for addition and erred in doing

so.

6. In support of his contention, he relied on the decisions of the Supreme Court reported in Sunil Gupta Vs. Kiran Girhotra and Others, Ghulam

Qadir Vs. Special Tribunal and Others, and the decision of this Court reported in 2000 (1) CLJ 640 (Sri Dinendra Kumar Bose v. Sri Tapan

Kumar Bose).

7. Mr. Roy, learned advocate representing the opposite party 3, on the contrary, supported the impugned order. He contended that long before

the application for grant of letters of administration was filed in 2001, the property in question was transferred in his favour in 1992 and he has a

substantial interest in the matter. Reliance was placed by Mr. Roy on the decision of the Supreme Court reported in G. Gopal Vs. C. Baskar and

Others, wherein it was ruled that a person having even a slight interest in the estate of the testator is entitled to file caveat and contest grant of

probate. Reliance was also placed by Mr. Roy on the Bench decisions of this Court reported in Nabin Chandra Guha Vs. Nibaran Chandra

Biswas and Others, Haripada Saha and Another Vs. Ghanasyam Saha and Another and 1983 (1) CLJ 169 (Saral Patwar v. Smt. Sushila Dassi).

He, accordingly, prayed for dismissal of the revisional application.

8. In reply, Mr. Banerjee contended that the opposite party No. 3 had taken the risk of purchasing the property without conducting proper search

and considering the fact that the will executed by the testatrix is a registered document, it must be held that the risk taken by him was a calculated

one and he is to suffer consequences arising there from.

9. I have heard learned advocates for the parties and considered the materials on record.

10. Before I proceed to decide the only issue that arises for a decision on the application as to whether the learned Judge was justified in allowing

the application for addition filed by the opposite party No. 3, thereby permitting him to contest the said misc. case, it would be proper to make a

survey of the decisions of the Supreme Court in relation to ''caveatable interest'' and under what circumstances a non-party could be allowed to

intervene in a proceeding for grant of probate or letters of administration.

11. In G. Gopal (supra), the learned Judges of the Supreme Court were of the view that the Respondents, who were grand children of the testator

claiming interest in his estate on the basis of a settlement deed executed by the testator himself which admittedly was revoked later on, had caveat

able interest in the estate of the testator and, therefore, were entitled to notice before the final order is passed. Their Lordships opined that ""(I)t is

well-settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the

will of the testator"".

12. Prior to the decision in G. Gopal (supra), another bench of two learned Judges of the Supreme Court in its decision reported in Krishna

Kumar Birla Vs. Rajendra Singh Lodha and Others,) had the occasion to observe that a caveat able interest is an interest in the estate of the

deceased testator which may be affected by grant of probate of the will of the deceased. The test required to be applied is: Does the claim of grant

of probate prejudice the right of the caveator because it defeats some other line of succession in terms whereof the caveator asserted his right? It

was further held that what would be the caveat able interest would depend upon the fact situation obtaining in each case and no hard-and-fast rule,

as such, could be laid down. In paragraph 109 of the decision, Their Lordships held:

It is in that backdrop the question which is required to be posed is: Did the Calcutta High Court or the other High Court opine that even a

busybody or an interloper having no legitimate concern in the outcome of the probate proceedings would be entitled to lodge a caveat and oppose

the probate? The answer thereto, in our opinion, must be rendered in the negative. If anybody and everybody including a busybody or an

interloper is found to be entitled to enter a caveat and oppose grant of a probate, then Sections 283(1)(c) and 284 of the 1925 Act would have

been differently worded. Such an interpretation would lead to an anomalous situation. It is, therefore, no possible for us to accede to the

submission of the learned Counsel that caveat able interest should be construed very widely.

13. These decisions were considered by another bench of two learned Judges of the Supreme Court. In its decision reported in Shri Jagjit Singh

and Others Vs. Mrs. Pamela Manmohan Singh, , the learned Judges were of the view that conflicting views had apparently been expressed by

coordinate benches on the interpretation of the expression ""caveat able interest"". The learned Judges felt that the issue deserves to be considered

and decided by a larger bench and, accordingly, directed the registry to place the matter before the Hon''ble the Chief Justice for appropriate

order.

