

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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TEST CAS.No.37/1996

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Date of decision: 23.04.2009

SMT RAJ RANI BHASIN

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Petitioner

Through: Ms Vaishali Deshpande, Advocate

Versus

STATE

..... Respondent

Through: Mr Manoj Kumar Rathi proxy counsel
for Mr Vivek Kumar Tandon, Advocate for State.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The maintainability of the petition for grant of Letters of Administration on demise of applicant/petitioner and IA.No.14400/2007 for substitution of legal representatives moved therein is for consideration.
2. The petition was filed originally by Smt Raj Rani Bhasin for Letters of Administration of the estate of her son Shri C.P. Bhasin. The said estate was pleaded to be comprising of land and built up property at 180/2/272 situated Rajpur Road, Dehradun, plot of land Q-37, Gurgaon, Haryana and a locker in State Bank of India, Rajpur Road, Dehradun. Even though the entire estate of which administration rights were sought was situated outside Delhi, the petition was filed in this court pleading the deceased to be at the time of his death residing in Delhi. It was further pleaded that the

deceased had not married and the petitioner Smt Raj Rani Bhasin being his mother was the only class-1 heir. Though the petition did not disclose the other close relatives of the deceased but the petition was accompanied by the affidavit of Shri R.P. Bhasin as the brother of the deceased, giving no objection to the grant of administration to the mother Smt Raj Rani Bhasin.

3. During the pendency of the petition the original petitioner Smt Raj Rani Bhasin died and IA.No.3514/2006 was filed in this court by the aforesaid R.P. Bhasin and his another brother Shri Swarup Prakash Bhasin, as legal representatives of Smt Raj Rani Bhasin for substitution in her place. In the said application it was disclosed that Smt Raj Rani Bhasin had left besides two sons aforesaid i.e., R.P. Bhasin and Swarup Prakash Bhasin, two daughters, namely, Smt Pomela Chopra and Smt Kiran Sachdeo and the widow and daughter, namely, Neelam Bhasin and Ms Sunaina Khanna of a pre-deceased son of the said Smt Raj Rani Bhasin. Notice of the said application was issued to the other legal representatives of Smt Raj Rani Bhasin. Ms Sunaina Khanna could not be served by ordinary process and was ordered to be served by substituted service. None filed any objections and vide order dated 5th March, 2007 the said application was allowed and R.P. Bhasin and Swarup Prakash Bhasin were substituted as petitioners in place of the original petitioner Smt Raj Rani Bhasin. Letters of Administration was sought now jointly in favour of the said Shri R.P. Bhasin and Shri Swarup Prakash Bhasin. Affidavits of evidence were filed of both Shri R.P. Bhasin and Shri Swarup Bhasin. Letters of Administration was sought in favour of Shri R.P. Bhasin and Shri Swarup Prakash Bhasin on the plea that Smt Raj Rani Bhasin had left a Will dated 5th June, 1996 and a codicil dated 29th April, 2002 in favour of the said Shri R.P. Bhasin and Shri

Swarup Prakash Bhasin and to the exclusion of her other legal heirs. However, before the petition could be considered on merits, Shri R.P. Bhasin died and IA.No.14400/2007 has been filed for substitution of his legal representatives. The said Shri R.P. Bhasin is stated to have left his widow Smt Aneeta Bhasin and two sons, namely, Koushik Bhasin and Raman Bhasin and two daughters Ms Alka Sachdeo and Ms Rachna Mehta. The application does not state that Shri Ram Prakash Bhasin had left any Will and as such all his aforesaid heirs are sought to be substituted in his place.

4. When IA.No.14400/2007 came up for consideration, it was felt that these proceedings being for grant of Letters of Administration, substitution of legal representatives could not be ordered. The matter was as such listed for arguments on the said aspect. The counsel has been heard.

