(2011) 04 DEL CK 0283

Delhi High Court

Case No: FAO No. 169 of 2011

Karan Singh and Others	APPELLANT
Vs	
State and Others	RESPONDENT

Date of Decision: April 25, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, Order 47 Rule 1, Order 7 Rule 11, 2(2)
- Limitation Act, 1963 - Article 137, 37
- Succession Act, 1925 - Section 295

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: G.P. Thareja and Himal Akhtar, for the Appellant; Madan Lal Sharma, Varun Nischal and Amit Rana, for the Respondent

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

The challenge by means of this first appeal u/s 295 of the Indian Succession Act, 1925, is to the impugned order dated 20.12.2010 passed by the trial court, whereby the probate petition of the Petitioner was dismissed on two counts. The first count was that in an earlier proceeding between the parties it was held that there is no valid Will dated 4.9.1986, and which will itself was relied upon by the Petitioner in the present probate petition. It was thus held that the probate petition was barred by res judicator/issue estoppels. The second count for dismissal of the petition was that the petition was held to be barred by time.

2. Learned Counsel for the Appellant at the outset argued that if the trial court resorted to the provision of the Order 7 Rule 11 Code of Civil, then, the contents of the plaint were deemed to be correct and consequently, there could not have been further finding of facts. To this aspect, the learned Counsel for the Appellant is

correct, however, that would not mean setting aside of the impugned order because the provision of the law under which the order is passed, if it is wrongly stated by the trial court, cannot mean that the order becomes illegal, once it is found to that there is a correct provision of law under which the order could have been passed. The order, in fact, has been passed under Order 12 Rule 6 CPC which provides that on admitted facts, a case can be disposed of. Decree as defined u/s 2(2) CPC includes decision on , one or all of the matters in controversy. In a case where a suit is allowed a decree is passed and where the suit is dismissed, a decree also is drawn up. Decree includes dismissal of the suit. The impugned order therefore can be taken as having been passed under Order 12 Rule 6 Code of Civil.

3. It could not be disputed by the learned Counsel for the Appellant that in an earlier probate petition, filed by one Smt. Savitri Devi wife of late Sh. Vikram Singh, daughter in law of Sh. Tej Ram, and now presently represented by her legal heirs, for probate of the Will dated 4.9.1986 of the deceased Sh. Tej Ram, the Appellants had set up the Will dated 09.12.1986 in defense to the will dated 4.9.1986 set up by Smt. Savitri Devi. The court of Sh. G.P. Mittal, ADJ (as he then was) dismissed the probate petition and gave a finding holding that both the Wills dated 4.9.1986 and 09.12.1986 were not validly executed Wills of late Sh. Tej Ram. The Will who was set up by the Appellants was a later Will dated 09.12.1986 as compared to the earlier Will dated 4.9.1986 set up by Smt. Savitri Devi and therefore, it was necessary to pronounce upon the validity of the Will dated 09.12.1986, inasmuch as a later Will would have superseded an earlier Will even if the earlier Will was validly executed. Quite clearly, therefore, the existence and validity of the Will was very much in issue in the earlier probate petition decided on 19.4.2003 and, since it has been held in that probate petition No. 375/2001 titled as Savitri Devi v. State and Ors. that there was no validly executed Will dated 09.12.1986, there is issue estoppels against the Appellants from again seeking to establish validity of the said Will dated 09.12.1986.

4. The trial court in this regard in the impugned judgment has validly observed as under:

15. There in no dispute between the parties that the Probate Court in earlier probate petition filed by the Respondent has recorded the finding regarding the genuineness of the Will dated 9.12.1986 which is the subject matter of the present case. This finding has attended finality as Petitioner has not filed an appeal against these findings before the appellate court. So even if no issue has been framed regarding the validity of present Will in earlier probate petition bearing No. 375/01, effect of non-framing of issues has always not fatal to the trial and in case parties went to trial fully knowing the rival case and led the evidence not only support his case but to controvert the evidence led by the other side it can not be held that absence of any issue was fatal to the case and trial stands vitiated. As Hon''ble Supreme Court in Bhagwati Prasad v. Chandramaul AIR 1996 SC 735, has observed as under:

The general rule is no doubt is that the relief should be founded on the pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though, indirectly or even obscurely in the issues, and evidence has been led about them, hen the arguments that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence would introduce considerations of prejudice, and doing justice to one party the court can not do injustice to another.

18. So far as the applicability of these conditions to the present petition apart from the condition No. (ii), namely subject matter of the suit must be identical, all other conditions are satisfied. As in the earlier probate petition the present Will which is the subject matter of this petition was put in defense to Will dated 04.09.1986 set up by the Respondent in earlier probate petition bearing No. 375/01. So it can not be said that principle of res-judicator/constructive res-judicator are applicable to the facts and circumstances of the present case. But the contention of the counsel for the Respondent that, even if it is presumed for the sake of arguments, that present petition is not barred by the principle of res-judicator/constructive res-judicator, it is, at least, barred by the principle of issue estoppels, is having force in law.

19. There is distinction between cause of action issue estoppels and Res-judicator. Res-judicator debars the court from exercising its jurisdiction to determine the lies if it has attained finality between the parties whereas the doctrine of issue estoppels is invoked against a party. If an issue is decided against a party, the party would be stopped from raising the same in the latter proceeding. The doctrine of res-judicator creates a different kind of estoppels viz. estoppels by accord. However, the doctrine of "issue estoppels" as also "cause of action estoppels" may both be attracted. A cause of action estoppels arises where in two different proceedings identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegations of fraud and collusion.

