

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

+ **TEST CAS. 40/2002**

% **7th September, 2012**

SIRI KISHAN GUPTA Petitioner
Through: Mr. S.N. Kumar, Advocate with Mr.
S.K. Gupta, Advocate.

versus

STATE & ORS. CF+ Respondents
Through: Mr. Pradeep Dewan, Senior Advocate
with Ms. Anupam Dhingra, Advocate
for respondent No.7.
Mr. Ravi Gupta, Senior Advocate
with Mr. P.R. Aggarwal, Advocate
and Mr. Naveen Gupta, Advocate for
respondent No.8.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

I.A. No.8972/2012 (under Order 12 Rule 6 CPC by respondent No.8)
and Test Case No.40/2002

1. This is an application filed under Order 12 Rule 6 of Code of Civil Procedure, 1908 (CPC) on behalf of respondent No.8 for dismissing
Test Case 40/2002

Page 1 of 7

the probate petition on admitted facts. The present probate petition has been filed with respect to a Will dated 27.6.1984 of the deceased late Sh. Balmukand Gupta.

2. In the application, respondent No.8/applicant states that in fact Sh. Balmukand Gupta had left a Will dated 6.6.1984 and which Will was probated by this Court in probate case No.72/1985. In the application, it is further stated that pursuant to the grant of the probate, the estate has been administered and all the parties, including the beneficiaries to the Will as propounded in the present case, have received their shares. It is necessary, at this stage, to refer to paras 12 and 13 of the present application under Order 12 Rule 6 CPC and the same read as under:-

“12. That after the grant of the probate by this Hon’ble Court vide judgment dated 14.07.1986 in probate proceedings no.72/1985 the estate of the deceased was duly administered by the executant Shri Gopi Chand Gupta.

13. That it is a matter of record that after the grant of Probate Certificate the estate of the deceased stands duly administered and all the beneficiaries have already used and enjoyed their respective benefits under the said Will dated 06.06.1984 and now no estate of the deceased Shri Balmukand Gupta remains to be administered. The following are the details disclosing as to how the estate of the deceased Shri Balmukand Gupta, after having been administered have exchange hands long back:-

- a. Moveable properties including shares of M/s Madras Rubber Ltd., Bank Balances with Union Bank of India, Canara Bank, Bonds with Reserve Bank of India, amounts deposited with M/s Radhey Shyam Rattan Lal, have been duly received and encashed by Smt. Premwati Gupta- the widow of the deceased,

in terms of the Will dated 06.06.1984.

- b. Godown no. 66 B, Gadodia Market, Khari Baoli, Delhi which was bequeathed to Smt. Shashi Gupta the respondent no.6 herein was sold and transferred by her in favour of one Smt. Indu Jain by means of a duly executed and registered Sale Deed dated 22.3.1991. A copy of the said Sale Deed is annexed herewith and marked as Annexure-G. A perusal of the said Sale Deed would go to show that the said Sale Deed has been executed by Smt. Shashi Gupta, claiming herself to be the sole and absolute owner of the said godown on the basis of the last and final Will dated 06.06.1984 of her father Late Shri Balmukund Gupta.
- c. Godown No. 56A, Gadodia Market, Khari Baoli, Delhi which was bequeathed to Smt. Savita Goel and Smt. Sushma Gupta, the respondent nos. 3 and 4 herein, was after the grant of the probate certificate was rented out by them to the tenants claiming themselves to be the owners of the said Godown on the basis of the last and final Will dated 06.06.1984 of the deceased Shri Balmukund Gupta. Later on the said godown had been sold/transferred by the said two daughters of the deceased on the basis of the said Will dated 06.06.1984 only.
- d. 1/3rd share in the House No. K-27/A, Hauz Khas, New Delhi which was bequeathed to Shri Rattan Lal, the respondent no.8/applicant herein, after the said grant of probate was got mutated by him in his favour in the records of Municipal Corporation of Delhi. Subsequently the said House has also been sold and transferred by the applicant in favour of M/s Indralok Orchids and Estates, who are now in possession and control thereof and the present applicant has been left with no interest therein.
- e. 1/3rd share in the House No. 21, Banarsi Dass Estate, Delhi-110007 which was bequeathed in favour of Smt. Premwati/respondent no.2 herein was mutated/transferred in her favour. After her death the respondent no. 3 to 6 being the daughters of the respondent no.2 are the owners of the said property and are using and enjoying the same of their benefits.”

3. The petitioner has replied to these paras by stating as under:-

“10-12 Contents of paragraphs 1 to 12(sic 10 to 12) are matters of record”

4. I must state that the Supreme Court in the case of *Uttam Singh Duggal and Co. Ltd. Vs. United Bank of India and Ors. (2000) 7 SCC 120* has held that the expressions ‘pleadings’ as contained in Order 12 Rule 6 CPC will include pleadings in the application under Order 12 Rule 6 CPC.

5. I may also note that respondent Nos.2 to 6 in the present case, and for whose benefit the present petition is filed by the executors (executors are non-beneficiaries), were parties to the earlier probate petition No.72/1985. They appeared in those proceedings, did not contest and thereafter the probate petition No.72/1985 was disposed of by the judgment dated 14.7.1986. Evidence was led in probate case No.72/1985 before probate was granted. The present probate petition has been filed by two persons who claim to be the executors under the Will dated 27.6.1984. As already stated, the executors/petitioners are not beneficiaries of the Will dated 27.6.1984.

6. As per Section 273 of the Indian Succession Act, 1925 a probate once granted is final with respect to the estate of the deceased.

Judgments in probate cases are judgments in rem. Section 273 of the Indian

Succession Act, 1925 reads as under:-

“Section 273. Conclusiveness of probate or letters of administration.- Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:

Provided that probates and letters of administration granted-

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees.”

7. The only way in which the probate granted can be revoked is by means of filing a petition under Section 263 of the Indian Succession Act, 1925 and which provision reads as under:-

“Section 263. 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; or

(e) the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

8. It is not disputed as per the pleadings of the present application that beneficiaries of the Will which is propounded in the present probate petition have already applied for revocation of the probate of the judgment dated 14.7.1986 allowing the probate petition No.72/1985. Of course, what would be the effect of the same, I need not comment upon inasmuch as, as noted above the beneficiaries of the present Will dated 27.6.1984 were already parties and had appeared in the earlier proceedings before the judgment dated 14.7.1986 was delivered.

9. This probate petition is filed almost 16 years after the grant of probate in the earlier petition No.72/1985 and after probate granted has been duly/fully administered including by granting the beneficiaries the shares in terms of the probated Will and which beneficiaries are also beneficiaries of the Will dated 27.06.1984, propounded in the present case.

10. In view of the above, the present probate petition is liable to be dismissed not only on account of principles of *res judicata* inasmuch as the earlier judgment in the probate case No.72/1985 will act as not only against the parties to the present suit but also as a judgment in rem, but also because of the fact that the estate of the deceased has been fully administered. The probate petition is also liable to be dismissed inasmuch as the beneficiaries

to the Will propounded in the present case have already applied for revocation of the probate granted in probate case No.72/1985. I may note that I am not one way or the other commenting upon the merits of the petition filed under Section 263 of the Indian Succession Act, 1925 and such revocation petition will be heard and disposed of by the concerned Court in accordance with law.

11. The present probate petition is accordingly dismissed. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

SEPTEMBER 07, 2012

Ne