5. The counsel for the petitioner has argued that since in the present petition itself, earlier the legal representatives of the original petitioner have been allowed to be substituted, on the same reasoning, the legal representatives of Shri R.P. Bhasin are also entitled to be substituted. Reliance is also placed on **Devinder Singh Vs State** 72 (1998) DLT 385 in which in a proceeding for grant of Letters of Administration, the legal heirs of the petitioner were allowed to be substituted. However, I find that though in this case, the substitution was allowed, but the question, whether substitution can be allowed or not, did not fall for adjudication in this case and there is no discussion on this aspect. This judgment cannot thus be said to be a precedent on the issue falling for adjudication.

6. The ordinary rule is that an action/legal proceeding would abate on the demise of a party thereto. However, Order 22 Rule 1 of

CPC and principles whereof will apply to these proceedings also, provides that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. Thus, only if the right to sue is found to survive can the ordinary rule of abatement on demise of a party be interfered with and the legal representatives permitted to be substituted. The right to sue in Order 22 Rule 1 means the right to prosecute the proceedings and does not mean the original right of the plaintiff/petitioner to sue. However, in cases of personal actions i.e., in actions where the relief sought is connected with the individuality of the deceased, the right to sue will not survive to or against his relatives.

7. It is thus to be determined as to what is the nature of a proceeding for grant of Letters of Administration.

8. Section 218 of the Indian Succession Act provides that where the deceased has died intestate, administration of his estate may be granted to any person who, according to the Rules for the distribution of the estate applicable in the case of the deceased, would be entitled to the whole or any part of such deceased's estate. It is further provided that when several such persons apply for such administration, it shall be in the discretion of the court to grant it to any one or more of them. Under Section 220, the Letters of Administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death. Section 236 prohibits the grant of Letters of Administration to the minor or a person of unsound mind or even to any association of individuals. Section 273 provides that Letters of Administration shall have effect over all the property and estate, movable and immovable of the deceased and shall be

conclusive as to the representative title against all debtors of the deceased and all persons holding property which belongs to the deceased.

9. The person to whom Letters of Administration are granted does not thereby become entitled to the property or estate of the deceased. The estate still succeeds according to the law of succession applicable to the deceased. The purpose of Letters of Administration is merely to enable the administrator so appointed by the court to collect/assimilate the properties of the deceased, and/or to deal with the various authorities with whom the properties of the deceased may be vested or recorded and to realize the same and/or to have the same transferred in the names of the successors in accordance with law of succession applicable to the deceased. The administrator is required to, from time to time, file accounts in the court with respect to the administration of the estate and/or as to how the estate has been settled/transferred to the successors in accordance with law of succession applicable to the deceased and upon the administrator defaulting in the same, the court retains the power to revoke the grant.

10. The aforesaid would show that the proceeding for grant of Letters of Administrator is for appointment to the personal office as the administrator of the estate of the deceased. Such administration even when granted, ceases with the demise of the administrator and it is not as if the legal heirs of the administrator so appointed by the court are entitled to continue with the administration which was vested by the court in the administrator.

11. Viewed in this light, the proceeding for grant of Letters of Administration is for a right to personal office. If that is so then the

question of the right to sue surviving to the legal heirs of the petitioner does not arise. The right to the grant of Letters of Administration is a personal right and does not survive. Mr Justice Harington in **Sarat Chandra Banerjee Vs Nani Mohan Banerjee** ILR 36 Calcutta 799 held that in a case where the executor named in the Will, of which probate was sought dies, before obtaining grant, his widow claiming to be his heir could not be substituted. It was held that as the executor's right was derived under the Will, the right did not survive to the widow.