21. For the applicability of cause of action estoppels we would like to first deal upon the meaning of word "cause of action". Cause of action means which if traversed, it would be necessary for the Plaintiff to prove in order to support his right of judgment of court in the other words, it is a bundle of facts which gives a Plaintiff a right to relief against the Defendant. It must include some act done by the

Defendant since in the absence of such an act no cause of action can possibly be accrued. Everything which if not proved would give the Defendant right to immediate judgment must be part of the cause of action. In the present case admittedly no issue was framed regarding Will which is the subject matter of the present petition, in the earlier probate petition. But there is finding recorded by the Ld. Court holding the present Will as forged and fabricated in the earlier probate petition bearing No. 375/01. So cause of action as detailed in the present petition is will dated 9.12.1986, on the basis on which probate has been sought by the Petitioner, which is held to be forged and fabricated so there is findings recorded by the probate court, in earlier probate petition, regarding the present Will on the basis of which Plaintiff has averred that he is having a cause of action in his favor. Therefore the cause of action/issue which has been propounded be way of present petition, a finding on this cause of action has already been recorded by probate court in a previous probate petition. In view of the above discussion, I am of the opinion that the present petition is barred by the principle of cause of action/issue estoppels.

I completely agree with the findings and conclusions of the trial court as contained in the aforesaid Para. In fact, the Supreme Court in the case of Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Another, has succinctly elaborated of the principle of res judicator estoppels and issue estoppels in Para 26 and 31 of judgment and which Para read under:

26. It is settled law that principles of estoppels and res judicator are based on public policy and justice. Doctrine of res judicator is often treated as a branch of the law of estoppels though these two doctrines differ in some essential particulars. Rule of res judicator prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrated wrong. When the proceedings have attained finality, parties are bound by the judgment and are stopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are ''cause of action estoppels'' and ''issue estoppels''. These two terms are of common law origin. Again once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppels. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicator but these are not exhaustive of the general doctrine of res judicator. Legal principles of estoppels and res judicator are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

31. Law on res judicator and estoppels is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above the plea of res judicator, though technical, is based on public policy in order to put an end to litigation. It is, however, a different if an issue which had been decided in earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile law has changed or has been interpreted differently by higher forum. But that situation does not exist here. Principles of constructive res judicator apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (explanation to Rule 1) review is not permissible on the ground

that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

I therefore, hold that the trial court was justified in holding the subject probate petition to be barred by principle of issue estoppels.

5. So far as the issue of limitation is concerned, it is no longer res integral that provision of Article 137 of the Limitation Act, 1963 applies with respect to a probate petition. The Supreme Court in the case of Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur and Others, has held that a probate petition would also be governed by the provision of Article 137 of the Limitation Act. In the present case, the cause of action to file a probate petition on the basis of Will dated 09.12.1986 arose in favor of the Appellants when the Will dated 4.9.1986 was set up by Smt. Savitri Devi, in an earlier probate petition 375/2001. In fact, on filing of the written statement in the said probate petition upon the Appellants, limitation begun to run for filing of the probate petition based on the Will dated 09.12.1986. The earlier probate petition was filed in the year 2001 and the present probate petition was filed much thereafter on 27.8.2009. The trial court has rightly held the probate petition to be barred by limitation. The trial court in this regard has correctly given the findings and conclusions in paras 22 and 23 of the impugned judgment, which reads as under:

22. So far as the applicability of Limitation Act, is conceived Article 137 of Limitation Act 1963 apply to petition for grant of probate or letters of administration and said period of three years is to be computed from the date when the right to sue accrues. The contentions of the counsel for the Petitioner/non-applicant that the provision of Article 37 of the Limitation Act 1963 is not applicable to probate petition or letter of administration is not in consonance with the law propounded by the Ld. Apex Court in Krishan Kumar Sharma v. Rajesh Kumar Sharma IV (2009) SLT 72, in which judgment after relying on the judgment of The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, , it has been observed that in Para No. 8 "though

the nature of the petition has been rightly discussed by the High Court, it was not covered in observing that the application for grant of probate or letters of administration is not covered by the Article 137 of the Limitation Act. Same is not correct in view of what has been stated in the Kerala State Electricity Board''s Case (supra)". Even Delhi High Court in the case reported as Pratap Singh and Another Vs. The State and Another, has held as under:

the period of three years would surely commence at least from the date on which the legatee to a Will could be justifiable ascribed with the knowledge that the will on which his claim is founded is likely to be disputed by other persons, especially the natural heirs of the testator.

23. Now adverting to the facts of the present case, the present Will was propounded by the Petitioner in the earlier probate petition bearing No. 375/2001 and that probate petition was dismissed on 09.04.03 so even if Petitioner is imputed with the knowledge of factor of the existence of the present Will, which can be termed as accrual of the cause of action in his favor to file the present petition, the prescribed period of three years provide under Article 137 of Limitation Act 1963 has expired in 2006 whereas the present petition has been filed in year 2009, therefore, present petition is hopelessly barred by the limitation. From the above discussion, I am of the opinion that present petition is barred by the principle of cause of action/issue estoppels as well as hopeless is barred by limitation. Therefore, petition is rejected under provision 7 Rule 11 Code of Civil.

I completely agree with the aforesaid findings and conclusions.

6. In view of the above, there is no merit in this appeal, which is accordingly dismissed leaving the parties to bear their own costs.