

(2006) 08 CAL CK 0045

Calcutta High Court

Case No: G.A. No. 1019 of 2004 and P.L.A. No. 355 of 2001

Prabir Kumar Das

APPELLANT

Vs

Smt. Jayanti Das and Another

RESPONDENT

Date of Decision: Aug. 18, 2006

Acts Referred:

- City Civil Court Act, 1953 - Section 2(3), 5, 5(1), 5(3)
- Succession Act, 1925 - Section 2, 270, 300, 300(1)

Citation: (2007) 1 CALLT 227 : 111 CWN 242

Hon'ble Judges: Ashim Kumar Banerjee, J

Bench: Single Bench

Advocate: Utpal Bhattacharyya, for the Appellant; A.C. Kar, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Banerjee, J.

One Nirmal Kumar Das died leaving him surviving the parties above named by making a will. The widow, younger son and daughter being the respondents above named applied for letters of administration in this Court with a copy of the will annexed. The elder son, the applicant abovenamed, lodged caveat.

2. The present application was filed by the elder son for dismissal of the application for letters of administration being P.L.A.No. 355 of 2001 on the ground that this Court lacked territorial Jurisdiction to entertain the said application. The application for letters of administration was filed by invoking the jurisdiction of this Court on the ground that the deceased had his permanent place of abode at 25/5A, Ananthdeb Lane, Calcutta outside the jurisdiction of this Hon'ble Court as well as the City Civil Court, Calcutta. The place of abode within the territorial jurisdiction of District Judge, 24 Parganas (North). The deceased, however, left immovable property at Sitaram Ghosh Street, Calcutta within the Jurisdiction of this Hon'ble Court as well as City Civil Court at Calcutta.

3. The applicant contended that the provision of Clause 34 of the letters patent of the rules of this Court in its Original Side was no more applicable in the instant case in view of the amended provisions of the City Civil Court Act, 1993 (hereinafter referred to as the "said Act of 1953"). According to the petitioner since the property was within the Jurisdiction of the City Civil Court the application should have been filed in City Civil Court and not in this Court.

4. Such contention of the applicant was disputed by and on behalf of the respondents, inter alia, contending that by the amendment of the said Act of 1953 the provision of Section 300 of the Indian Succession Act was repealed in the State of West Bengal whereby concurrent jurisdiction was conferred upon the High Court along with the District Judges only in respect of the City of Calcutta and not beyond that.

5. The parties cited the following decisions:

(i) All India Reporter, 1929, Calcutta Page 141 (Gopal Chandra Biswas and Ors. v. Guru Charan Kirtania and Ors.)

(ii) 1984, Volume - II, Calcutta High Court Notes, Page 99 (In the goods of: Sailendra Nath Sarkar, deceased.)

(iii) Volume 93, Calcutta Weekly Notes, Page 812 (In the goods of: Smt. Tarak Bala Dasi)

(iv) [Alpine Industries Vs. Collector of Central Excise, New Delhi,](#)

(v) AIR SC W 2004 4853 (Swedish Match AB and Anr. v. Securities and Exchange Board, India and Anr.)

6. To appreciate the controversy let me first deal with the appropriate provisions of law. Sections 270, 300(1) of the Indian Succession Act and Section 5(3) of the City Civil Court Act are quoted below:

The Indian Succession Act:

270. When probate or administration may be granted by District Judge.-Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.

