

8

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: December 19, 2011
Judgment Delivered On: December 23, 2011

+ RFA(OS) 70/2009

JIA LAL KHANNA Appellant
Through: Appellant in person.

versus

JAWAHAR LAL KHANNA (SINCE DECEASED)
THRU LRs Respondents
Through: Mr.S.C.Singhal, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE S.P. GARG

PRADEEP NANDRAJOG, J.

1. A stitch in time saves nine. This idiom would be the apt preamble to the instant decision.
2. A stitch left unstitched in the year 1990 has led to a litigation between brothers spanning 21 years. It all began, when a petition under Section 278 of The Indian Succession Act with Will annexed, was filed in the year 1976 praying that: '*Letters of Administration of the Estate of Sh.Panna Lal Khanna with the Will annexed be granted to the petitioners*'.
3. Highlighting that the prayer refers to the '*petitioners*' and not '*petitioner*', we note that in the memo of the petition seeking Letters of Administration with Will annexed, the cause title was typed as under:-

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

9

"IN THE COURT OF THE DISTRICT JUDGE DELHI
In Re:-
The Estate of Shri Panna Lal Khanna, deceased.

Original Petition No. _____ of 1976

In Re:-

1. S/Shri Jia Lal
Jawahar Lal, and
Din Dayal
Sons of Late Shri Panna Lal Khanna,
residents of III.B/31 Lajpat Nagar,
New Delhi
---Petitioners

Versus

State
---Respondent"

4. The prayer clause may now be noted. It reads as under:-

"It is, prayed that the Letters of Administration of the Estate of Shri Panna Lal Khanna with the Will annexed be granted to the petitioners.

1. Jia Lal
2. Jawahar Lal
3. Din Dayal
Petitioners

through

Advocate"

5. In the petition it was pleaded that late Shri Panna Lal Khanna had died on 29.07.1975 and during his lifetime had executed a Will dated 01.05.1973, as per which his wife Smt.Bishan Devi was a legatee during her lifetime and thereafter, of the nine sons and one daughter of Panna Lal Khanna, property bearing No.III.B/31 Lajpat Nagar, New Delhi and property bearing No.XIII/2407/15, New Teliwara, Delhi was

devolved upon the petitioners i.e. Jia Lal Khanna, Din Dayal Khanna and Jawahar Lal Khanna.

6. The Will Ex.PW-1/1 was probated as per order Ex.PW-1/2 dated 14.04.1980. The concluding portion reads as under:-

"8. I consequently accept this petition and direct the letters of administration, with a copy of the will annexed, in respect of the immovable properties mentioned at Nos.1 and 2 in the annexure 'A' left by the deceased Shri Panna Lal Khanna, be issued in favour of the petitioners subject to their filing the estate duty clearance certificate, valuation of the property left by the deceased in the form prescribed by law, paying court-fees thereon and executing the requisite administration bond with one surety engaging for the due collection, getting in and administering the estate of the deceased."

7. Unfortunately, the three brothers, Jia Lal, Jawahar Lal and Din Dayal took their own sweet time in completing the necessary formalities i.e. obtaining a valuation report for the property and thereafter purchase stamp paper of adequate value on which the instrument of Letter of Administration had to be scribed. It was only in May 1990 that the needful was done. It is at this stage that had a stitch been stitched in time, the parties would have saved nine.

8. Misled by the memo of parties in the petition seeking Letters of Administration where, as noted herein above, after typing the numeral '1', names of three persons were typed as petitioners; and to a hasty person who would not bother to read beyond the name of the first petitioner and proceed on the assumption that the next name typed is that of the father, on the stamp papers filed, the instrument of *'GRANT OF LETTERS OF ADMINISTRATION UNDER SECTION 290*

11

OF THE INDIAN SUCCESSION ACT' was drawn up and signed by the then learned District Judge, Delhi; and with reference to the order dated 14.04.1980 granting Letters of Administration, the instrument was scribed as under:-

