

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

+ **FAO.No.219/2009**

% *Reserved On: 10.11.2010*  
*Decided On: 19.11.2010*

RAJVIR ..... Petitioner  
Through: Mr.Keshav Dayal, Sr. Adv. with  
Mr.D.K.Sharma, Mr.Sanjay Kumar  
Singh, Advs.

Versus

STATE & ANR. .... Respondents  
Through: Mr. S. L. Chaudhary, Mr. Padam  
Chaudhary, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE MOOL CHAND GARG**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No. |
| 2. | To be referred to the reporter or not?                                | No. |
| 3. | Whether the judgment should be reported in the Digest?                | No. |

: **MOOL CHAND GARG,J.**

1. This order shall dispose of an appeal filed by the appellant, Rajvir under Section 299 of the Indian Succession Act aggrieved of the order dated 26.03.2009 passed by the learned Additional District Judge, Delhi in MPC No.06/2006 filed by the legal heirs of Late Sh. Madan Lal seeking revocation of the grant of letters of administration in favour of the appellant.

2. Briefly stating the facts giving rise to the filing of this appeal are that one Sh.Gobind Ram, son of Sh. Asa Ram was the owner of property bearing no. A-1/69, Lajpat Nagar, New Delhi. He entered into an agreement to sell dated 7.6.1968 for sale of 100 sq. yds. of property no. A-1/69, Lajpat Nagar, New Delhi in favour of the appellant. The physical possession of the back portion of the property was handed over to the purchaser as per the terms and conditions of the agreement to sell. The front portion was in possession of the tenant and Sh. Gobind Ram promised to hand over the possession of the front portion after getting it vacated from the tenant. The sale deed was to be executed in

favour of the applicant after obtaining sale permission from the office of L&DO. Instead of obtaining the sale permission, from the office of L&DO, Sh. Gobind Ram filed the suit no. 538/83 against the applicant and Sh. Sewa Ram for possession of the property and for setting aside of the sale agreement dated 7.6.1968. The written statement as well as the counter claim of specific performance of the agreement to sell dated 7.6.1968 was filed by the applicant. The suit was hotly contested by both the parties. Vide order dated 22.9.1987 Smt. K. Shamberwal, Sub-Judge dismissed the suit of Sh. Gobind Ram and decreed the claim of the applicant for specific performance of the agreement dated 7.6.1968 in respect of property no. A-1/69, Lajpat Nagar, New Delhi. Sh. Gobind Ram was directed by the court to execute the sale deed in favour of the applicant within thirty days from the date of the judgment failing which applicant was entitled to get the same executed through the court. Sh. Gobind Ram filed RFA No. 49/88 against the orders of Smt. K. Shamberwal, Sub-Judge in the High Court. The appeal was contested by the appellant. During the pendency of the RFA Sh. Gobind Ram expired. The appellant moved CM. No. 1349/92 praying that no legal heir of the deceased had taken steps to bring him or her on record within the period of limitation and on this application Hon'ble Mr. Justice P.N. Nag passed the order dated 29.10.1993 that the appeal stands abated and was accordingly dismissed. The appellant moved an application in the court of Sh. S.K. Sharma, Sub-Judge for compliance of the order. Ld. Sub-Judge appointed Sh. Kunwar Pal Sharma, Naib Nazir of the court to execute the sale deed. Hence the sale deed was executed in favour of the applicant on 27.4.1994. Thus the appellant became the owner of 100 sq. yds. of property no. A-1/69, Lajpat Nagar, New Delhi. The balance sale consideration of rupees eight thousand was also deposited by him in the court of Sh. S.K. Sharma, ld. Sub-Judge.

3. An eviction petition was filed by the appellant against the legal heirs of Late Sh. Madan Lal for evicting him from the property which was sold by Late Sh. Gobind Ram to Late Sh. Madan Lal and for which a decree for specific performance was passed in favour of Late Sh. Madan Lal as per the order passed by Smt. K. Shamberwal, Sub-Judge by dismissing the suit of Sh. Gobind Ram for recovery of possession and

a sale deed was executed in their favour by the Madan Lal after dismissal of RFA filed by Late Sh. Gobind Ram against the order of Smt. K. Shamberwal, sub-Judge in this Court.

