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

+ CM(M) 537/2018 & CM APPL Nos.21082/2018,
28049/2018, 9718/2019

SUMANGLI GUPTA

..... Petitioner

Through : Mr.P.K.Aggarawal, Mr.Mercy
Hussain, and Ms.Tannya Sharma,
Advocates.

versus

SANJAY GUPTA & ORS

..... Respondents

Through : Mr.Manish Vashisht, Mr.Sameer
Vashisht, Mr.Manashwy Jha and
Mr.Aman Singh Brar, Advocates for
respondents No.1 & 2.
Ms.Warisha Farasat, Panel Counsel,
Ms.Rudrakshi Deo and Ms.Hafsa
Khan, Advocates for GNCTD/
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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02.05.2019

1. This petition challenges the impugned order dated 01.02.2018 whereby an application under Order VII Rule 11 CPC filed by the petitioner in PC No.285/6/05 was dismissed.

2. The brief facts are the respondent No.1 had filed a petition for grant of succession certificate to clear the debt/security of bank deposits of `19,38,388.94 with American Express Bank; and `29,928/- with Punjab National Bank on the strength of an alleged Will dated 23.03.1980, purportedly executed by late Smt.Parmod Gupta – mother of petitioner and respondents No.1 & 2. Smt.Parmod Gupta

expired on 05.07.2001. By virtue of the said Will, the mother of the parties bequeathed all her movable and immovable properties to the respondent No.1 to exclusion of all other legal heirs, except a sum of `5.00 Lac to be spent on the marriage of petitioner herein. An alleged codicil dated 19.10.1997 was also executed by the mother of parties.

3. However, according to the petitioner herein, Smt.Parmod Gupta died intestate and both the alleged Will and codicil are forged and fabricated documents. Smt.Parmod Gupta is alleged to be a member of L R Gupta HUF and owned considerable properties to the tune of Rs.1000 Crores and had numerous litigations pending with different courts.

4. On 02.08.2014 the petitioner moved an application under Order VII Rule 11 CPC to dismiss the petition of respondent No.1 on the ground the sole basis to claim succession certificate is an alleged Will and a codicil and both are forged /fabricated one and as per Section 372 of the Indian Succession Act, the Succession Court is not competent to adjudicate upon the legality and proof of the Will/codicil. It was alleged the learned Administrative Civil Judge (hereafter the 'ACJ') has wrongly relied upon *Krishna Sobti vs State* 230 (2016) DLT 632 to dismiss the application of the petitioner.

5. During the course of arguments, the learned counsel for the petitioner has referred to following provisions of the Indian Succession Act:-

“370. Restriction on grant of certificates under this Part.—

(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:

Provided that xxx xxx.

373. Procedure on application.—

(1) – (2) xxx xxx

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) xxx xxx”

6. It was argued by the learned counsel for the petitioner the Succession Court ought not to determine complicated questions of facts and law but may grant a certificate to applicant on *prima facie* conclusion if he is the person having best title. It was argued since the procedure for obtaining the succession certificate is summary, the evidence be not allowed to be recorded by the learned Succession Court.

7. The learned counsel for the petitioner relied upon *Madhvi Amma Bhawani Amma & Others vs Kunjikutty Pillai Meenakshi Pillai & Others* (2000) 6 SCC 301 wherein the Court held:-

“13. This sub-section reveals two things, first adjudication is in a summarily proceedings and secondly if the question of law and fact are intricate or difficult, it could still grant the said certificate based on his *prima fade* title. In other words the grant of certificate under it is only a determination of *prima fade* title. This as a necessary corollary confirms that it is not a final decision between the parties. So, it cannot be construed that mere grant of such certificate or a decision in such proceeding would constitute to be a decision on an issue finally decision between the parties. If that be so how could principle of *res judicata* be made applicable to a case in a subsequent suit? The effect of such certificate is also laid down in Section 381 which is quoted hereunder:

‘381. Effect of certificate : Subject to the provisions

of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of Section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted."