300(1). The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

City Civil Court Act:

5(3) The City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try and proceeding under-

(i) the Guardians and Wards Act, 1890 (8 of 1890)

(ii) X X X X X

(iii) the Indian Lunacy Act, 1912 (39 of 1925)

(iv) the Indian Succession Act, 1925 (39 of 1925)

7. Sub-section (1) of Section 300 of the said Act of 1925 empowers the High Court to have concurrent Jurisdiction with all District Courts and in Calcutta the City Civil Court. Clause 34 of the High Court Rules gives testamentary and intestate Jurisdiction through out the State of West Bengal upon the High Court. This particular provision being Section 300 was amended by West Bengal amendment. After such amendment the High Court did not have testamentary jurisdiction where City Civil Court was having exclusive jurisdiction. Section 270 of the said Act of 1925 provides for territorial jurisdiction in case of matter relating to succession. It provides that where the deceased had a fixed place of abode or any property moveable or Immovable lying within the jurisdiction of the District Judge the said District Judge would have the power to grant probate of the will or letters of administration as the case may be. Hence, in the instant case the deceased had property within the jurisdiction of the City Civil Court being Sitaram Ghosh Street, Calcutta. Hence, City Civil Court did have the jurisdiction to entertain the application. Similarly, the District Judge, 24 Parganas (North) was also having jurisdiction to entertain this application as the deceased had a fixed place of abode within his territorial jurisdiction. u/s 300 sub-section 1 of the said Act of 1925 read with Section 270 High Court was having concurrent jurisdiction in the instant matter with the District Judge, 24 Parganas (North). Clause 34 of the Letters Patent gives power to the High Court to deal with testamentary matter which was retained by Section 300 Sub-section (1) available as on the date of making of the application. Amendment of Section 5(3) of the Act of 1953 took away the jurisdiction of the High Court where the City Civil Court was having territorial jurisdiction. However, such amendment was restricted to the City of Calcutta and not beyond that.

8. Applying the law as discussed above in case the deceased was having moveable and immovable property within the jurisdiction of the City Civil Court and also his place of abode therein the High Court could not have entertained the present application. Since the deceased was having properties within the jurisdiction and place of abode outside the jurisdiction of the City Civil Court the District Judge, 24 Parganas (North) was having concurrent jurisdiction with the City Civil Court and as such the High Court was entitled to entertain the present application having concurrent jurisdiction within the District Judge, 24 Parganas (North).

9. In the case of Sailendranath Sarkar (supra) as well as in the case of Tarak Bala Dasi (supra) this issue was gone into by two single Benches of this Court. Paragraph 37 of the Judgment in the case of Sailendranath Sarkar (supra) being relevant herein are quoted below:

37. Next, it is to be considered to what extent the jurisdiction of the High Court in testamentary and intestate matters conferred by Clause 34 of the Letters Patent, 1865 has been affected by the City Civil Court (Amendment) Act, 1980. In the case of [Maniklal Shah Vs. Hiralal Shaw](#), it has been held that under Clause 34 of the Letters Patent, 1865 the Court's jurisdiction in testamentary matters is co-extensive within the limits of the Province (new State of West Bengal). It, therefore, follows that where the deceased has died having a fixed place of abode or leaving assets within the State but outside the Ordinary Original Civil, Jurisdiction of the High Court then the High Court has power and jurisdiction under Clause 34 of the Letters Patent to grant probate or letters of administration as the case may be. It appears to me that Section 5(3) of the City Civil Court Act as amended has affected the testamentary and intestate jurisdiction conferred on the High Court by Clause 34 of the Letters Patent only in cases arising exclusively within the territorial jurisdiction of the City Civil Court, i.e. where the deceased has died having a fixed place of abode and leaving all the assets within the City of Calcutta as defined by Section 2(3) of the City Civil Court Act. If either deceased has died having a fixed place of abode or leaving any asset outside the City of Calcutta but within the State then the High Court shall have jurisdiction to grant probate of letters or administration as the case may be under Clause 34 of the Letters Patent. In view of the amended Section 5(3) of the City Civil Court Act the High Court shall not have jurisdiction to try any proceeding under the Indian Succession Act. Thus the said sub-section has completely deprived the High Court of its jurisdiction to take any proceeding under the Indian Succession Act, 1925 in cases where exclusive jurisdiction has been conferred upon City Civil Court, i.e. cases arising exclusively in the City of Calcutta as defined u/s 2(3) of the City Civil Court Act, 1953. That being the position power to take proceeding by virtue of Clause 34 of the Letters Patent in cases coming within the exclusive jurisdiction of the City Civil Court would amount to conferring jurisdiction of the High Court by a back-door process. Omission of Section 300 of the Indian Succession Act, 1925 has completely taken away High Court's concurrent power and jurisdiction under Indian Succession Act exercisable by the District Courts. This became necessary because under the proviso added to Section 2(bb) of the Indian Succession Act in respect of the City of Calcutta a reference to District Judge would mean City Civil Court. High Court having been robbed of its jurisdiction in respect of the proceeding in testamentary and intestate matter arising exclusively within the jurisdiction of the City Civil Court by the City Civil Court (Amendment) Act, 1980 cannot exercise the same by virtue of Clause 34 of the Letters Patent in the cases arising exclusively within the territorial jurisdiction of the City Civil Court. That would clearly defeat the purpose of omission of Section 300 of the Indian Succession Act by a process of back

