

Date of Decision: 29th April, 2008

+ **TEST.CAS. 47/2005**

SWARAN LATA Petitioner
Through Mr.Surinder Anand, Advocate.

versus

P.P.SHARMA Respondent
Through Mr.V.K.Makhija, Sr.Advocate with
Mr.Inderjeet Sharma, Advocate.

CORAM:**MR. JUSTICE S. RAVINDRA BHAT**

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

% **29.4.2008****Mr. Justice S. Ravindra Bhat (Open Court)**

1. Heard counsel for the parties.
2. Mr.V.K.Makhija, learned senior counsel for the respondent had relies upon the judgment and order of the Division Bench dated 7.4.2008 whereby the Appeal against the decision of this Court's order dated 18.11.2006 in IA 10301/2006 was allowed. This Court had, after noticing the previous proceedings which led to the grant of

probate in probate case No.34/1988, by a judgment and order of this Court dated 2.3.2005, in respect of the Will dated 15.6.1984 (of late Shri Sudarshan Lal), overruled the objections of the present respondent regarding the maintainability of the proceedings. The respondent had, in IA 10302/2006, sought for review and recall of the Court's order dated 4.8.2006. The application was dismissed by a speaking order, as also the petitioner's application IA 1001/2006 for framing additional issues was filed.

3. The respondent carried the matter in an appeal to the Division Bench. In the appeal, the respondent (who was appellant) contended that the present proceedings under Section 263 of the Indian Succession Act, 1925, for revocation and annulment of the probate were not maintainable and that the order made by this Court had to be set aside.

4. The Division Bench took into account the order of the learned Single Judge, the Division Bench in the previous case (Probate Case No. 34/1988 concerning the same will) as well as the order of the Supreme Court. In paragraph 16, the Division Bench observed as follows:-

"16. We have perused the judgment and orders passed by the learned Single Judge, the Division Bench as well as that of the Hon'ble Supreme Court in Probate Case No.34 of 1988 and we are of the view that respondent's

endeavour to lead evidence in support of its contention that the said Will is forged and fabricated document is barred in law as it is hit by principles of res judicata. Firstly, the issue that the said Will was a forged and fabricated one was directly and substantially an issue in the previously instituted probate proceedings. Secondly, the former probate proceedings is a court competent to try the subsequent testamentary proceedings. Moreover, the said issue had been heard and finally decided by not only the original court in the first probate proceedings but also the judgment of the learned Single Judge had attained finality as not only a Division Bench of this Hon'ble Court but also the Hon'ble Supreme Court had dismissed appeals filed against the said judgment and order dated 2nd March, 2005."

5. It was later concluded after citing several authorities in support of the proposition that when matter is substantially an issue and parties have been given full opportunity in that regard, the findings on such issue would continue to bind them. The Court concluded as follows:-

"We have also carefully seen the endorsement in the original Will as well as the endorsement in the certified copy issued by the Registrar's Office as placed on record in the new testamentary case and we are of the view that there is no discrepancy. While in the registered Will, it has clearly been mentioned that the said Will had been presented by the appellant, Shri P.P.Sharma, in the Registrar's copy in the column "presented by" the Registrar has written above the word "by", "of" thereby mentioning that the document pertains to the Will of Shri Sudershan Lal. In

any event, Mr.Sudershan Lal could not have presented the Will for registration as admittedly the Will was registered on 18th May, 1987 i.e. much after the death of the testator. The new ground being urged by Mr.Chandhiok in support of his contention that the said Will was forged is only an additional evidence on old grounds. The said Will and the endorsement on its back page were always available on the record of the earlier Probate Case. The respondent cannot be exempt from proof of having exhausted due diligence in presenting her objection to the earlier Probate Case. Consequently, we do not find that the new ground being urged by Mr.Chandhiok is even prima facie enough to warrant a finding that the Letter of Administration was obtained fraudulently by making a false suggestion or by concealing something material from the record.

20. Another point urged by Mr.Chandhiok, which we would refer to only as a “talking point” is that one of the pages carries the name of Mr.Madan Mohan, Advocate. This, he said, represents Mr.M.M.Sharma. We are not inclined to agree with Mr.Chandhiok. Mr.M.M.Sharma is a distinct individual who has separately signed down below at the back of the said Will.

21. In our view the genuineness of the Will having been upheld right upto the Supreme Court, the respondent's endeavour to lead fresh evidence on the ground that the said Will is a forged and fabricated document is clearly barred by principles of res judicata and by principles re-litigation.”

5. This Court also considered the previous judgment in the probate case No.34/1988. That was a contested proceeding where the present petitioner was a respondent and objector, following issues

have been framed for consideration in the said probate case No.34/1988:-

“ 7. On 18.9.995, following issues were framed:-

- 1. Whether the deceased had executed a valid Will on 15.6.1984? OPP.*
- 2. Whether the properties mentioned in the Will are Joint Hindu Properties? If so, to what effect? OPD.*
- 3. Whether the Will dated 15-6-1984 is forged and fabricated and as a result of a conspiracy as alleged in para 8 of the preliminary objections in the written statement? OPD.*
- 4. Whether the petition is not in accordance with Sections 276, 280 and 281 of the Indian Succession Act? If so, to what effect? OPD.*
- 5. Whether the registration of the Will is in accordance with law? OPD.*
- 6. Whether the schedule of properties filed along with the petition is not in accordance with the contents of the Will? If so, to what effect? OPD. “*

6. As is evident the third issue pertained to alleged forgery of the Will and on that count, petitioners entitlement to probate. This Court, after considering all the materials circumstances (including the question as to whether the Will was executed under suspicious circumstances), found in favour of the respondent in this case, i.e. the party applying for probate. The discussion on this issue is between paragraph 11 and paragraph 41 of the judgment.

7. The Court was satisfied on the basis of the conspectus of the evidence and the materials established that the deceased testator have executed a Will dated 15.6.1984 as his last legal testament on the basis of such findings, it granted probate. The subsequent events show that the present petitioner challenged the grant of probate before the Division Bench; that appeal was rejected on 18.8.2005. Much of the same arguments which were raised for revocation, in the present case, were apparently raised before the Division Bench and after due consideration rejected by a reasoned and considered judgment. The matter did not rest there. The petitioner carried the order of the Division Bench in an Appeal before Supreme Court as a Special Leave Petition being SLP No. 1607/2006 which was dismissed on 30.1.2006.

8. The present case for revocation of will does not urge anything new; it alleges the same grounds. In view of the above developments and particularly the observations of the Division Bench in FAO 294/2007 and 7/2007, paras 19 to 21, this Court is of the opinion that in the absence of any other grounds for revocation of the Will, earlier granted in probate case No.34/1988, the findings that the questions here raised are barred by the principle of *res judicata*. The findings in the judgment of the Division Bench, in the previous probate case, affirmed the probate and rejected the argument about

forgery and existence of suspicious circumstances. In view of Section 273 of the Indian Succession Act, such probate is final. The proceedings are *in rem*, and bind the entire world, as regards validity of the will. Apart from the question of res judicata, the principle of issue estoppel would also apply and debar the petitioner from raising the same contentions. The present petition therefore, clearly does not survive.

9. In view of the above observations, the petition is no longer maintainable. It is therefore, dismissed.

S. RAVINDRA BHAT,J

APRIL 29, 2008

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