14. Having regard to the aforesaid decision in Jagjit Singh (supra), it can safely be concluded that there is no declaration of law on the point that

could be regarded as binding on me as precedent under Article 141 of the Constitution and it would be unsafe to proceed acknowledging the

pronouncement in either Krishna Kumar Birla (supra) or G. Gopal (supra) as the settled law. It would, however, not preclude me to decide the

issue raised herein based on the ratio decidendi of the other decisions that have been cited by the parties.

15. Heavy reliance was placed by Mr. Banerjee on the decision in Sunil Gupta (supra). I am afraid, the ratio of the decision is not applicable here.

There, the agreement for sale followed by the deed of sale was executed at a point of time when the probate proceedings were pending. This

would be evident from a bare reading of paragraph 17. Here, the alleged transfer of property by way of sale occurred nearly nine years before

institution of the said misc. case. Although it is true that the will executed by the testatrix is a registered document, the purchase does not seem to

be hit by the doctrine of lis pendens which was the case in Sunil Gupta (supra).

16. In Ghulam Quader (supra), the Supreme Court reiterated the law that grant of probate conclusively establishes valid execution of the will and

appointment of the executor but does not establish more than the factum of the will as the probate Court does not decide question of title or of the

existence of the property mentioned therein.

17. The Bench in Sri Dinendra Kumar Bose (supra) was considering two questions, viz. whether in proceedings for grant of probate it is open to

the trial Judge to go into the question of title of the testatrix and did the testatrix in the case at hand have the title to the property in question. The

first question was answered in the negative. Answer to the second question is not relevant for a decision on this application.

18. The Bench decisions cited by Mr. Roy, on the other hand, are now taken up for consideration.

19. In Nabin Chandra Guha (supra), the Bench noted that the words in Section 283 of the Indian Succession Act, 1925 that ""all persons claiming

to have any interest in the estate of the deceased"" have from time to time been explained by judicial decisions. Applying the law laid down in

various decisions, it was held by the Bench that a purchaser from an heir after the death of the testator has a locus stand; and to have it is not

necessary for the objector to show that he had an interest in the estate at the time of the testator''s death.

20. While holding that the trial Court was not justified in refusing the Petitioners an opportunity to contest the probate proceedings, the Bench in

Haripada Saha (supra) ruled that ""(I)t is well-settled that any interest, however, slight, and even the bare possibility of an interest is sufficient to

entitle a person to enter caveat in a probate proceeding"".

21. In Saral Patwar (supra), the Bench clearly laid down the law, on interpretation of Section 283(1) of the Act, that the expression ""claiming to

have any interest in the estate of the deceased"" appearing therein is wide enough to include persons having possibility of an interest and in case his

interest is such as is or is likely to have prejudicially or adversely affected by the grant, a person would be qualified to receive citation.

22. Notwithstanding the fact that a larger Bench of the Supreme Court might be in season of the issue that has been referred to it by the learned

Judges in Jagjit Singh (supra), nothing precludes me to decide this application being guided by the Bench decisions of this Court, which are binding

on me. Although in Krishna Kumar Birla (supra) it was held that the view expressed in Nabin Chandra Guha (supra) is not entirely correct, the

other two Bench decisions referred to above interpreting Section 283 of the Act in wide terms went unnoticed and, therefore, there could be no

impediment to apply the law laid down therein particularly when the propositions of law in paragraph 86 of the said decision stand substantially

diluted by the observations in paragraph 103 thereof.

23. In the present case, it is found that the opposite party No. 3 has questioned the will itself in his application for addition. Whatever be the worth

of the allegations made by him, it cannot be said that he has absolutely no interest in the estate of the deceased. From the materials on record it

could not be ascertained as to whether the vendors from whom the opposite party No. 3 allegedly purchased the property would have inherited

the properties left behind by the testatrix as if she died intestate. The property allegedly was disposed of in favour of the opposite party No. 3

nearly 9 years prior to institution of the said misc. case and the purchase that he has made stands the risk of being affected if the terms of the will

were to be made effective. I am of the considered view that the opposite party No. 3 does have the locus stand to object and in directing

impleadment of the opposite party No. 3 as Respondent in the said misc. case, the learned Judge has not acted beyond the bounds of his authority

or has not passed a perverse order or has not acted in flagrant violation of the fundamental principles of law and justice so as to warrant

interference in exercise of power conferred by Article 227 of the Constitution of India.

24. I find no merit in the application. The same stands dismissed, without costs.