George Anthony Harris Vs Millicent Spencer

Court: Bombay High Court

Date of Decision: Aug. 11, 1932

Acts Referred: Succession Act, 1925 â€" Section 263

Citation: AIR 1933 Bom 370 : (1933) 35 BOMLR 708

Hon'ble Judges: Wadia, J

Bench: Single Bench

Judgement

Wadia, J.
The plaintiff has filed this suit for revocation of the grant of letters of administration to the estate of one Annie Made Fencer

deceased made by this Court to the defendant, who is the full sister of the deceased, on June 25, 1931, on the ground that the grant was obtained

by means of false and fraudulent representations contained in her petition for letters of administration. The deceased was a resident of Manmad,

but in or about January 1931 she came to Bombay to have an operation performed for removing a cataract in one of her eyes, and she died in the

King Edward Memorial Hospital on or about March 3, 1931. The plaintiff is the son of one Christian Harris, who is the son of a predeceased

sister of the deceased named Matilda alias Henrietta. The deceased also left her surviving two sons and two daughters by another predeceased

sister Ellen and a cousin by the name of John Lastings alias John Spencer. Plaintiff alleges that the deceased left an estate which inter alia consisted

of four per cent. Improvement Trust Bonds of the face value of about Rs. 19,000 and also some jewellery and cash, that these bonds belonged to

the deceased herself but were kept in the joint names of herself and the defendant, and payable to the survivor of them, merely for the sake of

convenience. The bonds were deposited for safe custody with the Imperial Bank of India, Bombay, and on the security of these bonds the

deceased used to draw moneys for her purposes from time to time. Plaintiff further alleges that the deceased made a will on or about October 24,

1928, in which, after giving certain legacies, she gave and bequeathed all the rest of her estate to him. That will is not forthcoming. It is alleged in

the plaint that the defendant has wrongfully concealed and suppressed the same, and in his evidence the plaintiff says the same thing by stating that

the defendant is now withholding the same. There is, however, a writing in his possession which he says is the draft of the said will, and in April

1931 he applied to the District Court at Nasik for letters of administration to the estate of the deceased as her grand-nephew and legatee under the

will. He also filed the draft of the will in the proceedings at Nasik. Defendant appeared in these proceedings through her advocate on June 6,

1931, to oppose the grant, and presumably the proceedings were thereupon stayed.

2. On June 18, 1931, defendant applied for letters of administration to this Court, and letters of admininistration were granted to her on June 25,

1931. Defendant says that she drafted the petition to obtain letters of administration herself without any assistance, and she got it typed by some

one in this Court. On the grant of the letters the proceedings at Nasik were allowed to drop. In her petition the defendant stated that no will of the

deceased had been found though due and diligent search had been made for the same, that she was the only surviving next-of-kin of the deceased,

being the only surviving sister of the deceased, that she was entitled to the whole of the estate left by the deceased, and that no application had

been made to any other Court for probate or letters of administration. The plaintiff says that these statements are false and fraudulently made, and

he has therefore filed this suit for revocation of the grant, for receiver and for injunction.

3. The defendant contends in the first place that this suit is not maintainable on the ground that the plaintiff has no interest in the estate of the

deceased. Ho is admittedly not an heir as on an intestacy, and his only interest would bo as a legatee under a will which according to the defendant

was destroyed by the deceased with the intention of revoking it. It is laid down in Mortimer on Probate Law and Practice, Edn. of 1911, p. 585

(B), that an action for revocation of letters of administration granted on an intestacy may bo brought by a person claiming an interest under an

alleged will of the deceased for the purpose of having the grant revoked in order that he may obtain probate of the alleged will under which he

claims to be interested. The contest in such a case lies between the administrator to whom letters of administration have been granted and the

person alleging the existence of the will, and the contest which relates to the validity of the will is decided in one and the same proceeding. If the

will propounded is invalid, the Court pronounces against it, and the grant is re-delivered out to the administrator on a copy of the decree being

filed. If the will is valid, the grant is revoked, and probate is ordered to issue in solemn form of law to the person entitled thereto. This is done in

England in one and the same proceeding, and the question which arises is whether the same procedure is also applicable in India when a party

applies for revocation of letters of administration and at the same time propounds a will as the last will and testament of the deceased. Rule 639 of

the High Court Rules provides that in cases not provided for by chapter XXXI of the High Court Rules, or by the rules of procedure laid down in

the Indian Succession Act, 1925, or by the Civil Procedure Code, the practice and procedure of the Probate Division of the High Court of Justice

in England shall be followed so far as they are applicable and not inconsistent with that chapter and the said Acts. There is no decided case in

