

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

% **Date of decision: 18th December, 2017**

+ **TEST.CAS.15/2016 & IAs No.2463/2016 (u/O XXXIX R-1&2 CPC), 13295/2016 (u/O XXXIX R-4 CPC) & 4830/2017 (of R-2 u/S 151 CPC).**

SARLA GUPTA

..... Petitioner

Through: Mr. Jaskaran Singh, Adv.

Versus

THE STATE & ORS

..... Respondents

Through: Mr. Rajesh Yadav and Ms. Ruchira, Advs. for R-2.

Mr. Puneet Gupta and Mr. Sangam Kumar Jha, Advs. for R-6 to 8, 10 & 11.

Ms. Chandrani Prasad and Mr. Chirag Mahalwal, Advs. for R-12 to 15.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This order is in continuation of the earlier order dated 13th December, 2017.
2. The main counsel Mr. Anil Sharma, for the petitioner, has not appeared today also and Mr. Jaskaran Singh, Advocate who had appeared on 13th December, 2017 appears today also.
3. Mr. Jaskaran Singh, Advocate is not even conscious of the query which was made to him on 13th December, 2017 and resultantly has no answer to the same. He only states that the stay should not be vacated.
4. I had on 13th December, 2017 enquired from Mr. Jaskaran Singh, counsel for the petitioner, about the maintainability of this petition under Section 276/278 of the Indian Succession Act, 1925 for grant of Letters of

Administration, observing that the proceedings for grant of Letters of Administration being summary in nature, wherein the right of the parties cannot be decided and if rights claimed by the petitioner are to be established, it is to be by way of a suit and not by way of a petition seeking Letters of Administration.

5. I have today again considered the said question and perused the petition.

6. The petitioner has approached this Court, pleading (i) that the deceased Shakuntala Devi was the owner of property No.10, Bengali Market, Bazar Lane, New Delhi; (ii) that the husband of the deceased Shakuntala Devi pre-deceased her and the deceased Shakuntala Devi was issueless and has left the petitioner and the respondents No.2 to 11 as her only Class II heirs; (iii) that the deceased Shakuntala Devi had not executed any Will during her lifetime, while being possessed of sound state of mind; (iv) that after the death of her husband, the deceased Shakuntala Devi was not in her perfect state of mind and was suffering from various ailments and was visually impaired; (v) that the petitioner being one of the Class II heirs of the deceased Shakuntala Devi is entitled to maintain this petition seeking Letters of Administration; and, (vi) that the respondents No. 2 to 10 are contemplating to create third party interest with respect to the property, to deprive the petitioner from her legitimate share in the property aforesaid.

7. The respondents No.2 & 5 to 11 filed joint objections to the aforesaid petition, setting up a document claimed to be the validly executed last Will of the deceased Shakuntala Devi.

8. None appears for the respondents No.3&4.

9. The counsels for respondents No.2 & 5 to 11 state that respondents

No.2 & 5 to 11, besides one Rajesh Bansal, are the beneficiaries under the document claimed to be the Will of the deceased Shakuntala Devi. It is further stated that the said Rajesh Bansal has not been impleaded as a party to this petition; that the said Rajesh Bansal has died; that the respondents No.3&4 have been served and have not been appearing.

10. It was in the aforesaid context that the question arose, whether the dispute as arises from the pleadings aforesaid, is to be decided in a petition seeking Letters of Administration by one of the persons claiming to be the natural heir of the deceased.

11. The adjudication of the dispute would entail adjudication of the question, whether the document set up by respondent No.2 & 5 to 11 is the validly executed last Will of the deceased Shakuntala Devi.

12. The petition though is titled as under Section 276/278 of the Indian Succession Act but Section 276 provides for an application for probate or for Letters of Administration with the Will annexed. The plea in the petition is not, of the deceased Shakuntala Devi having left any Will and the petitioner is neither seeking probate nor Letters of Administration with the Will annexed. Invocation of Section 276 is thus misconceived.

13. Part IX of the Indian Succession Act, 1925 is titled "Probate, Letters of Administration and Administration of Assets of Deceased". The provisions thereunder, spread over several Chapters, relevant for the present purpose are as under:-

"218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.-(1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be

granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

220. Effect of letters of administration.-*Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.*

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,*

shall, unless otherwise directed by the grant, have like effect throughout the other States.

The proviso to this section shall apply in India after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.

The proviso shall also apply in India after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.

278. Petition for letters of administration.—(1) *Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—*

- (a) the time and place of the destator's death;*
- (b) the family or other relatives of the deceased, and their respective residences;*
- (c) the right in which the petitioner claims;*
- (d) the amount of assets which are likely to come to the petitioner's hands;*
- (e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and*
- (f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.*

(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

295. Procedure in contentious cases.-In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908.) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

298. Power to refuse letters of administration.-Notwithstanding anything hereinbefore contained, it shall, where the deceased was a Muhammadan, Buddhist or exempted person, or a Hindu, Sikh or Jaina to whom section 57 does not apply, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

300. Concurrent jurisdiction of High Court.-(1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

(2) Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do."

14. As far back as in **Maung Ba Han Vs. Maung Tun Yin** MANU/RA/0169//1934 it was held that it is incumbent upon the Court to, before granting administration of estate to anyone, determine expeditiously the status and fitness of such person to administer the estate. Similarly, Division Bench of the Calcutta High Court in **Annapurna Kumar Vs.**

Subodh Chandra Kumar AIR 1970 Calcutta 433 held that the Court should immediately take action under Section 298.

