

S/L 10
06.08.2026
Court. No. 25
Sourav

WPA 18959 of 2025

**Peter David Sweetman & Anr.
Vs.
The State Bank of India & Ors.**

*Mr. Billwadal Bhattacharyya, Sr. Adv.
Mr. Ramkrishna Dutta*

...for the petitioners.

*Mr. Debashis Saha
Mr. Avirup Roy Sanyal
Ms. Sucheta Pal
Mr. Jyotishman Sarkar*

...for the State Bank of India.

*Mr. D. K. Kundu
Mr. A. Basu*

...for R.B.I.

1. The petitioners have filed the present writ application praying for a mandamus upon the respondents to release the funds/amount lying in the account of the deceased being Account Nos. 11126857632, 37457626489 and 37457888694 of the respondent no. 2 Bank in favour of the petitioner on the basis of the probate of the deceased Subhas Mitra without insisting of letters of administration.
2. Mr. Bhattacharyya, learned Senior Advocate appearing for the petitioners submits that the deceased Subhas Mitra alias Subhas Chandra Mitra was domicile of the United Kingdom. During his lifetime, he has made and published a Will dated November 30, 2009 signed and executed in London on the same date. The deceased died on December 17, 2019. After his death, the last Will and Testament of the deceased was probated on May 5, 2023 and the administration of his estate was granted by the High Court of England and Wales to the executors of the deceased who are the petitioners herein.

3. In the said Will the testator has described the money investments and properties wherever situated which includes three bank accounts as mentioned above in the State Bank of India, DA Block, Salt Lake Branch. All the formalities pertaining to the probate of the last Will and Testament of the deceased was completed. On February 29, 2024, the petitioners through their learned advocates has sent a copy of the said last Will and testament, death certificate of the deceased and the probate granted by the High Court of Justice, England and Wales to the Bank for release of the fund lying in the name of the deceased.
4. In the representation submitted by the petitioners through their learned advocates requested the Bank for release of the fund lying in the name of the deceased in terms of the probate granted by the High Court of England and Wales. On receipt of the advocate's letter, the respondent no. 2 has sent a reply on April 30, 2024 informing the petitioners that the Will was executed and probated outside the India and, therefore, the petitioners should approach the Indian Court for issuance of the letters of administration and after getting the letters of administration, the respondent no. 2 will take appropriate steps for release of the fund. Now the petitioners have challenged the said communication of the Bank dated April 30, 2024.
5. Learned counsel for the petitioners submits that once the High Court of England and Wales has granted the probate, there is no necessity for obtaining any further letters of administration for the said probated Will. He has relied upon the judgment in the case of ***Sanjay***

Khanduja Vs. Punjab National Bank and Another, reported in **2021 SCC OnLine Del 3209** and submits that the similar issue was raised before the Delhi High Court and the Delhi High Court has held that the only requirement for claiming rights under a probate granted by a foreign court, would be to file an apostilled copy of the judgment of the said foreign Court. The Delhi High Court has passed the judgment by relying upon the judgment in the case of ***Sameer Kapur Vs. State through the Sub-Divisional Magistrate South Delhi***, reported in **2020 (12) SCC 480**.

6. By relying upon the said judgment, learned counsel for the petitioners submits that the respondent Bank has wrongly interpreted the law and directed the petitioners to obtain the letters of administration from the Indian Court instead of relying upon the probate granted by the High Court of England and Wales. He further submits that the petitioners have submitted the said probate to the Bank with the apostilled but the Bank has not accepted the same.
7. Per contra, learned counsel appearing for the Bank has relied upon Section 228 of the Indian Succession Act, 1925 and submits that as per the said provision, the petitioners have to obtain a Letters of Administration of the probate granted by the High Court of England and Wales but the petitioners failed to obtain the letters of administration.
8. Learned counsel for the Bank has relied upon the judgment in the case of ***Roshan Anthony Gunawardhana Vs. Ministry of Finance*** reported in **2022 SCC OnLine Mad 9379** and submits that the

Madras High Court has held that an application for grant of an ancillary probate is required to be filed before the concerned Court of India, along with the authenticated copy of Will and the final order obtained from the Foreign Court. The necessity to obtain an ancillary probate is clear from a conjoint reading of Sections 213, 228 and 270 of the Indian Succession Act, 1925.