door construction which I do not propose to adopt. Effect of omission of Section 300 as submitted by the petitioners would amount to exercise of jurisdiction under the omitted Section 300 of the Indian Succession Act in cases arising exclusively within the jurisdiction of City Civil Court where a value of the estate left by the deceased is over rupees one lakh. Amended Section 5(3) of the City Civil Court Act has expressly taken away the High Court's jurisdiction under Indian Succession Act, 1925 in cases arising exclusively within the territorial jurisdiction of City Civil Court. From the amendment of Section 5 of the City Civil Court Act and omission of Section 300 of the Indian Succession Act the necessary intendment of the legislature appears to be that in cases arising exclusively within the territorial jurisdiction of the City Civil Court and in respect of which City Civil Court has exclusive jurisdiction as stated hereinbefore the High Court shall not exercise any power or jurisdiction be it under Indian Succession Act or under Clause 34 of the Letters Patent. The necessary effect of the above amendment and omission, in my view, is that the power and Jurisdiction of the High Court in the testamentary or intestate matter under the provision of Indian Succession Act have been totally taken away and partially under Clause 34 of the Letters Patent in cases arising exclusively within the territorial jurisdiction of the City Civil Court i.e. where the deceased had his fixed place of abode and has also left all his assets within the territorial jurisdiction of the City Civil Court High Court's jurisdiction under Clause 34 of the Letters Patent in respect of cases arising outside the territorial jurisdiction of the City Civil Court has not been affected. Further, omission of Section 300 of the Indian Succession Act cannot in my view, be interpreted to mean that High Court's jurisdiction exercisable under Clause 34 of the Letters Patent in cases arising outside the territorial limit of the City Civil Court has been curtailed. Such interpretation would amount to deprivation of the High Court's original jurisdiction conferred by Letters Patent in matters which are not within the exclusive jurisdiction of the City Civil Court without express words or by necessary implication. The jurisdiction of a superior Court cannot be affected save and except by express or necessary implication of a mandatory nature of a statute. In Craies on Statute Law (17th Edition) at page 123 it is observed that the general rule applicable to the construction of statutes is that there is not to be presumed without express words an authority to deprive the Supreme Court of a jurisdiction it had previously exercised or to extend the private jurisdiction of the Supreme Court to the inferior Courts. Further, exclusion of Jurisdiction is not to be readily inferred. There is a presumption against exclusion of jurisdiction of a Civil Court by a statute. Very clear words will be required to oust altogether the jurisdiction of the Court in the matter of private rights [Smt. Nilima Ghosh and Another Vs. Prakriti Bhushan Mitter](#), 10. Paragraphs 36 and 37 of the judgment of Tarak Bala Dasi (supra) being relevant herein are quoted below:

36. I agree with the interpretation given by Mr. P.K Roy as to Clause 34 of the Letters Patent that in respect of the Will bequeathing the property which is situated outside

the limits of the State then this Court under Clause 34 of the Letters Patent cannot entertain the application for grant of probate.