12. **Haribhusan Datta v. Manmatha Nath Datta** AIR 1919 Cal 197 was a case of grant of Letters of Administration i.e., of the deceased having died intestate. It was held by Greaves, J. that the judgment in **Sarat Chandra Banerjee** (supra) applied. It was further held that the right which a petitioner seeks in an application/petition for Letters of Administration is a right from the court and if he had obtained the grant his title would have been derived from the court and cannot devolve on his heirs. This view was upheld by Division Bench in **Chandramani Maity Vs. Bipin Behari Sasmal** AIR 1932 Calcutta 203. All the said judgments nevertheless hold that any other person who may claim to be entitled to probate or letter of administration, though not entitled to be substituted in a pending case, is entitled to apply afresh/separately for the same.

13. The Division Bench of the Bombay High Court in **Thrity Sam Shroff Vs Shiraz Byramji Anklesaria and Aspi Byramji Anklesaria** AIR 2007 Bombay 103 upon the demise of all the executors of the Will who had applied for probate held that a probate proceedings even if contested is not transformed into a suit under

the CPC and the provisions of the CPC would apply to such proceedings only to the extent they are not inconsistent with the provisions of law comprised in the said Act. It was further held that the moment the sole executor or all the executors die, the question of proceeding being kept alive does not arise at all as there would be no occasion in such a case to grant any probate. It was held that such a proceeding would die a natural death as a consequence of non-survival of any executor and the question of applicability of Order 22 of the CPC does not arise at all. It was further held that even the provisions of Order 1 Rule 8 of the CPC would not be applicable in such cases and further that in such cases there is no right to sue which can survive. Another single Judge of the Bombay High Court in **Manekji Manchershah Javeri Vs. Phiroze Boman Javeri** MANU/MH/0132/1969 also took the view that there could be no substitution of the legatee on the demise of the executor.

14. What has however weighed with me against blindly following the aforesaid dicta is the long span of time taken in the courts in disposal of such proceedings. The present petition, even though uncontested, has been pending for the last over 12 years. Though most of the said long span is attributable to the laxity of the petitioner, considerable time has also been taken in serving the respondents, who even though subsequently filed no objection and/or did not chose to contest, are under the law necessarily required to be served. Time in such cases is also taken in issuance of citation, and in obtaining valuation of the estate with respect to which the petition is filed. If such petitions are contested, at least insofar as for grant of probate, under Section 295 of the Indian Succession Act, the procedure prescribed for disposal thereof is as of a suit. This entails examination and cross examination of witnesses. The petition for

probate may not be instituted necessarily by the executor. The petition may be instituted by a beneficiary under the Will, either in absence of any executor or on the refusal of the executor to act. Such petitioners may either be the sole beneficiaries under the Will or may be only one of the beneficiaries. The question which arises is, what is to happen in the case of demise of such a petitioner. Since the petition even in those cases would be only for grant of probate, i.e. only for determining the validity of the Will and not for establishing any rights in any of the properties, if the judgments aforesaid are to be applied, the position in those cases would also be the same i.e., the petition would abate on the demise of the petitioner. In such contested cases if substitution is not to be permitted and the person who on the demise of the original petitioner may be interested in seeking the probate/letters of administration is required to institute a fresh petition, it would entail waste of the proceedings undertaken till then and would require fresh service of witnesses and examination of witnesses who may have already been examined. Some of such witnesses may not even survive for that long and possibility of disappearance of valuable evidence which may swing the ultimate result of the proceedings, cannot be ruled out.

15. The Supreme Court in **B. Banerjee Vs. Smt. Anita Pan** AIR 1975 SC 1146 (though dissented with on another point in **Deena Vs UOI** AIR 1983 SC 1155) held that where two interpretations are possible, that which validates the statute and shortens litigation, should be preferred to the one which invalidates or proliferates. It was further held that the courts must avoid multiplicity of litigation. Any interpretation of a statute which will obviate purposeless proliferation of litigation, without whittling down the effectiveness of

the effectiveness of the protection for the parties sought to be helped by the legislation, should be preferred to any literal, pedantic, legalistic or technically correct alternative. In that case also the Apex Court was conscious that to shorten litigation in the manner directed therein, they were straining the language to the little extent of interpreting the expression in the statute under consideration. However, it was held that public justice and social gain ought to be promoted. Such considerations are germane to the larger concept of justice, which it is the duty of the courts to promote.