9. Heard the learned counsel for the respective parties. Perused the materials on record and the judgment relied by the parties.
10. There is no dispute that the Will was executed by the deceased at United Kingdom and the probate was also granted by the High Court of England and Wales. The Bank has rejected the request of the petitioners for release of the fund lying in the name of the deceased in favour of the petitioners on the basis of the probate granted by the High Court of England and Wales that the petitioners have not obtained the Letters of Administration from the Indian Court by producing the probate granted by the High Court of England and Wales.
11. In the case of ***Sanjay Khanduja (supra)*** the Delhi High Court was dealing the similar issue and held that:

“10. In this background, the question is whether the said order of the Probate Court, Texas can be recognised by courts in India. Section 41 of the Indian Evidence Act, 1872 reads:

“41. Relevancy of certain judgments in probate, etc., jurisdiction. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away

from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing is relevant.

Such judgment, order or decree is conclusive proof-that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment [order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [order or decree] declares that it had been or should be his property.”

11. In *Menahem Mesha Menaham Messa* (supra), the High Court of Bombay had the occasion to consider an appeal arising out of a suit which was originally transferred from Aden, where late Bunin Menahem Mesha, the deceased testator in the matter, was domiciled. As per the decision of the Protectorate of Aden, the Defendants in the matter were the named administrators of the Will of said deceased testator. This was contested by the Appellant, the only son and heir of the deceased testator, who sought a declaration to the effect that the Appellant is entitled to the whole estate as heir, and that he was also entitled to a grant of letters of administration with respect to the

deceased testator's estate and Will. The Bombay High Court observed as under:

If the judgment in question comes under s.41, there can be no doubt that the validity of the will cannot be allowed to be re-opened. It establishes the character and status of the plaintiff as an administrator as on intestacy and takes away the character of defendants Nos. 1 to 3 as executors of the will on the ground that the will was not executed in accordance with the law applicable to the parties and is invalid.

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The Indian Evidence Act makes no distinction between a foreign Court and a British Indian Court as the Civil Procedure Code does, and I am unable to see any principle upon which such distinction should be made for the purpose of giving effect to s. 41 of the Act. The word "Court" is not defined in the Act but s. 3 says that unless a contrary intention appears from the context the word "Court" is used in the Act as including all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence. This of course is not a definition, and it is clear that the word "Court" is not in terms limited to a domestic Court. Having regard to the principles on which such judgments are recognised, I see no reason to restrict s. 41 to judgments of domestic tribunals, and respectfully agree with the view of Chandavarkar, J. in the case referred to above. I think the word "Court" in s. 41 means any Court which is competent either by international law or by a statute. Assuming however, this is not correct, the position practically remains the same, because by comity of nations such judgments are given the same recognition, as Woodroffe and Ameer Ali point out, as domestic judgments.

12. In 2019, in the matter of *Chander Kanta Mishra [Supra]*, a *ld. Single Judge* of this Court, also considered a matter involving the entitlement of the Petitioners in the suit property. The Petitioners were to be substituted as beneficiaries of a Will, being legal heirs of late Dr. Shanta Sharma, a citizen of USA. The said Dr. Shanta Sharma was the beneficiary of a Will executed by a Late Major (Retd) Bhim Raj Sharma. The Court observed as under:

12. The grant of probate is a proceeding in rem as has been held in *Basant Devi v. Ravi Prakash Ram Prasad Jaiswal* (2008) 1 SCC 267 as well as in *Chiranjilal Shrilal Goenka v. Jasjit Singh* (1993) 2 SCC 507. Further in *Dr. Devika Damji Shah v. Rashmi Mukesh Shah* (2012) 114(5) Bom LR 2757 the Court held:—

“17. Mr. Shah on behalf of the wife drew my attention to the judgment of the Supreme Court in the case of *Surinder Kumar v. Gian Chand* AIR 1957 SC 875 showing the presumption that the judgment in a probate Court granting probate was a judgment in rem and must be presumed to have been obtained in accordance with the procedure prescribed by law. This essentially applies to Indian judgments. It would also apply to foreign judgments which are not in breach of the law relating to execution of the wills in force in India-Section 63 of the Indian Succession Act with regard to execution of the will. If a foreign judgment has seen that the requirement of Section 63 of Indian Succession Act is followed it would certainly be conclusive and also binding upon the parties who claim their rights thereunder. This exception is specifically set out in the judgment in the case of AIR 1950 Mysore 57 DB which has held that such a judgment in rem, including judgment of a foreign Court is binding upon the parties upon the operation of Section 41 of the Indian Evidence Act but only

provided those Courts are competent to pronounce the judgment as contemplated in that section. The Court would be competent and its judgment would be conclusive if they followed the law applicable in India. Such a judgment would hold good until the probate granted under such judgment is revoked also under the law in force in India being Section 263 of the Indian Succession Act.”

