

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.4397 of 2017 (O&M)

State of Punjab and others ... Appellants

Versus

Vipan Kumar and others ... Respondents

2. RSA No.4398 of 2017 (O&M)

Civil Hospital, Kapurthala
and another ... Appellants

Versus

Vipan Kumar and others ... Respondents

Date of Decision: 15.09.2017

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Gulnoor Ghuman, AAG, Punjab,
for the appellants.

Mr. Vijay Kumar Jindal, Sr. Advocate,
with Ms. Janya Sirohi, Advocate,
for the caveators/respondents.

RAJIV NARAIN RAINA, J.

1. This order will dispose of the two above captioned appeals, one filed by State of Punjab and the other filed by Civil Hospital, Kapurthala against the judgment and decree of the learned District Judge, Kapurthala dated January 30, 2017.

2. Mr. Vijay Kumar Jindal, learned Senior counsel assisted by filing counsel Ms. Janya Sirohi, Advocate appearing on caveat.

3. Caveat is discharged.

4. Heard Ms. Gulnoor Ghuman and Mr. Vijay Kumar Jindal at considerable length and perused the papers on record with their able assistance.

5. Even assuming that a question of law arises in these appeals, the plaintiffs-respondents having remained successful in two Courts, it could have been no more than as to whether on the basis of a probate order of a testamentary Will, could the State of Punjab draw mileage from orders passed in probate proceedings under the Indian Succession Act, 1925, to question of title of the plaintiffs or do such proceedings decide case under probate only with respect to the Will dated July 21, 1956 executed by late Smt. Parvati in favour of beneficiaries, who were not the plaintiffs. The probate order dated April 26, 2014 is Ex.D-1 in the present suit.

6. The learned Senior counsel cites judgments of the Supreme Court to show that the answer to the question is in the negative.

7. A question of title to immovable property cannot be decided in a probate proceeding which proceedings are confined to the proof of Will but not its authority and binding effect on the rights of third parties. Such parties have independent right to assert title by way of a suit for declaration and mandatory injunction seeking to set aside adverse actions of the defendants in its mutation record against the plaintiffs changing ownership in favour of the beneficiaries of the testamentary Will to the exclusion of the plaintiffs.

8. He relies on Joginder Pal v. Indian Red Cross Society, (2000) 8

SCC 143. The question before the Supreme Court was whether the

provisions of the Indian Succession Act, 1925 should in a probate order be conclusive as to the representative title of the executor or legatee (para.14). The Supreme Court considered the provisions of Section 373, 383 (e) and 387 of the Indian Succession Act and especially Section 387 thereof, a provision which deals with the effect of decisions under the Act and liability of holder of certificate thereunder. The provisions of Section 387 is reproduced for ready reference:-

"387. Effect of decisions under this Act, and liability of holder of certificate thereunder.- No decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this part shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto."

9. The Supreme Court referred to its past dicta and observed that the question had been considered previously by the Supreme Court earlier and answered in Madhvi Amma Bhawani Amma and others v. Kunjikutty Pillai Meenakshi Pillai and others, JT 2000 (5) SC 336 : 2000 (3) RCR (Civil) 187 (SC). The Supreme Court observed in paras.16 and 17 of the judgment as follows:-

"16. This question was also considered by this Court in the case of Madhvi Amma Bhawani Amma and others v. Kunjikutty Pillai Meenakshi Pillai and others, JT 2000 (5) SC 336 : 2000 (3) RCR (Civil) 187 (SC). In this case after having considered the provisions of Sections 370 to 390 of the Indian Succession Act as well as Section 11 of the Civil Procedure Code, it has been held that any adjudication under Part X does not bar the same question being raised

between the same parties in a subsequent suit or proceeding. It has been held that Section 387 of the Indian Succession Act takes a decision given under Para X of the Indian Succession Act outside the purview of Explanation VIII to Section 11 of the Civil Procedure Code. It has been held that Section 387 gives a protective umbrella to ward off from the rays of res judicata to the same issue being raised in a subsequent suit or proceeding. We are in full agreement with the view expressed in this case.

17. In view of the specific provisions of law it is not possible to accept Mr. Sohal's submissions. Section 387 specifically permits the 2nd Respondent to file a subsequent suit. Merely because issues were raised and/or evidence was led, does not mean that the findings given thereunder are final and operate as res-judicata. Even in summary proceedings issue can be raised and/or evidence can be led. The proceedings remain summary even though the Court may, in its discretion, permit leading of evidence and raising of issues. So in a subsequent suit the crucial issues must be decided afresh untrammelled or uninfluenced by any finding made in the proceedings for grant of Succession Certificates.”

10. Mr. Jindal then refers to the Supreme Court ruling in Mrs. Hem Nolini Judah (since deceased) and after her legal representative Mrs. Marlean Wilkinson v. Mrs. Isolyne Sarojbhashini Bose and others, AIR 1962 SC 1471. The Supreme Court in this authority observed that questions of title are not decided in proceedings for the grant of probate or letters of administration whatsoever might have happened in those proceedings would not establish the title to property.

11. It appears settled legal position that the probate proceedings and orders passed therein and relied upon by the appellant-State of Punjab and the mutations in the revenue papers maintained by it, reflecting the those orders, casts a dark cloud on the rights of the plaintiff-respondents

compelling them to seek recourse to legal remedy against the impugned mutation on Government record maintained by it, without hearing the plaintiffs and thereby purporting to change ownership rights, to institute the present suit to vindicate their right to property from where this appeal arises, that the State and its agency co-defendant would have no case in appeal, presently depending strongly on an application for additional evidence under Order 41 Rule 27 of the CPC filed with the State appeal for permission to produce the mutations based on the probate order.

12. Even if that application is allowed and the documents brought on record those would still be worth nothing in the context of title to property since those are based solely on the orders of the Court that are passed in probate proceedings to which the plaintiffs were not party. The result is that Will may be genuine as between the testator and the beneficiary but it will not have legal effect on the extrinsic rights of the parties. Punjab State can claim no title to the suit property, a shop, dependant solely on orders passed in probate proceedings.

13. In this case, the location of the property with reference to the order has not been established as a fact by the State on legal evidence, as a defendant in the suit, to fit exactly the shop in dispute as against the State's claim on the suit land on which the shop stands.

14. Both the Courts have accepted the plea of the plaintiffs-respondents qua ownership and possession of the defendant State of Punjab or the Government Hospital over the suit property and, therefore, I am not inclined to interfere with the well reasoned and elaborate judgment authored by the learned District Judge, Kapurthala pronounced on January 30, 2017.

15. The findings arrived at by the Court of first appeal after appreciating the evidence and the applicable law to the facts-in-issue is proper and deserves to be affirmed based on sound reasoning. The application under Order 41 Rule 27 of the CPC is therefore declined as the documents have no bearing on the case of the plaintiffs based on title to suit property. The mutations based on the order passed by the Probate Court are of no consequence and are accordingly set aside. Plaintiffs are declared owners in possession of the suit property as against the defendants who have failed to prove their case by evidence.

16. As a result of the above discussion, both the appeals are found devoid of merit and are hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

15.09.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*