"IN THE COURT OF SHRI JASPAL SINGH DISTRICT
JUDGE, DELHI

Probate Case No.80/76

I, Jaspal Singh, Judge of the District of Delhi hereby make known that on the 14th day of April, 1980, Letters of Administration with copy of Will Ex.P-1 dated 1.5.1973 for the property and credits to the extent of Rs.66,000/- (Rupees Sixty Six thousand only) as per schedule attached of Late Shri Panna Lal Khanna, late(sic) of Delhi, Deceased was granted to Shri Jia Lal son of late Shri Panna Lal Khanna resident of II-B/31, Lajpat Nagar-III, New Delhi, he having undertaken to administer the same and to make a full and true inventory of the said Property and credits and exhibit the same in this court within six months from the date of this grant or within such further time as the court may from time to time appoint and also to render to this court a true accounts of the said property and credits within one year from the same date or within such further time as the court may from time to time appoint.

Given under my hand and the seal of the court
on this 28th day of May, 1990."

9. Armed with the instrument granting Letters of Administration in his name, which obviously is an error when the instrument was drawn up, and the reason being as afore-noted in para 8 above, Jia Lal Khanna i.e. the appellant obtained credit in sum of ₹66,000/- after obtaining an order dated 01.09.1990 from the Court of Justice Mohd.Shamim and on the strength of the instrument granting Letters of

12

Administration, started representing as if he was the beneficiary under the Will; and unfortunately the title paramount i.e. L&DO also started corresponding with him as if he was the successor-in-interest of his father.

10. He never rendered any accounts of the rent received by him to his two brothers and this led his brother Jawahar Lal Khanna, a beneficiary under the Will and co-petitioner when Letters of Administration were obtained, to file CS(OS) No.1292/1992.

11. In the suit, Jawahar Lal Khanna prayed that the property No.B-3/31, Lajpat Nagar and XIII/2407/15 New Teliwara be partitioned and he be given 1/3rd share therein. He has also sought a decree against the appellant pertaining to accounts being rendered for the rents received by him.

12. Needless to state, basis of the claim in the suit was the Will Ex.PW-1/1 in respect whereof Letters of Administration was granted vide order dated 14.04.1980, Ex.PW-1/2.

13. The appellant took a defence that he was the sole owner of the two properties and relied upon a relinquishment deed dated 24.04.1984 executed in his favour by Din Dayal. Qua the plaintiff he relied upon an affidavit Ex.PW-1/D1 which reads as under:-

"AFFIDAVIT

I, Jawahar Lal Khanna son of Shri Panna Lal Khanna, aged about 35 years, resident of III-B/31, Lajpat Nagar, New Delhi, petitioner in the above noted case, do hereby solemnly affirm and declare as under:-

1. That the property bearing No.III-B/31, Lajpat Nagar, New Delhi was constructed by Shri Jia Lal my elder brother in the year 1953-54. All the expenses in regard to construction etc. was borne by Shri Jia Lal. Shri Jia Lal was also realizing rent from the tenants

13

from time to time, even during the life time of my parents.

Delhi.

Dated: 10.11.1976.

Verification

I, the above named deponent do hereby solemnly affirm and declare that the contents of the above affidavit are true and correct to my knowledge and that no part of it has been concealed therefrom.

Verified at Delhi, this 10.11.1976."

14. It appears that due to either old age or the firm conviction upon the belief that the affidavit Ex.PW-1/D1 and that the instrument on which the Letters of Administration have been drawn empower him to act as the owner of the property and the affidavit is an acknowledgement by the first respondent of his being the owner, Jia Lal Khanna the appellant, is just not able to come to terms that the learned Single Judge has held his brother i.e. Jawahar Lal Khanna to be the one-third owner of the two subject properties. So firm is his belief that he has refused to pay his share of the fee to the learned Local Commissioner appointed by the Court to submit a report whether the two properties can be partitioned by metes and bounds. Even in the appeal, we found his attitude to be hard. Unfortunately for him, it appears that no lawyer is prepared to argue the appeal and at his instance, vide order dated November 25, 2011 we had expedited hearing of the appeal and listed the same for December 19, 2011, when arguments were heard.

15. Vide impugned decree dated 14.05.2009 the plaintiff Jawahar Lal Khanna who died fighting the battle with

the appellant and whose wife and son have been brought on record as the legal heirs has been declared to be one-third owner of the two properties and the appellant has been declared to be the owner of the remaining two-third on account of the Will executed by late Sh.Panna Lal Khanna and the relinquishment deed executed by Din Dayal Khanna in favour of the appellant.