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5. Thus, as per trust whatever is left of the properties of deceased after distribution of gifts incurring expenses etc. shall go to the petitioners herein. Admittedly the subject property is still left and needs to be partitioned. Hence, per bare reading of Will and Trust Deed the petitioners need to be substituted as the legal heirs of late Dr. Shanta Sharma, as her left over assets need to be distributed amongst the petitioners only.

13. Considering Section 41 of the Indian Evidence Act, 1872, the legal position, settled by the Supreme Court even as recently as in 2020, in Sameer Kapur (Supra), is that in the case of a probate, a competent court will include a Foreign Court, and a probate granted by a foreign court would even be recognised in India. The relevant portion of the said judgment of the Hon'ble Supreme Court is as under:

“14.1 When an application under Section 276 of the Act is submitted for probate or for letters of administration with will, if any objection is raised by any body with respect to execution of the will, in that case, the applicant is required to prove the will and thereafter the will shall be probated and the court may pass an order for letters of administration. However, in a case where a will has been proved or deposited in a court of competent jurisdiction situated beyond the limits of the State, whether within or beyond

the limits of India, in that case, as provided under Section 228 of the Act, when a properly authenticated copy of the will is produced, the letters of administration may be granted in favour of such person. Meaning thereby, in such a situation, the will is not required to be proved again and it shall be conclusive. Therefore, Section 228 of the Act shall be an enabling provision and it confers an additional right to apply for letters of administration on the basis of such authenticated copy of the will. Therefore, as rightly observed by the learned Single Judge and the Division Bench that Section 228 is akin to Section 276 of the Act.

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17. Therefore, considering the law laid down by this Court in the case of Kunvarjeet Singh Khandpur, it can be said that in a proceeding or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the court to perform a duty. Probate or letters of administration issued by a competent court is conclusive proof of the legal character throughout the world. That the proceedings filed for grant of probate or letters of administration is not an action in law but it is an action in rem. As held by this Court in the case of Kunvarjeet Singh Khandpur, : (SCC P. 468, para 15)

"15.... '16. ... (c)... an application [for grant of probate or letters of administration] is for the court's permission to perform a legal duty created by a will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed.'" Therefore, even if the will is probated

by any court mentioned in Section 228 of the Act, right to get the letters of administration is a continuous right which can be exercised any time, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed.

18. Applying the law laid down by this Court in the aforesaid decision and the observations made hereinabove, the submission on behalf of the appellants that Probate Case No. 15/2001 filed by respondent no. 2 for letters of administration under Section 228 of the Act, read with Section 276 of the Act is barred by law of limitation, cannot be accepted. At this stage, it is required to be noted that even in the plaint, it is specifically pleaded that after passing away of the father of the parties in the year 2000, the appellants started intermeddling with properties bequeathed to respondent no. 2, which were situated in Delhi and, therefore, left with no option, he was compelled to apply for letters of administration. Therefore, even as per the pleadings in the application, the cause of action started from the date on which the appellants started intermeddling with the properties bequeathed to respondent no. 2, after passing away of the father of the parties in the year 2000. Therefore, in the facts and circumstances of the case, both the learned Single Judge and the Division Bench have rightly refused to reject the application in exercise of powers under Order 7 Rule 11 of the CPC. In the facts and circumstances of the case and as observed hereinabove, it cannot be said that the application for letters of administration was clearly barred by the law of limitation which was required to be rejected in exercise of powers under Order 7 Rule 11(d) CPC. We are in complete agreement with the view taken by the High Court.”

14. It is thus clear that under Section 41, a competent court includes a foreign court. So long as the probate or letter of administration is granted by a competent foreign court and the same does not violate the laws of succession in India, it can be recognised in India.

15. Further, the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961, i.e., the Apostille Convention, is clear to the effect that legalisation in the Indian Embassy would not be required if the document is duly apostilled. India, being a member of the Apostille Convention since 2005, there is no requirement of legalisation of duly apostilled documents in India. The relevant portion of the Apostille Convention is as under:

“ARTICLE 2 - Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.”

16. This is also confirmed by the notification of the Ministry of External Affairs, dated 18th November, 2020. The relevant portion of the said notification is as under:

“2. It has been brought to the notice of this Ministry that some institutes/organizations/establishments in India demand an apostilled document of a member country to be further attested by the Indian Mission/Post in that country. It is clarified that no further attestation or

legalization of an apostilled document should be required in India as India is a member of the Hague Apostille Convention. An apostilled document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.

