

IN THE HIGH COURT OF DELHI AT NEW DELHI

TEST CAS. NO.3/2006 & IA No.No.3840/2008

RESERVED ON: May 26, 2008

DECIDED ON : July 16, 2008

KARAN SINGH

.....PETITIONER

THROUGH: Mr. Pradeep K. Bakshi, Mr. Rajat Navet,
Advocates.

VERSUS

STATE AND ORS.

.....RESPONDENTS

THROUGH: Mr. J.S. Lamba, Advocate for Respondent No.4,
Mr. Akhil Sibal, Advocate for Respondents 3 & 5.
Mr. Anil Sapra with Mr. Rajesh Pathak, Advocates
for applicant in IA 14267/2007.

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 |

% 16.7.2008

Mr. Justice S. Ravindra Bhat:

IA No.No.3840/2008 in Test Case No.3/2006

1. This order will dispose of IA No.3840/2008 filed under Section 271 read with Section 300 of the Indian Succession Act. The applicant questions the jurisdiction of this Court to entertain and proceed with this testamentary case.
2. Briefly the facts are that the deceased, Ashok Malik (hereafter referred to as "the

Testator”) died on 4.1.2003. He was a permanent resident of Rohtak and lived in Addis Ababa, Ethiopia. The Testator died at Apollo Hospital in Delhi where he had been shifted for medical treatment, on urgent basis. The Petitioner seeks Probate of a Will, said to have been executed by the Testator on 29.10.2002. The Petitioner claims that he was nominated as the Executor of the Will and therefore he is entitled to approach the Court for grant of a Probate. The valuation of properties for which Probate is sought is indicated at Rs.6.37 crores.

3. In terms of the Will the testator it is contended divided all his properties between his son, Karan Malik, and his married daughter Ms. Priyanka Batra. He did not bequeath any property in favour of his wife Ms. Neeru Malik and bequeathed his 1/5th share in the parental house at Rohtak, in the said will, to his mother. According to the Will all immovable properties (there are seven of them listed out in detail in Annexure-I to the petition) are agricultural properties or plots, located at various places in Haryana and Rajasthan. Three of these are agricultural properties at Rohtak, two plots in different locales at Gurgaon, a share in the parental house at Rohtak and 17 bighas agricultural land at Alwar, Rajasthan. The total valuation of these is disclosed as Rs.4.24 crores. So far as moveable assets are concerned, five vehicles (cars) are subject to be the bequest which include three located at Addis Ababa, Ethiopia such as one Mercedes Car, one Nissan Patrol 4 Wheel Drive, and a Hyundai Santro Car and a Ford Ikon Car in India. The Petitioner has disclosed balance of amounts lying in deposits in six deposits (FCNR & NRE) in Standard Chartered Bank to the extent of Rs.1 crore and a balance sum of Rs.50,000/- in various accounts in HDFC Bank at New Delhi.

4. After issuance of notice, the Respondents i.e. the wife and son of the testator, Karan Malik and Ms. Neeru Malik entered appearance and objected to the grant of Probate. By their reply dated 30.6.2006 the Objectors leveled several allegations against the Petitioner- who is the brother of the testator- and also adverted to previous disputes pertaining to properties. They have relied upon the previous litigation i.e. Civil Suit No.59/1990 before the Senior Sub-Judge, Rohtak. The objectors have leveled allegations against the testator's married daughter Priyanka Batra and also sought to list out allegations concerning manipulations by her. They state that the Will is fabricated, forged and a concocted document, not signed by the testator. According to them the Will was also not executed in accordance with law. They alternatively contend that execution of the Will was procured by undue influence by Priyanka Batra or the Petitioner, upon the testator.

5. The Objectors have moved the application, under Section 271 read with Section 300. They contend that this Court should decline to proceed with the matter and applying the principles of Order 7 Rule 10 CPC return the proceedings. Mr. Akhil Sibbal, learned counsel contends that the pleadings and materials on record establish that all the immovable properties and almost all movable properties except an insignificant portion, being part of Bank Accounts are outside the territorial jurisdiction of this Court. Counsel contended that the main beneficiaries of the Will i.e. children of the testator also live outside the jurisdiction of this Court and the Testator did not have a fixed place of abode in Delhi. He admittedly died in Apollo Hospital where he was shifted for medical treatment. In these circumstances the Court does not possess jurisdiction and should decline to further proceed with the matter. Learned counsel relied upon a decision of this

Court reported as *Kanta Vs. State* AIR 1985 Delhi 453.

7. Mr. Pradeep Bakshi, on behalf of the petitioner, on the other hand, contended that this Court should not entertain this application questioning jurisdiction at this stage in view of Section 21 of the Code of Civil Procedure. Learned counsel pointed out that the petitioner lives in Delhi; the witnesses required to depose in the case also live in Delhi and what is more substantial proceedings have taken place in this Court. Counsel relied upon on the fact that the question of maintainability on the ground of territorial jurisdiction was taken only in *Mach*, 2008. He submitted that unlike in the case of *Kanta* where the immovable properties were insignificant, in this case the amounts in the bank though not comparable with value of immovable properties are nevertheless substantial.

8. For a better appreciation of this case it would be necessary to set out the relevant provisions of the Indian Succession Act which are Sections 270, 271 and 300. They are extracted below :-

“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.”*

“ 271. Disposal of application made to Judge of district in which deceased had no fixed abode.—*When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.”*

“300. Concurrent jurisdiction of High Court.—

(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.