15. Supreme Court, in ***Illachi Devi Vs. Jain Society, Protection of Orphans India*** (2003) 8 SCC 413, held that the object behind granting ample discretion to the Court under Section 218(2) in the matter of grant of Letters of Administration in the matter of intestacy is that the grantee is responsible to the Court and is required to carry out the directions faithfully, diligently and effectively; that the administrator would avoid occurrence of personal consideration in the matter of administration and would perform various duties and functions with all efficiency, integrity and honesty and that the administrator is entrusted to act in a fiduciary capacity.

16. The Court, in a proceeding for grant of Letters of Administration, is concerned only with, whether the person seeking Letters of Administration is a fit person to be granted Letters of Administration of the estate of the deceased. Reference in this regard can be made to ***Bai Parvatibai Vs. Raghunath Lakshman*** AIR 1941 Bom 60, ***Mahadeo Shankar Shinde Vs. Maruti Shankar Shinde*** AIR 2003 Bom 312 and ***Delhi Development Authority Vs. Vijaya C. Gurshaney*** (2003) 7 SCC 301. The Court in such proceedings does not enter into question of title to the property. Reference in this regard can be made to ***Leelawati Singh Vs. State*** (1998) 75 DLT 694, ***Anjan Kumar Singhi Vs. Ranjan Kumar Singhi*** (2011) 126 DRJ 56 (DB), ***Ramchandra Ganpatrao Hande Vs. Vithalrao Hande*** AIR 2011 Bom 136 and to ***Ganesh Mohapatra Vs. Udaynath Mohapatra*** 1972 SCC OnLine Ori 35. Such proceedings are summary in nature and complicated questions of title cannot be appropriately conducted in summary proceedings.

17. In *Shubhra Singhal Vs. State* MANU/DE/4848/2013, finding the relationship between the petitioner, claiming to be one of the heirs, to be acrimonious and contentious with the others also admitted to be heirs, it was held (i) that no purpose would be served in keeping the proceedings for grant of Letters of Administration pending, trying it as a contentious suit and deciding whether the Letters of Administration should be granted to the petitioner as sought or not, when from the pleadings it was evident that the petitioner cannot be said to be an appropriate person fit for grant of Letters of Administration and a suit for partition being a more appropriate remedy for adjudication of the disputes raised; (ii) that the grant of Letters of Administration requires the grantee to whom grant is made, to collect the estate and to distribute the same amongst rightful claimants; where relationship is bitter, the petitioner cannot be expected to, as Administrator, fairly distribute the estate between all the claimants; (iii) issues as to the shares in the estate cannot also be decided appropriately in a Letters of Administration proceedings, when, if there is any merit in the claim of the petitioner, partition is the only remedy; and, (iv) where it is found that there is no need for administration and what is in fact sought is adjudication of a right in the estate and consequent partition of the estate, the Court is entitled, in exercise of discretion under Section 298 supra, to refuse the grant of Letters of Administration and to relegate the parties to the remedy of partition.

18. In *Administrator General Vs. State* 237 (2017) DLT 469 also, it was held (i) that in proceeding seeking Letters of Administration the Court is concerned only with, whether the person seeking Letters of Administration is a fit person to be granted the Letters of Administration of the estate of the

deceased; (ii) the said proceeding is not concerned with, whether the bequest is bad or not or amongst whom is the estate to be distributed; (iii) the Court, in such proceedings does not enter into question of title to the property; and, (iv) such proceedings are summary in nature and complicated questions of title cannot be appropriately conducted in summary proceedings.

19. It is for this reason that in the present case, it was deemed appropriate to pose the question aforesaid to the counsel for the petitioner at the threshold only, so that the parties in this case are not compelled to first litigate for tens of years on whether the petitioner is a fit person to be granted Letters of Administration and thereafter be relegated to the correct remedy in law.

20. However, the counsel for the petitioner has chosen not to avail of the opportunity given to him on 13th December, 2017. Mr. Jaskaran Singh, Advocate, today also has brought judgments only to contend that the petition is not barred by time and not on the question which was posed to him on 13th December, 2017.

21. The counsel for the respondent No.2 has relied upon ***Mt. Hajira Khatoon Vs. Saiyad Mustafa Husain*** AIR 1941 Oudh 474 and in the matter of ***Estate of Late Shri Gurcharan Dass Puri*** AIR 1987 P&H 122 holding that the remedy of Letters of Administration is misconceived when complex questions of law and fact qua title are to be adjudicated.

22. The aforesaid two judgments also support the view aforesaid.

23. Thus, this petition is not found to be the appropriate remedy for the rights claimed by the petitioner and is dismissed but with liberty to the petitioner to, if desirous, invoke appropriate remedy in law.

24. The petitioner, vide *ex-parte* order dated 22nd February, 2016, while

entertaining the petition and issuing notice thereof, was granted an order restraining the respondents from dealing with the title and possession of property No.10, Bazar Lane, Bengali Market, New Delhi and has been enjoying the said protection till now.

25. Since this petition is being dismissed as not maintainable, it is deemed appropriate to continue the said interim order till 30th January, 2018, to enable the petitioner, if so desire, invoke appropriate remedy.

26. Thus, notwithstanding the dismissal of this petition as not maintainable, the order dated 22nd February, 2016 shall continue to bind the parties till 30th January, 2018.

No costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 18, 2017

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(corrected and released on 6th January, 2018)