4. After receiving notice of the eviction petition, legal heirs of Late Sh. Madan Lal filed the petition for revocation of letters of administration granted in favour of the appellant which according to them has affected their right to enjoy the property. It was pleaded that the letters of administration was obtained by the appellant by making false suggestions and by concealing material facts inasmuch as In the will dated 16.3.1992 it was written that the testator was in possession of property no. A-1/69, Lajpat Nagar, New Delhi whereas Sh. Gobind Ram handed over the vacant possession of the back portion of the property to the applicant in 1968 and in the agreement to sell it was specifically written that he was not in possession of the property since 7.6.1968. Sh. Rajvir claimed that Sh. Gobind Ram was residing with him in house no. 95, Zamrudpur and after his death the will was found by him from his papers whereas in the death certificate Sh. Gobind Ram is shown to be the resident of house no. 101, Zamrudpur. Sh. Chandra Shekhar, one of the attesting witness of the will is the brother of Sh. Rajvir. He is residing with Sh. Rajvir and hence was having full knowledge regarding the alleged will. No citation was issued to the applicant inspite of the fact that he was an interested party. Hence the letter of administration was obtained by them by making untrue statements and by producing false documents and witnesses in the court. The petitioner Sh. Rajvir got the will typed according to his own choice and left blanks in the will.

The petition was contested by the appellant. On the pleadings of the parties, following issues were framed:

“1. Whether the order dated 18.1.1994 and also the letter of administration dated 25.3.1994 are liable to be set aside, as alleged by the applicant?

2. Relief.”

5. The learned ADJ taking note of the provisions contained under Section 263 of the Indian Succession Act observed that in the present case, the respondents were able to show that there was a just cause for

revoking the letters of administration granted to the appellant. Before making reference to the reasons given by the learned ADJ in the impugned order, I may mention the provisions contained under Section 263 of the Indian Succession Act which reads as under:

“Revocation or annulment for just cause : The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.- Just cause shall be deemed to exist, where -

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant though such allegation was made in ignorance or inadvertently ; or

(d) the grant has become useless and inoperative through circumstances.”

6. Applying the provisions contained under Section 263 (b) and (d) as aforementioned, the learned ADJ came to a conclusion that in the present case the letters of administration of the Will subject matter of the controversy was obtained by the appellant by not only pleading incorrect facts but also concluded that in the facts of the case, the letters of administration in favour of the appellant at least to the extent of 100 sq. yards of the property forming part of property bearing No.A-1/69, Lajpat Nagar, New Delhi became useless in view of Late Sh. Gobind Ram having failed in Suit No.538/1983 to obtain possession of the said portion of the property from Late Sh. Madan Lal and further that in the said Suit a decree for specific performance was passed by the Court in favour of the legal heirs of Late Sh. Madan Lal. The appeal filed against the said order stood abated and subsequently a decree of specific performance was also passed in favour of the legal heirs of late Sh. Madan Lal under the orders of a competent Court.

7. At this juncture, it would be relevant to take note of the evidence which came on record in support of the plea of revocation taken by late Sh. Madan Lal. Sh. Madal Lal had expired during the course of the

pendency of the proceedings and later on his legal heirs were brought on record. One of the legal heirs Sh. Rajiv Relhan, who is the son of late Sh. Madan Lal also appeared as witness and as stated that Sh. Madan Lal Relhan purchased the property bearing no. A-69, Lajpat Nagar, New Delhi. The possession of the back portion of the property was handed over to Sh. Madan Lal Relhan by late Sh. Gobind Ram. Later on Sh. Gobind Ram filed a suit for possession and for cancellation of agreement to sell. Sh. Madan Lal Relhan filed a claim for specific performance. The suit filed by Sh. Gobind Ram was dismissed and the suit for specific performance was decreed. The certified copy of the judgment is Ex.AW1/1 and the decree sheet is Ex.PW1/2. The certified copy of the agreement to sell is Ex.PW1/3. Sh. Gobind Ram filed RFA in the High Court. He died during the pendency of the RFA and the appeal abated. Sh. Rajvir filed an application in the High Court for setting aside the abatement. His application was dismissed and the certified copy of that order is Ex.AW1/4. Sh. Gobind Ram died in Arjun Nagar, Kotla Mubarakpur. The property was mutated in the name of Sh. Madan Lal through court. The photocopy of the sale deed executed in favour of Sh. Madan Lal through court is Mark A. He deposed that the will propounded by Sh. Rajvir is not a genuine will. This witness was cross examined on behalf of Sh. Rajvir and in his cross examination he deposed that his father took the property from Sh. Gobind Ram in 1968.

