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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.471/2002 & CM No. 5567/2011

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1st September, 2011

SHRI O.N.SHARMA & ANR.

..... Appellants

Through: None.

VERSUS

SHRI RAJ KISHORE GUPTA & ANR.

..... Respondents

Through: Mr. Varun Goswami, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the 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?

VALMIKI J. MEHTA, J (ORAL)

1. The matter was passed over on the first call on behalf of the appellants. On the second call, no one is present for the appellants. I have therefore heard the counsel for the respondent and after perusing the record am proceeding to dispose of this appeal which is about 10 years old.

2. The challenge by means of this appeal under Sections 384 and 299 of the Indian Succession Act, 1925 (in short 'the Act'), is to the impugned judgment dated 20.4.2002. By the impugned judgment the trial court/probate court had allowed an application under Order 7 Rule 11 CPC

filed by the respondents in a petition filed by the appellants under Section 263 of the Act, and therefore rejected the petition under Section 263 of the Act. By the impugned judgment, the trial court has dismissed the petition under Section 263 of the Act on two counts. The first count was that the tenants in a property viz the appellants have no interest so as to seek revocation of a probate granted to the beneficiaries of a Will. The second count was that the petition was held to be barred by time as having been filed beyond three years.

3. The facts of the case are that the suit property was owned by one Smt. Sona Devi. Smt. Sona Devi executed a Will dated 16.7.1981 bequeathing the suit property to Sh. Gopal Gupta, S/o Sh. Raj Kishore Gupta. A probate case bearing no. 246/1985 was filed by Sh. Raj Kishore Gupta for grant of probate of the Will dated 16.7.1981 and vide order dated 4.5.1987, probate petition was allowed and Sh. Raj Kishore Gupta was granted probate of the Will of Smt. Sona Devi dated 16.7.1981.

4. The appellants were the petitioners before the probate court under Section 263 of the Act and sought revocation of the probate granted vide order dated 4.5.1987. The stated interest of the appellants was that they were tenants in the property owned by the deceased. The trial court with respect to the issue of lack of entitlement of tenants to file a petition for revocation of a probate held that tenants who have no concern with the beneficial interest in the bequeathed property, can have no rights/locus standi to file a petition under Section 263 of the Act. The relevant

observations of the trial court in this regard are contained in para 12 of the impugned order and which reads as under:-

“12. There cannot be any dispute about the fact that the tenancy rights are very valuable rights. It is true that in para 18 of the Municipal Corporation Greater Bombay Vs. Lal Pancham and Others (supra) it was observed by the Hon’ble Supreme Court that the tenant has an interest in the demise premises under the Transfer of Property Act as well as Under Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In my view that interest is not the interest in the estate of the deceased under Section 218 of the Indian Succession Act. The question which came up for consideration before the Hon’ble Supreme Court in the above mentioned case was regarding vires of Section 354 R and 354 RA of the Bombay Municipal Corporation Act, 1888. Plea raised on behalf of tenants (respondents in the SLP) was that the Section 354R and 354RA did not contemplate any notice to the tenant though they had interest in the demise premises. It was held by the Hon’ble Supreme Court that under the scheme the tenants could have filed objections to the order for clearance being occupants of the building or being the persons likely to be dishoused and therefore, Section 354R and 354RA were intra-vires of the Constitution. Similarly, in Ratnamala Dasi and others Vs. Ratan Singh Bawa (supra) what was held was that a tenant is entitled to the declaration relating to his interest in the tenanted property. Similarly, in Banwarilal Shriniwas Vs. Kumari Kusum Bai and others (supra) what was in dispute before the Hon’ble Madhya Pradesh High Court was whether a purchaser of a property by reason of transfer from the legal heirs of the deceased has an interest in the estate and a right to oppose testamentary document or not, it was held that such a transferee had the locus standi to apply for revocation. Thus what was meant by the slightest interest was the interest in the estate of the deceased and not merely tenancy rights. For instance, if the owner of a property having a tenant therein dies without any heir, the said tenant will not be entitled to the ownership rights in the property. On the other hand, the property will encheat to the State. This, I am of the view that even on the admitted facts, the petitioners who claim themselves to be the tenants under deceased Smt. Sona Devi have no right to challenge the

grant of probate in favour of respondent (Gopal Gupta)/Raj Kishore Gupta.”