3. Copy of a Note on “Issuing and Accepting Apostilles” is enclosed for ready reference. The full text of the Hague Apostille Convention and list of its member countries are available at <https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille>

4. To avoid unnecessary hassle caused to general public by demand of further legalization or attestation of an apostilled document, all concerned are requested to disseminate the information contained in paras 1, 2 & 3 above, among organizations/academic establishments, which are under their charge/in their jurisdiction or are affiliated with them. The information may also please be prominently displayed on the official websites.”

17. The above being the legal position, the only requirement for claiming rights under a probate granted by a foreign court, would be to file an apostilled copy of the judgment of the said foreign court. In view of the judgment of the Hon'ble Supreme Court and settled legal position and as also the notification dated 18th November, 2020, the following directions are issued:

(i) The Petitioner may produce before all the three banks, PNB-Kalkaji branch; PNB-Panipat branch and Central Bank of India-Kalkaji, the copy of order of the Probate Court, Texas (USA), bearing the original seal of the apostille, dated 15th June 2010. After verification, copies of the said apostilled document, shall be accepted by

the banks and access shall be given to the Petitioner.”

12. The petitioners have also referred the judgment in the case of ***BMO Trust Company Vs. State Bank of India & Anr.*** reported in ***2022 SCC OnLine Del 5078***. In the said case also the Delhi High Court has considered the judgment in the case of ***Dr. Sanjay Khanduja (supra)*** and passed an order directing the Bank to release the fund. The judgment relied by the petitioners in the case of ***Roshan Anthony Gunawardhana (supra)*** the Madras High Court has considered the judgment passed by the Hon’ble Supreme court in the case of ***Sameer Kapur (supra)*** and the judgment passed by the Delhi High Court in the case of ***Dr. Sanjay Khanduja (supra)*** but was of the view that the facts of the case of ***Roshan Anthony Gunawardhana (supra)*** is distinguishable from the facts of ***Dr. Sanjay Khanduja***.
13. Considered the judgment delivered by the Delhi High Court in the case of ***Dr. Sanjay Khanduja (supra)*** the Delhi High Court has held that the only requirement for claiming rights under a probate granted by a foreign court, would be to file an apostilled copy of the judgment of the said foreign court. In the present case, the learned counsel for the petitioners submits that the petitioners have submitted the apostilled copy of the probate granted by the High Court of England and Wales but in spite of the same, the Bank has not released the same.
14. The Hon’ble Supreme Court in the case of ***Sameer Kapur (supra)*** has categorically held that in the case where a Will is proved or deposited in the court of

competent jurisdiction situated beyond the limit of the State whether within or beyond the limits of India, in that case as provided under Section 228 of the Act when a property authenticated copy of the Will is produced, the letters of administration may be granted in favour of such person. Meaning thereby, in such a situation, the Will is not required to be proved again and it shall be conclusive. Therefore, Section 228 of the Act shall be an enabling provision and it confers an additional right to apply for letters of administration on the basis of such authenticated copy of the Will.

15. In the case, the petitioner has also obtained the probate of will of the deceased from the High Court of England and Wales and the petitioner has submitted the same to the Bank for release of the fund in favour of the petitioner in terms of the probate granted by the competent Court.
16. The Letters of Administration in essence is not concerned with the genuineness of a will or other testamentary disposition. It is essentially records recognition upon the right of the petitioner to administer the affairs of the deceased. The order of Supreme Court has not only held that the will has been duly executed and represented the last will and testament of the testator, it has also affirmed the right of the petitioner to represent his estate. The judgment, as is well settled, operates a judgment in rem. The bank fails to find any justification to require the petitioner to obtain Letters of Administration all over again from a Court in India. The stand of the bank would have been sustainable provided there was a substantive objection raised to the manner

in which the probate came to be granted or where it was established that the Court of England and Wales while granting probate had failed to adhere to some vital aspect of the procedure or mandatory prescription which governs that grant under the laws in India.

17. Thus, this Court finds that the communication dated April 30, 2024 is not sustainable and accordingly, the same is set aside and quashed.
18. The petitioners are directed to submit the apostilled copy of the probate granted by the High Court of England and Wales to the respondent no. 2 and, if any, application is filed by the petitioners to the respondent no. 2, the respondent no. 2 shall release the fund in favour of the petitioners in terms of the probate granted by the High Court of England and Wales upon completion of all formalities in accordance with law.
19. **WPA 18959 of 2025** is disposed of.
20. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Krishna Rao, J.)