8. No doubt this witness was cross-examined but the cross-examination of the aforesaid witness revolved around the capacity of Sh. Gobind Ram in having executed the Will in favour of the appellant in a sound and disposing mind which question was not relevant for the purpose of deciding the petition for revocation. Evidence was also recorded by the appellant including the statement made by Sh. Chander Shekhar but again the testimony was relevant for the purpose of execution of the Will in question which is not relevant for the purpose of deciding the question of revocation of probate or letters of administration. At this juncture, it would be appropriate to take note of the observations made by the learned ADJ which are relevant for the purpose of deciding the lis between the parties subject matter of their

petition for revocation of the probate/letters of administration granted in favour of the appellant with respect to the said Will. The relevant observations read as under:

“This petition is for deciding the question whether the grant dated 25.3.1994 is liable to be set aside and revoked or not. Hence the question of validity of the execution of the will is not relevant at this stage. The applicant has prima facie made a case that an agreement to sell was executed by Sh. Gobind Ram in his favour on 7.6.1968. The possession was also handed over to him. The sale deed was to be executed in his favour after obtaining sale permission from L&DO. Instead of obtaining sale permission Sh. Gobind Ram filed a suit for possession as well as cancellation of documents against Sh. Madan Lal. In the same suit Sh. Madan Lal filed his counter claim claiming specific performance of the contract dated 7.6.1968. The suit for possession filed by Sh. Gobind Ram was dismissed whereas the counter-claim filed by Sh. Madan Lal was decreed on 22.9.1987 by Smt. K. Shamberwal, Sub-Judge, Delhi. Sh. Gobind Ram executed the alleged will on 16.3.1992. Before executing this will he had already filed RFA No. 49/88 against the orders of Smt. K. Shamberwal, Sub-Judge, Delhi in the Hon'ble High Court. When Sh. Gobind Ram himself filed a suit for possession, it means he was admitting that he was not in possession of that part of the property and he also wanted cancellation of the documents executed by him in favour of Sh. Madan Lal. During his own lifetime he hotly contested the case and lost it and against that order he preferred an appeal. So on the date of execution of the will he at least knew that there was a decree against him. After his death the appeal abated. The beneficiary of the alleged will moved the High Court for setting aside the abatement order but his application was also dismissed. Now the sale deed stands executed in favour of Sh. Madan Lal by the orders of the court. He has become absolute owner of 100 sq. yds of the property. This part of the statement is not disputed by Sh. Rajvir in his cross examination. The testator cannot pass on better title than what he himself had. If the testator himself was not the owner of the half of the property and not in possession of half of the property how could he bequeath that portion in favour of Sh. Rajvir. Sh. Rajvir has claimed that the deceased Sh. Gobind Ram was treating him like his son and was residing with him and he performed his last rites. So he is supposed to be aware of the fact that the testator was not in possession of the whole of the property as written by him in his will and claimed by Sh. Rajvir. He is presumed to be aware of filing of an appeal by the testator. Hence letter of administration granted in favour of Sh. Rajvir in such circumstances is liable to be set aside on equity also. At this stage I cannot go into the question of validity or otherwise of the will but the applicant is the owner of the

half of the property for which the letter of administration has been granted in favour of Sh. Rajvir. The explanation (d) to Section 263 of the Indian Succession Act provides that if the grant has become useless and inoperative through circumstances it is a ground for revocation. In fact when the sale deed has been executed in favour of the applicant for 100 sq. yds of property no. A-69, Lajpat Nagar, New Delhi and he is already in possession of some part of the property, the grant in favour of Sh. Rajvir has become useless and inoperative to that extent. It was held by the Hon'ble Supreme Court in the case of **Viswanathan Vs Abdul Wajid, AIR 1963, Supreme Court, Page 1** that:

“An order revoking the grant of probate when it has become infructuous because of a decision in a suit relating to the title of the property affected thereby may properly be made in exercise of the powers under this section. Hence in this case the testator himself was well aware that in 1968 he entered into an agreement to sell with the applicant with regard to half of the property and handed over the possession to them.”

Subsequently they won the case and after the death of the testator the appeal filed by him stood abated. Now the sale deed stands executed in favour of the applicant through the court. He has already deposited the balance sale consideration in the court. The applicant has successfully made out a just cause for revocation of letter of administration granted in favour of Sh. Rajvir by the court vide its judgment dated 25.3.1994.”

9. In the light of the facts as discussed above and the law as discussed earlier by me in para 5 of this judgment, I find no infirmity in the order passed by the learned ADJ in having revoked the letters of administration regarding the Will of Late Sh. Gobind Ram dated 16.03.1992 vide judgment dated 25.03.1994.

10. I may only observe that the claim of the respondents relates to only 100 sq. yards of the plot of total land which is measuring 200 sq. yards. Nothing stated herein will affect the rights of the appellant regarding other 100 sq. yards of the property which admittedly is in his possession and which is situated towards the road from two sides and service road on the other side and is adjacent to the portion of the property which is in possession of the legal heirs of late Sh. Madan Lal and the tenant Sh. Harish Sethi.

11. With these observations, the appeal filed by the appellant is dismissed with no orders as to costs.

12. TCR be sent back along with a copy of this order.

**C.M. 9622/2009.**

Dismissed as having become infructuous.

**MOOL CHAND GARG,J**

**NOVEMBER 19, 2010**

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