16. The reasoning of the learned Single Judge is short and sweet. The same is that Jia Lal Khanna, Jawahar Lal Khanna and Din Dayal Khanna, the three sons of late Sh.Panna Lal Khanna were the co-petitioners in Probate Case No.80/1976 and all of them claimed inheritance in the two properties under their father as per the Will dated 01.05.1973, Ex.PW-1/1, probate whereof was granted vide order dated 14.04.1980, Ex.PW-1/2 and since Din Dayal Khanna had admittedly relinquished his one-third share in the subject properties in favour of Jia Lal Khanna, Jawahar Lal Khanna would have one-third share in the two properties. The affidavit Ex.PW-1/D1 signed by Jawahar Lal Khanna has been explained by the learned Single Judge with reference to Section 41 of the Transfer of Property Act holding that rights in immovable property cannot be extinguished by estoppel except under Section 41 of the Transfer of Property Act. The learned Single Judge has held that Jia Lal Khanna has led no evidence that he spent the entire money to construct property No.III.B/31 Lajpat Nagar and that the affidavit Ex.PW-1/D1 would at best be proof that Jia Lal Khanna spent money to construct the building, but has held that the same would not mean that he became the owner of both the properties.

15

17. Appellant Jia Lal Khanna argued before us that he is the owner of both properties for the reason:- (a) the instrument on which the Letters of Administration has been scribed is in his name, (b) affidavit Ex.PW-1/D1 executed by Jawahar Lal Khanna recognizes him to be the owner of the two properties, (c) after obtaining order dated 01.01.1990 he took ₹66,000/- from Canara Bank and the said order recognizes him to be the owner of all properties left by his father.

18. We need not pen a lengthy reasoned opinion inasmuch as we concur with each and every finding returned by the learned Single Judge.

19. We have highlighted herein above the error which has crept in, and the possible reason thereof, when the instrument of Letters of Administration was scribed in the language as noted in para 8 herein above. The fact of the matter remains that Jia Lal Khanna along with his two brothers filed Petition No.80/1976 seeking Letters of Administration to the estate of their father with the Will dated 01.05.1973 annexed. The order Ex.PW-1/2 dated 14.04.1980, grants the Letters of Administration as per para 8 thereof, contents whereof have been noted in para 6 above. It is the judicial order which determines the right and not the ministerial reflection thereof.

20. Jia Lal Khanna has clearly admitted, and in any case if he seeks inheritance under the Will dated 01.05.1973, that the bequest by his father gives one-third share to his brother Jawahar Lal Khanna.

21. The wrongly worded instrument on which the Letters of Administration have been scribed does not confer and cannot confer exclusive rights of ownership in favour of Jia

16

Lal Khanna. Merely because, armed with a wrongly worded instrument drawn up, he received ₹66,000/- pursuant to order dated 01.09.1990 would have no effect. That apart, his status would be that of a trustee inasmuch as it is the Will dated 01.05.1973 which has to govern the manner of administration of the estate of late Sh.Panna Lal Khanna.

22. The affidavit Ex.PW-1/D1 only recognizes that Jia Lal Khanna spent money to raise a construction on property No.III.B/31 Lajpat Nagar. Thus, the affidavit would have no bearing with respect to property No.XIII/2407/15 New Teliwara. Even as regards the property at Lajpat Nagar, it not being in dispute that the perpetual leasehold rights under L&DO were in the name of Panna Lal Khanna, merely because he spent money on constructing a building thereon, would not make him the owner of the land in any case. He having joined the two other brothers in seeking Letters of Administration on the strength of the Will dated 01.05.1973 has to remain bound by the admissions made by him in the petition filed.

23. We dismiss the appeal with costs in sum of ₹25,000/- imposed upon the appellant and in favour of the respondents No.1(a) and 1(b).


(PRADEEP NANDRAJOG)
JUDGE


(S.P.GARG)
JUDGE

DECEMBER 23, 2011

dk

*Frsh cm 3848/12 u/s 151 CPC for mod. of above or, by appellants
1/ 3849/12 u/s 151 CPC for exemption.*