37. I also agree with Mr. Roy in his interpretation that the High Court can entertain the application for probate of the will bequeathing the property which is situated within the limits of the State or "Bengal Division" as contemplated in the Letters Patent, but outside the jurisdiction of City Civil Court after the said Amendment Act.

11. In the case of Sailendranath Sarkar (*supra*) the deceased had the place of abode as well as the properties within the district of Howrah. It was contended before the learned single Judge that the jurisdiction of the High Court conferred upon it under Clause 34 of the Letters Patent was taken away by the amendment of Section 5(3). Learned Judge discussing the law in detail ultimately came to a finding that Clause 34 was retained by Section 300(1) and could not have been taken away by the amendment of Section 5(3) of the City Civil Court Act which had its enforcement within the city of Calcutta and not beyond that.

12. In the case of Tarak Bala Dasi (*supra*) the deceased was having place of abode within the jurisdiction of City Civil Court at Calcutta. Properties were left within Calcutta. However, the deceased was also having property at Kashi outside the State of West Bengal. His Lordship held that Clause 34 did not empower the High Court to deal with the properties situated outside the State of West Bengal. His Lordship further held that the High Court could entertain the application for probate in respect of the properties which were situated within the State of West Bengal as contemplated under the Letters Patent but outside the jurisdiction of the City Civil Court because of such amendment. His Lordship ultimately held that the application was not maintainable in the High Court because it involved property outside Bengal.

13. Considering these two single Benches decision I am of the view that the learned Judges accurately interpreted the relevant provision of the statute and I do not find any scope of disagreement with their Lordships. As I have already observed hereinbefore, the legislature by virtue of the amendment of the City Civil Court Act cannot confer Jurisdiction on the City Civil Court over the properties or place of abode outside the territorial jurisdiction of the said Court. In the first case being Sailendra Nath Sarkar (*supra*) the entire cause of action arose in Howrah. The learned Judge rightly held that the High Court did have the jurisdiction because of Clause 34 and the amended provision of Section 5(3) of the City Civil Court Act did not have any application. In the case of Tarak Bala Dasi (*supra*) the learned Judge rightly refused to entertain the probate application as the deceased left property outside the State and held Clause 34 not applicable beyond the State of West Bengal.

14. Other three decisions noted above were cited by and on behalf of the applicant in support of his contention that to interpret Section 5(3) of the said Act of 1953, I should give its grammatical and ordinary meaning instead of considering other

aspects. In the latest decision of the Apex Court in the case of *Swedish Match AB* (supra) the Apex Court observed, it is a well settled principle of law that where wordings of a statute are absolutely clear and unambiguous recourse to different principles of interpretations may not be resorted to but where the words of a statute are not so clear and unambiguous, the other principles of interpretation should be resorted to.

15. The said Act of 1953 was enacted to minimise the load of the High Court in its Original Side and not for the purpose of ouster of its jurisdiction within the city of Calcutta or otherwise. The object of the bill was to ensure speedy administration of justice in the city of Calcutta. Section 5(1) of the said Act of 1953 limits the jurisdiction of the City Civil Court within the City of Calcutta. By amendment of sub-section 3 the matters under Indian Succession Act, 1925 were given exclusively to the City Civil Court to the exclusion of the High Court. By that amendment the provisions of Section 300(1) of the Succession Act was made inapplicable within the city of Calcutta. In the instant case testator was having his permanent place of abode within the Jurisdiction of the District Judge, 24 Parganas (North). Hence, the probate application could also be filed before the District Judge, 24 Parganas (North). In such view of the matter by dint of Section 300(1) read with Clause 34 of the Letters Patent the High Court retained its concurrent jurisdiction with the District Judge, 24 Parganas (North) to entertain this application.

The application thus fails and is hereby dismissed.

There would be no order as to costs.

Urgent xerox certified copy would be given to the parties, if applied for.