

**(1987) 03 DEL CK 0080**

**Delhi High Court**

**Case No:** First Appeal No. 109 of 1986

Virender Gupta

APPELLANT

Vs

Nitender Gupta and Others

RESPONDENT

**Date of Decision:** March 6, 1987

**Citation:** (1987) 31 DLT 406

**Hon'ble Judges:** R.N. Aggarwal, J; C.L. Choudhary, J

**Bench:** Division Bench

**Advocate:** B.B. Sawhney and R.K. Makhija, for the Appellant;

### **Judgement**

R.N. Aggarwal, J.

(1) This unfortunate litigation is between three brothers, namely, Shri Virender Gupta, Shri Robinder Gupta and Shri Nitender Gupta sons of late Shri T.N. Gupta, a resident of Delhi. They have a sister, named Smt. Meena Sen Gupta, but she is out of the dispute since she has been paid her share in the estate of the father in accordance with the wishes of late Shri Gupta and also in terms of the alleged family settlement dated 14th September 1982.

(2) Shri T.N. Gupta died at Delhi on 6th September 1982. Shri Nitender Gupta filed a petition u/s 276 read with sections 224, 229, 248 and 278 of the Indian Succession Act for the grant of probate/letters of administration with the will annexed thereto in respect of the estate of late Shri T. N. Gupta. The petition was contested by the other two brothers, namely, Robinder Gupta and Virender Gupta and also by the sister. They pleaded that subsequent to the will there was a family settlement and the property should be distributed in terms of that settlement.

(3) Shri Justice Mahinder Narain on August 19, 1985 framed the following issues in the probate petition :

"(1) Whether the Will dated 28th July 1982 is liable to be probated by this court ? (2) Whether the Will dated 31st August 1982 has been destroyed ? If so, in what

circumstances and whether the same can be reconstructed and probate granted on the basis thereof ?

(4) On September 2, 1985, another issue was added and that reads as follows:

"WHETHER the petitioner is estopped from claiming the probate of the Will dated 31st August 1982 in view of the alleged family settlement dated 14th September 1982 ?"

(5) After the above issue was framed the petitioner filed an application (I.A. No. 3043/85) alleging that in the probate proceedings it was not open to the court to go into the family settlement and, Therefore, the additional issue should be deleted. The petitioner in support of his contention had relied on Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others, . The learned single Judge Shri Justice H.C. Goel by an order dated February 27, 1986 accepted the contention of the petitioner and held that issue No. 3 ought not to have been framed in the case and the same is accordingly deleted.

(6) It is against this order that Virender Gupta has come in appeal. We may notice here that Shri Virender Gupta has filed a suit (No. 1675/84) for partition and rendition of accounts. That suit is being contested by Nitender Gupta. On the pleadings of the parties, on 2nd September 1985he court framed the following issues:

"(1) Whether Shri T.N. Gupta executed a valid Will dated 31-8-1982, and whether the dispositions made therein in that Will can be given effect to ? (2) Whether there is no valid family settlement dated 14-9-82 between the parties to the suit ? (3) Whether defendant No. 2 is not estopped from questioning the alleged family settlement dated 14-9-1982 ? (4) To what shares the parties to the suit are entitled with respect to the estate of T.N. Gupta and Smt. Ganga Devi ? (5) In the event, the alleged family settlement is held not to be binding, is defendant No. 1 entitled to any amount which was purported to have been advanced by him as a loan to his father and mother."

(7) We find that the issues framed intuit No. 1675/84 are all embracing and they fully cover the entire dispute between the parties. We see no legal bar to both the probate petition and the suit being tried together. We see no need to decide the controversy raised in the appeal in the probate proceedings. We accordingly order that suit No. 1675 of 1984 and the probate case No. 46/83 shall be tried together. The evidence shall be recorded in suit No. 1675 of 1984.

(8) Mr. Sawhney for the petitioner in the probate matter contends that the probate case is fixed for evidence for 30th and 31st March 1987 and he has summoned his evidence and a joint trial of both the suit and the probate case should not be ordered. We in the circumstances of this case do not agree in this contention of the learned counsel. It would be in the fitness of the thing that both the probate case

and the suit are tried and disposed of together. The suit as well as the probate case were pending in the court of Mr. Justice H.C. Goel. He has now been shifted from original side and his successor court is Shri Justice N.C. Kochhar. We request that if it is possible the learned single Judge may expedite the disposal of the suit. We give leave to the parties to file additional documents as well as list of witnesses within two weeks. Both the suit as well as the probate case shall be listed before the learned single Judge on 30th March 1987 and he may give further directions in the case as may be suitable to him. The appeal is disposed of. No order as to costs.