India, at least I have been referred to none, in which the procedure followed in England has been adopted, and it appears to me to be somewhat

doubtful whether the same procedure can be followed here. In England a caveat can be lodged by the party applying for a revocation of a grant

even after the grant has been made. Section 284 of the Indian Succession Act refers only to the usual caveats against the grant of probate or letters

of administration, that is to say, to caveats filed before the grant is made. The grant of probate or letters of administration is the decree of a Court,

and where it has boon wrongly granted, an application can be made to the same Court which granted it to set it aside, and it seems that a regular

suit is not always necessary (see Komollochun Dutt v. Nilruttun Mundle ILR (1878) Cal. 360 unless the grant is sought to be revoked on the

ground of the invalidity of the will or on the ground of any dispute as to its genuineness. There may, therefore, be either an application to revoke the

grant or a substantive suit, but when the grant is revoked, it seems that fresh proceedings have to be instituted in order to obtain proper

representation to the estate of the deceased, and that must be done by a petition filed under the provisions of the Act. It may be argued that if a suit

is filed, there is no reason why the matter of the alleged will and the revocation of the previous grant should not be tried at the same time. The party

propounding the alleged will may as plaintiff seek to obtain revocation of the grant to the defendant. The defendant may be called upon to prove his

title to the letters of administration, and then the plaintiff'' may contest the grant and lead his own evidence in support of the will. At any rate such a

procedure will save multiplicity of proceedings and costs especially where the estate is a small one. As I have said, the point has not been decided

before and is not free from doubt, and as we are governed by the Indian Succession Act, we cannot follow any rule of the English procedure

which may be inconsistent with the provisions of that Act. The point, however, does not really arise for determination in this suit. There is no prayer

in the plaint that the Court shall pronounce for the will sought to be propounded by the plaintiff on a draft and that the Court shall decree probate

thereof in solemn form. The plaintiff applies only for revocation, and what is necessary both in England and in India is that the person applying for

revocation must show that he is interested in the alleged will, i. e., in the estate of the deceased disposed of by the alleged will. That interest may be

very slight. It has even been held that it may be a bare possibility. But there must be some interest which the applicant is prima facie entitled to

claim in the estate of the deceased.

4. In this case admittedly no will is forthcoming, and the general presumption of law is that it must have been destroyed by the testatrix with the

intention of revoking it. It is true that this presumption is rebuttable, but here the presumption is strengthened by production of certain letters which

passed between the deceased and her cousin John Lastings alias John Spencer which have been exhibited on commission, in which she says that

she had destroyed the will. The presumption is further strengthened by production of a subsequent will of 1929 made by the deceased which is,

however, unattested, and therefore invalid in law. There is the further evidence of Mr. Lastings himself in which he says that the deceased told him

that she had revoked the will. On the other hand plaintiff has produced what he calls a draft of the will of 1928, and he says that he saw the original

of this will on the birth of his son in August 1930, when it was shown to him and to his wife by the deceased herself. It is common ground that the

deceased used to look upon the plaintiff as her son, and the plaintiff used to look upon the deceased as his mother. Plaintiff has admitted that there

were occasional differences and disputes between him and the deceased which led to unpleasantness from time to time, but in spite of this

unpleasantness it is his case that there was no reason why the will in his favour should have been revoked, and that in fact it had not been revoked

but had been either suppressed or withheld. I do not wish to say anything about the witness Tukaram, as he does not carry the plaintiffs'' case any

further. The question of the genuineness and the validity of the will or of the draft does not, however, arise for consideration at this stage on the

application for revocation of grant of letters of administration, nor can I throw out the application on the ground that the applicant has not adduced

all his evidence to show that there is a will in existence which is valid and has not been revoked. The only matter which the Court has to consider

upon such an application is to see whether the application falls under any one of the grounds laid down in Section 263 of the Indian Succession

Act, It is admitted that the will was made in 1928, and there is a dispute whether it has been revoked. Not having heard the whole evidence on

either side, I cannot express any opinion in these proceedings about the genuineness of the alleged draft, nor on the point whether the draft now put

forward is admissible to probate u/s 237 of the Act, for it will be on the person who propounds the draft will to show that the will has been lost or

mislaid or destroyed by wrong or accident and not by the deliberate act of the testatrix herself with the intention of revoking it. I am satisfied on the

evidence that has been led that prima facie the plaintiff has an interest in the estate of the deceased. He would have been entitled to enter a caveat

to the petition for letters of administration on the strength of the alleged draft and to oppose the grant. I, therefore, hold that the suit is maintainable.

