

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

+ **FAO.No. 19/2010**

% *Reserved On:16.11.2010*
Decided On: 25.11.2010

MUNISH BHALLA Appellant
Through: Mr. Daljeet Singh, Sr. Adv. with Mr.
D.P. Sharma, Adv.

Versus

STATE & ORS. Respondents
Through: Mr. A.K. Verma, Mr. M.P. Singh, Adv.
for R-2.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG,J.**

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1. The present appeal arises against an order dated 21st December, 2009 passed by the Ld. ADJ whereby objections filed by the appellant opposing the grant of probate was dismissed by the Ld. ADJ on the ground that the objections were not filed in time even though the objector had knowledge about the proceedings and no reason was tendered for the delay. The following facts lead to the present appeal.

2. That the appellant's father and the testator are brothers and ran a business together and the loan they had raised against the title deeds of the said property was recalled after their business ran into heavy losses. That the appellant's father relinquished half his share in favour of the testator and also executed a relinquishment deed dated 28.12.1987 in the testator's favour. In the year 1992 the appellants father through his wife and the appellant applied for cancellation of the relinquishment deed by filing a suit bearing no. 371/4/92 before this high court wherein this court was granted a stay order dated 16.4.1992 whereby the testator was restrained from encumbering or parting of

possession of the said property and thereafter the suit was subsequently transferred to the court of the District Judge.

3. Soon thereafter the testator contested the suit and after his death his legal heirs contested the suit on his behalf and vide decree dated 29.08.2005 the suit stands decreed and the deed stands cancelled. But before the death of the testator he executed a will dated 7.03.1994 whereby he bequeathed the said property to Respondent No.2 and soon thereafter Respondent No.2 filed a petition for grant of probate bearing no. 85/96 against the will dated 7.03.1994.

4. That it is the case of the appellant that on 28.08.2009, for the first time he became aware of the probate case when he was called for examination and cross-examination in support of the objections filed by Respondent No.3 and Respondent No.4. That soon thereafter, the appellant filed two applications one under section 283 (1) (c) of the Indian Succession Act and under section 5 of the Limitation Act. According to the appellant, even though he was cited as a witness and his affidavit was placed on record, it was only on 20.10.2009 when he was called for cross-examination that he became aware of the probate proceedings and as per decision taken by the court on 26.11.2009 when the court closed evidence of the objectors that the appellant decided to file caveat and sought to oppose the probate case.

5. The respondent has opposed these applications on the ground that the caveator has no interest in the property left. He was fully aware of the proceedings inasmuch as when he was called upon to appear as witness in this case by one of the objector, he also filed an affidavit. In the said affidavit he has taken the stand that he is no longer interested in the property having sold the same to third party. It is, therefore, stated that he is not left even with a slight interest in the property and was not entitled to obstruct the process of granting of probate and, therefore, the learned ADJ rightly dismissed his application.

6. I have heard the submissions of both the parties. I have also gone through the written arguments placed on record. I have also scrutinized the record of the court below.

7. I may observe that the Ld. ADJ observed that after the case was fixed for final arguments, the appellant filed objections along with an application under section 5 of Limitation Act. He has made the following observations:-`

“It is not in dispute that objector had knowledge about these proceedings, same had filed affidavit as a witness of one parties. It is also not disputed that notice to general public was given by publication in some newspaper. No reason is explained as why the applicant did not file objections in time. No reason to allow the applicant to file objections now particularly when case is at its fag end i.e. for final arguments. Request is thus declined.”

8. It is submitted by the appellant that under section 283 (1) (c) of the Indian Succession Act, 1925 it is stated that :-

“Powers of District Judge.- (1) In all cases the District Judge or District Delegate may, if he thinks proper-

(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.”

9. And the appellant further states that he has sufficient ground to question the grounds on which the Respondent no.2 is seeking grant of probate.

10. The appellant further places reliance on the supreme court judgment of G. Gopal v. C. Baskar and others (2008) 10 SCC 489 wherein the apex court held that a person having even a slight interest in the estate of the testator is entitled to file caveat and contest grant of probate.

11. On the question of delay the appellant further places reliance on a Patna high court judgment of Shanti Devi v. Anil Kumar Singh wherein the Ld. Judge has dealt with the issue of delay in filing a caveat and held that:-

“8. The question is - for such delay, can a substantive right to file a caveat be defeated? The Act nowhere prescribes a time frame within which a caveat has to be lodged. The rules framed by this Court in relation thereto do not suggest any time during which the caveat has to be lodged. The logical conclusion, therefore, would be that such caveat can be lodged any time before the grant is accorded. In the absence

of a time fixed for doing a particular thing, there is no question of depriving a substantive right on the ground of delay.

The right, therefore, to lodge a caveat remains open until such time the grant is accorded. Once the grant is accorded, the matter stands finally concluded by a judgment in rem and, at that stage, nothing can be done. The right to lodge a caveat by a person having some interests in the estate of the testator comes to an end at that stage.”

12. However, the aforesaid principle does not apply in this case inasmuch as the appellant has not conducted himself in a correct and righteous manner. He was listed as a witness by the attorney of Respondent No.3 and 4 who are the objectors to the probate petition on 31.8.2005 and a publication was also made in the newspaper in November 1996 by the Respondent no.2 inviting objections to the will and hence going by these facts, it is quite apparent on the face of law that the appellant was well aware of the probate proceedings and yet he's raking up the issue now at a later stage to cause prejudice to the Respondent No.2

13. It is also not disputed that in his affidavit dated 20.10.2009 the appellant has categorically stated that the property, subject matter of the probate has already been sold and transferred to Mrs. Indrani Patnaik w/o Dipti Ranjan Patnaik and thus it is apparent that the appellant has no right on the property and yet he's indulging in such frivolous litigation just to create mischief and delay the ongoing process of law. The Supreme Court judgment shall not apply in the present case since the appellant has relinquished all rights to the property and does not even have the slightest of interest in the estate. The Patna High Court judgement also does not apply since the appellant has no interest in the estate property and the question of delay does not arise. It is a matter of record that this affidavit was not filed by the appellant along with his appeal but has been filed by the respondent during the course of hearing of this appeal.

14. It is true that the matter is awaiting final disposal but looking to the conduct of the respondents and also taking consideration that the

respondent is not left with any interest in the property, I agree with the order of the learned ADJ dismissing his application which was even otherwise highly belated. More so, in the circumstances, no just cause will be served by permitting the appellant to participate in the proceedings. Consequently, the order of the ADJ is upheld and the appeal is dismissed.

15. No costs.

16. A copy of this order be sent to the learned ADJ along with TCR.

C.M.1010/2010

Interim order is vacated.

The application is disposed of.

MOOL CHAND GARG,J

NOVEMBER 25, 2010

'ps'