16. Recently this court had undertaken a financial audit and which discloses that the costs per minute of proceedings in the court is in excess of Rs 6000/-. I have wondered, whether this court should adopt an interpretation which would have consequence of not only waste of judicial time but also be harmful to the litigants. In my view, the same ought to be avoided unless one finds that the other view is totally impermissible in law, or would result in prejudice to the opposing / competing party and which prejudice cannot be taken care of.

17. Having examined the matter in the said light, I do not see any prejudice which would be caused to the opposition/competing party if the proceedings are permitted to be continued by a person other than original petitioner, whether by way of substitution or by way of impleadment. Order 23 Rule 1A also provides that in the case of withdrawal or abandonment of a suit by the plaintiff, a defendant may apply to be transposed as the plaintiff under Order 1 Rule 10 of the CPC. In a case for grant of Letters of Administration or a probate, the particulars of the close relatives of the deceased who may be interested in contesting the petition or who may have an

interest in the estate are required to be given and are treated as respondents. Any one of them, on the demise of the original petitioner, may be interested in continuing the proceedings and can be so substituted. As far as the question of suffering the prejudice is concerned, I find that the fear of the administration/probate being granted to a person other than that to whom the respondents have given no objection/consent can be eliminated by providing that upon so happening the court may again seek the no objection/consent of such persons/respondents. In most of the cases requirement may not be found for the same. Even if in the cases where the petition is by the named executor or by a person being one of the several successors under the personal law applicable to the deceased, I feel that if any of the beneficiaries and/or another heir is interested in continuing the proceedings, the same ought to be permitted. The same will save the time and costs of the court and also may be beneficial to the litigants.

18. This should however not be understood as entitling the proceedings to be continued by a person who otherwise has no interest in outcome thereof or by the heirs/legal representatives of an executor simplicitor and which heirs/legal representatives do not themselves have any right to or interest in the estate of which administration is sought or probate of Will with respect where to is sought. The right to continue proceedings is of the person who on demise of original petitioner is desirous of seeking administration or interested in the probate.

19. The question however arises, as to how, if the right to sue does not survive, the proceedings are to continue. The provision of Order 23 Rule 1A has already been considered. In my view, that can be

pressed into service. Similarly Order 1 Rule 10 CPC can also be invoked. The proceedings for letter of administration and probate, in a way are also in a representative capacity because relief is sought for the benefit of all the successors/beneficiaries under the Will. Upon demise of representative, another interested in the subject matter can continue the proceedings. Similarly, the principles enshrined in Order 7 Rule 7 and of courts granting relief which may be just, as if asked for and the courts taking notice of and moulding the relief, according to subsequent events would also be applicable.

20. Looking in this direction, I find that different courts have devised different means, including aforesaid for allowing such proceedings to be continued, even after demise of original petitioner.

21. A Single Judge of the Calcutta High Court in **Santi Swarup Sarkar Vs. Pradip Kumar Sarkar** AIR 1997 Calcutta 197 allowed the beneficiary under the Will to proceed with and continue probate proceedings upon demise of the surviving executor who had originally applied therefor. In doing so, while not overruling the earlier judgments of the same High Court noted by me hereinabove, it was held that in doing so the substance of the matter to be decided in the case was not affected. Similarly, in **In Re: Satidas Mukherjee alias S.D. Mukherjee Vs. In Re: Sudip Mukherjee** MANU/WB/0360/2004 also continuance of proceedings was allowed on the principle of taking note of subsequent events and not as substitute. The Division Bench of the Madras High Court in **Govind M.Asrani Vs. Jairam Asrani** AIR 1963 Madras 456 held that, on the demise of the executors who had applied for probate, legatees under the Will were permitted to continue the petition. There also, while upholding the principle that in applying for probate/letters of administration the right asserted is a personal right, continuance of

proceedings was allowed placing reliance on the doctrine / principle that the court is entitled to take note of the subsequent events and to mould the reliefs accordingly. The court, however, held that the application for coming on record should be made as one seeking the direction of the court and not under Order 22 Rule 3 of the CPC.