5. I completely agree with the aforesaid conclusion of the trial court inasmuch as a tenant in a property which is bequeathed by a Will of the deceased, has no locus standi to challenge the Will of the owner/landlord, when no rights in the suit property, which will flow from the bequest are at all claimed by the said tenants. Merely because tenants have tenancy interest in the property, the said interest will not mean that they have an interest as regards the validity of the Will of the deceased owner/landlord. The only effect act of having a tenancy interest will be that tenants will continue in the tenanted property under the new owner/landlord to whom the property has been bequeathed.

6. I therefore, find no error in the judgment of the trial court holding that the appellants have no interest or locus to challenge the order dated 4.5.1987 which had granted the probate.

7. On the second aspect, the trial court has held that the petition under Section 263 was barred by limitation under Article 137 of the Limitation Act, 1963, inasmuch as in the civil suit which was filed on 15.4.1991 by Sh. Gopal Gupta/respondent no.2, it was specifically mentioned in para 4 that a registered Will dated 16.7.1981 was executed by Smt. Sona Devi in favour of Sh. Gopal Gupta and that a probate has been granted by the learned District Judge, Delhi in probate case No.2466/1985. The appellants were parties to that litigation. The subject petition under Section 263 was however filed almost after 9 years i.e. on

24.7.2000. The petition was therefore rightly dismissed as barred by time. Para 15 of the impugned judgment contains the relevant conclusion, and with which I agree, and the same reads as under:-

“15. Aswini Kumar Chakravarty(supra) relied upon by the learned Counsel for the petitioner was under the Limitation Act , 1908 whereas Ramesh Nivrutti Bhagwat (supra) referred to by the learned Counsel for the respondents is under the Limitation Act , 1963. The present case is governed by the new Limitation Act and therefore, Aswini Kumar Chakravarty and another (supra) relied upon by the learned Counsel for the petitioner would be of no avail. Otherwise also in a later decision of our own Hon’ble High Court in Pamela Manmohan Singh Vs. State 2000 RLR 137 decided on 20.12.99, it was held that Article 137 of the Limitation Act is applicable to the proceedings for grant of probate. In the said case an application under Order 1 Rule 10 CPC was sought to be made after a period of three years and the same was rejected being barred by limitation. In coming to this conclusion, Hon’ble Mr. Justice Vikramjit Sen had referred to Kerala State Electricity Board, Trivandrum Vs. T.P.Kunliallumna, AIR 1977 SC289, where it had been held that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure but to all the applications otherwise not covered under any other Article of the 1963 Limitation Act. It had been urged by the learned Counsel for the petitioners that the petitioners had come to know about the Will only when the respondents sought permission to lead secondary evidence in respect of Will. This is not so. I have summoned the file of the Civil suit pending before the learned Civil Judge. The suit was instituted on 16.4.91. It is specifically mentioned in para 4 of the said Civil Suit that plaintiff Gopal Gupta had been adopted as her son on 17.10.80 and a Will dated 16.7.81 which was registered on that very day was also executed by said Smt. Sona Devi bequeathing her movable and immovable properties in favour of the plaintiff. It was also stated in the said Civil Suit that a probate had been granted in respect of the said Will by the

Learned Distt. Judge Delhi, in probate case No. 2466/85. The present petition for revocation having been instituted on 24.7.2000 i.e. after more than 9 years of the filing of the Civil Suit where the present petitioners had knowledge of the Will, the petition for revocation of grant of probate would not only be barred by limitation but the petitioners would also be deemed to have acquiesced in favour of the grant of probate of the Will.”

8. In view of the above, there is no merit in the appeal, which is accordingly dismissed leaving the parties to bear their own costs. Trial court record be sent back.

SEPTEMBER 01, 2011
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VALMIKI J. MEHTA, J.