5. The next question is whether there is u/s 263 of the Indian Succession Act just cause for revocation of the grant of letters of administration. The

power to revoke is discretionary, and a clear case showing just cause has to be made out. The explanation of the term ''just cause'' in the section

itself is exhaustive and not merely illustrative, so that the application of the plaintiff must fall under one or more of the said grounds. Plaintiff alleges

that the statements made by the defendant in her petition are false and fraudulent, and he relies on the statements that I have referred to before. It is

clear that a grant obtained fraudulently is void ab initio. Taking these statements seriatim, I am satisfied that it was not a false and fraudulent

statement on the part of the defendant when she said that after due search had been made no will of the deceased had been found, for all that the

plaintiff filed in the probate proceedings in the District Court at Nasik was an alleged draft, which he could only have filed on the assumption that

the will itself was not forthcoming. The other three statements, viz., that the deceased died leaving her surviving as the only next-of-kin, that she

was entitled to the whole of the estate, and that to her knowledge no other application for probate or letters of administration with or without the

will annexed, are false, but, in my opinion, they are not fraudulent, as there was no intention on the part of the defendant to deceive or to conceal. I

must say here that I do not believe the defendant when she stated more than once that the petition for letters of administration was her own unaided

composition, and I expected her to be more frank and straightforward with the Court than she actually was. I still believe her when she said that

she considered herself to be the only surviving next-of-kin as the only surviving sister of the deceased, as in fact she is, and I also believe her when

she said that the statement that no other application for probate or letters of administration had been made in any other Court referred to her own

act in the sense that she herself had made none other than her application for letters of administration to this Court. In my opinion, however, Clause

(c) of Section 263 stands in her way. The three statements I have just referred to are untrue in fact, and even if they have been made inadvertently,

as I hold they have been, one or the other of them had to be alleged to justify a grant to her alone.

6. It is true that u/s 219 (d) those who stand in equal degree of kindred to the deceased are equally entitled to the administration. u/s 47 of the Act

the defendant and the plaintiff''s father and the children of the deceased sister Ellen would all share equally, but for purposes of letters of

administration the defendant is certainly the nearest in degree of kindred to the deceased. However, u/s 300 (1) of the Act the jurisdictions of the

High Court and the District Court are concurrent, and letters of administration would not be granted by the High Court if proceedings are already

pending before a District Judge. In fact all further proceedings in the High Court would then have to be stopped. The grant may also be revoked if

proceedings in the High Court are defective, u/s 263 (a). Section 283 (1) (c), however, makes it discretionary for the Court to issue citations on all

persons claiming to have an interest in the estate of the deceased, however slight the interest may be, and though illustration (2) says that the grant

may be revoked where parties who ought to have been cited have not been cited, it has been held by our Appeal Court in Digambar v. Narayan

(1910) 13 Bom. L.R. 38 dealing with the corresponding sections of the old Probate and Administration Act of 1881, that absence of citations

which are discretionary does not in itself invalidate the grant.

7. In my opinion, therefore, u/s 263 (c) there is just cause for a revocation of the grant of letters of administration. Ordinarily, revocation would

follow, and u/s 296 of the Act the defendant would have to deliver up the letters of administration to this Court. The estate, however, is a very

small one, and the fairest order I propose to make at present is not to revoke the grant, but to order the defendant to hand over the letters of

administration to the Prothonotary and Senior Master of this Court, not for cancellation, but to be kept by him until the further orders of the Court.

I also order the Receiver to continue in possession of the estate until the further orders of the Court. If any application is made in this or any other

Court for fresh representation, either with the alleged draft will annexed or without, within four weeks from this date, and fresh representation is

granted, the grant of the letters of administration will stand revoked. If, however, no such application is made within four weeks, or if made, no

fresh grant is made to anyone else in due course, I order the Prothonotary to re-deliver the letters of administration to the defendant.

8. After I had concluded my judgment in which I had left it open to the parties to take further proceedings, if any, for fresh representation to the

estate of the deceased, either in this or in any other Court, within four weeks, counsel for the defendant suggested that in that case the letters of

administration might be revoked, and an order should be made now for handing them over to the Prothonotary and Senior Master for cancellation,

as the defendant has been advised to take fresh proceedings in this Court immediately. No objection was taken by counsel for the plaintiff. The

order, therefore, I now make, in supersession of the order made above, is that the grant be revoked, and that the defendant do hand over the

letters of administration forthwith to the Prothonotary. Receiver to continue in possession of the estate until the further orders of the Court.

9. Costs of both parties to come out of the estate of the deceased.