(2) Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over and local area beyond the limits of the towns of Calcutta, Madras and Bombay shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorized it so to do.”

9. The facts indicated above reveal that the testator did not live in Delhi; he was working and residing at Addis Ababa, Ethiopia. The medical records which are a part of the file show that he was shifted to Apollo Hospital, in New Delhi due to a medical emergency. He unfortunately succumbed to his illness. It is common ground that all the immovable properties which are the subject matter of bequest are outside the territorial limits of this Court. The beneficiaries too live outside; the daughter Priyanka Bantra lives in Mumbai and the son, the other heir lives in Gurgaon. One attesting witness too, lives outside the jurisdiction of this Court. The Petitioner's claim for jurisdiction is that he resides in Delhi and that some part of the movable property is located within the jurisdiction of this Court – they are cash balances in bank accounts. During the course of the proceedings the objector-respondents have placed on record copies of bank balance certificate issued by the HDFC and the Standard Chartered Bank. According to the letter of the HDFC Bank dated 29.12.2007, (a copy of which is produced along-with the application and has not been denied by the petitioner) of the four accounts with which the Will was concerned, two stood in the name of the deceased and two belong to Ms. Neeru Malik. One such account of Ms. Neeru Malik was closed and the other had a balance of Rs.25097.97. The two bank accounts of Shri Ashok Malik had a balance of US\$ 8541.17 and US\$ 7128.18 respectively.

The letter of Standard Chartered Bank dated 9.1.2008 similarly shows that out of the six accounts originally maintained, three were closed. One was a joint account of Mr. Ashok Malik and Ms. Neeru Malik; the account holder of one more was the deceased Ashok Malik where the amount indicated was Nil balance. The last account was of Ms. Neeru Malik where too the Bank has disclosed the amount as Nil balance. These facts were part of the materials placed before the Court along with the application; they have not been denied though opportunity was granted to the Petitioner.

10. In these circumstances what emerges is that approximately US\$ 15,600 or a sum equivalent to about Rs.7 lakhs is lying to the credit of the deceased testator in Banks in Delhi. They are subject matter of the present proceedings. On the other hand, all other properties such as 7 pieces of valuable immovable properties as well as three cars are outside the jurisdiction of the Court. They are valued at over Rs. 5 crores. The beneficiaries to the will too do not live in Delhi; nor do the objectors.

11. It is settled law that by virtue of Section 273 of the Indian Succession Act, Probate proceedings, validly entertained are proceedings *in rem* (see *Basanti Devi Vs. Ravi Prakash Ram Prasad Jaiswal* 2008 (1) SCC 267 and *Smt. Rukmini Devi vs. Narendra Lal* 1985(1) SCC 144. The mandate of Section 271 is that where the deceased had no fixed abode at the time of his death it is the discretion of the Judge before whom the application for probate is made to refuse it, if it can be disposed of more justly and conveniently in another district or place. The ratio in *Kanta's* case was that as against value of substantial properties, which were outside jurisdiction of the Court, the movable property on the basis of which the jurisdiction was claimed was insignificant. In this case too it is common ground that

the disclosed value of the total property is Rs.6.5 crores of which undeniably 4.25 crores or the bulk of the property is outside the jurisdiction of this Court. Although originally the Petitioner had valued the bank account and amounts lying to the credit of deceased within jurisdiction of this Court as Rs.1 crore fifty thousand, yet, it has been subsequently disclosed that the amounts are to the tune of about Rs.7 lakhs. It is not as if the deceased in this case had no fixed place of abode. Indeed he was residing and working at Addis Ababa, Ethiopia. Except fact that the Executor is a resident of Delhi and one of the attesting witnesses is said to be residing at Delhi, in addition to the amounts lying in bank accounts in Delhi, there is no other fact to establish jurisdiction of this Court. In *Kanta* it was held that the mere fact that witnesses are residents of Delhi is no ground for exercising jurisdiction of this Court.

12. The Court held in *Kanta*, on a conjoint reading of Sections 270, 271 & 300 of the Act that in such cases where insignificant part of the property which is subject matter of the bequest is sought to be made the basis for claiming jurisdiction, the Court would be well advised in declining to exercise its powers. The Court had held that Delhi was most ill-suited for the purpose of examining rival contentions concerning grant of Probate. Here too similar considerations apply.

13. In view of the above discussion, this Court is of the opinion that the deceased cannot be said to be a person with no fixed abode; he was a resident of Addis Ababa; the bulk and substantial part of the immovable properties which are subject matter of bequest are outside jurisdiction of this Court. Even though the Court had entertained the proceedings, yet having regard to the fact that these are not by way of a suit, the Court does not find the

objection based on Section 21 CPC substantial; there is no impediment for it to conclude that continuing with these proceedings would be inappropriate and inexpedient. For these reasons the application has to succeed. It is open to the Petitioner to apply for grant of Probate in one of the competent Courts where the immovable properties are located. The application (IA No.No.3840/2008) is therefore, allowed.

In view of the above discussion, it is held that this Court has no jurisdiction to proceed further with the matter. Probate Case No.3/2006 is accordingly disposed of with liberty to the Petitioner, discussed above. In the circumstances, there shall be no order as to costs.

July 16, 2008

S. RAVINDRA BHAT
(JUDGE)