22. The Division Bench of the Karnataka High Court in **Kamamma Vs. Somasekharappa** AIR 1963 Mysore 136 held that under Section 2 of the CPC legal representative is a person who in law represents the estate of the deceased and includes also the person on whom the estate devolves on the death of a party who is sued in a representative character. It was thus held that the definition would bring the heirs into the category of legal representatives and the proceedings would be taken in a representative character i.e. representing the interest of those on whom the estate is devolved. It will thus be seen that the Karnataka High Court also though not disturbing the proposition of there being no right to sue, got past the said obstacle by allowing the proceedings to continue on other grounds.

23. The Gujarat High Court in **Jadeja Pravinsinhji Anandsinhji Vs. Jadeja Mangalsinhji Shivsindhji** AIR 1963 Gujarat 32 while similarly not disturbing the finding that the right to apply for probate is personal to the executor and does not survive after the death of the executor, however, relied upon the provisions of the Indian Succession Act enabling the beneficiary to apply for probate on the failure of the executor. It was held that upon the demise of the executor, the beneficiary under the Will is entitled to continue the proceedings. It was held that the executor was also seeking to establish the will not for himself but for the benefit of the beneficiary

and thus the action of the executor was a representative action which can be continued by those who he represents. Reliance on the principle contained in Order 1 Rule 8 CPC was made.

24. In fact the Apex Court in **Shambhu Prasad Agarwal v. Bhola Ram Agarwal** 2000(9) SCC 714 also disapproved of the dismissal of the applications for substitution of the petitioner in a probate case on the ground of the petitions having been filed in a personal right. It was held that where an executor dies though his heirs cannot be substituted because the executor possessed personal right but this is not applicable where the heirs of a legatee apply for issuance of a letters of administration. It was held that since there is no dispute that the applicants could file an independent petition for issuance of letters of administration, there can be no objection to allow them to continue the petition.

25. Coming now to the facts of the present case, the estate of which administration is sought is of the deceased brother of one of the petitioners and of the deceased brother of the predecessor of the other petitioners. They are claiming the rights through the mother of the deceased upon whom alone the said estate devolved by succession. All close relatives who could possibly have had objection have either consented to the grant of administration or chosen not to oppose. The only difference today is that of the two petitioners who were substituted in place of the original petitioner, one has expired. The result of declining the application for substitution would be to compel them to institute proceedings afresh. With respect, I am unable to concur with the old Calcutta judgments and the recent judgment of the Division Bench of Bombay High Court. With respect, the

Division Bench of the Bombay High Court has proceeded on a technical view of the matter and with respect where to there can be no disagreement. However, the court in that case was not faced with the practical difficulties/delays arising in disposal of such petition and with the contention considered by me above of the waste in following such an interpretation/procedure. I, applying the principles discussed above, hold the petition to be maintainable. Accordingly, IA.No.14400/2007 for substitution is allowed.

26. Otherwise on merit it is the unrebutted position that the deceased was at the time of his demise an ordinary resident within the jurisdiction of this court. This court would thus have jurisdiction to entertain the petition. The petitioners, who are now found entitled to the estate, of which letters of administration are sought are found suitable persons. I, however, find that it would be impractical to grant administration jointly to a large number of persons. Accordingly, in the exercise and powers vested in the court under Section 218 of the Indian succession Act, the letters of administration are granted to Smt Aneeta Bhasin wife of late Shri R.P. Bhasin and Shri Swarup Prakash Bhasin.

The petition is accordingly allowed and disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

April 23, 2009
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