8. Further in *C.Ramya Bala vs Ch.Jayaram & Others* IV (2013)

ACC (DB) (AP) it was held:-

"9. The question that arises before us is as to whether it was competent for the Court to pronounce upon the legality or proof of Will dated 21-11-2005?

10. The Act provides for adjudication of the disputes of various kinds pertaining to the claims based upon testate and intestate succession. The facility of execution of a Will is created not only in respect of any items of movable, but also immovable properties. However, a dichotomy is maintained as to the adjudication of the claims in respect of movable properties on the one hand and immovable properties on the other. Sections 370 and 372 of Part-X of the Act provide for grant of Succession Certificate in respect of movable properties, which are enlisted in sub-section (2) of Section 370. The mechanism provided for under Part-X cannot at all be pressed into service for adjudication of rights in respect of immovable properties.

11. It is true that in the instant case, respondents 1 and 2 did not make any claim vis--vis an item of immovable property. However, their sole basis was the Will dated 21-11-2005 marked as Ex.A.2. If Ex.A.2 were to have been in respect of a movable property alone, the trial Court would have been certainly competent to pronounce upon the validity of a Will. However, a perusal of Ex.A.2 discloses that the testator has bequeathed an item of immovable property, namely plot No.42 in Sy.No.192 of Kondapur village, in favour of the respondents in equal shares. Once that is so, the proof or otherwise of Ex.A.2 cannot at all be pronounced upon by the trial Court. This is so, notwithstanding the weak resistance that was offered by the appellant. The reason is that a Court cannot be conferred with the jurisdiction even with the consent of the parties, if it otherwise lacks jurisdiction.

12. One complication that arises on account of such an adjudication would be that as and when any claim is laid in respect of immovable property before a different Court, the necessity to pronounce upon Ex.A2 would arise once again and the adjudication and the findings recorded in an O.P. filed under Section 372 of the Act cannot be treated as final, much less binding on such proceedings."

9. Hence, it was argued by the learned counsel for the petitioner that the learned Trial Court be directed not to continue with the evidence as if in future there would be a dispute qua immovable property then also the Will would be examined, hence this unnecessary examination of witnesses be dispensed with.

10. Heard arguments.

11. Here, I may also refer to Section 57 of the Indian Succession Act and it notes:-

“57. Application of certain provisions of Part to a class of Wills made by Hindus, etc.—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; 2[and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):] Provided that marriage shall not revoke any such Will or codicil.”

12. I may also refer to *Krishna Sobti* (supra) wherein this Court had held as follows:-

“15. A harmonious construction of all the aforementioned provisions persuades this Court to hold that where a succession certificate is applied for qua a debt / security of a deceased, no matter even if it is based on a Will (but since a Will is not required to be probated in Delhi) an application for grant of a succession certificate can well lie even without the applicant having necessarily to go through the rigmarole of seeking a probate.”

13. In *Smt. Pintoo vs. Shyam Singh* AIR 1978 Allahabad 301 the

Court held:-

“Thus a probate is not necessary for the establishment of a right under a will by a Hindu where the provisions of clauses (a) and (b) of Section 57 are not attracted. Clause (a) of Section 57 is admittedly not attracted here and clause (b) is also not attracted because the property does not fall in the Provinces of Bengal, Bombay and Madras. See: Nobat Ram v. Gyatri Devi, (19&8 All LJ 69) and Jamna Kuar v. Daulat Rai ((1905) 2 All LJ 126), Further the will in question was alleged to have been executed on 11-3-1972, hence reference could if at all be made to clause (c) of Section 57 only. To such a will clauses (a) and (to) of Section 57 would have no application, see Mst. Janki Bai v. Durga Pd. AIR 1938 All 640. Since] the will in question could not fall under clauses (a) and (b) of Section 57, Section 213 had no application to it. The bar contained in Section 370 is attracted only in a case to which Ss. 212 and 213 apply. Since the provisions of Section 213 are not attracted. In the case as discussed earlier, there was no bar to the grant of a succession certificate under Section 370 of the Indian Succession Act. Reliance was placed on Kesar Singh Sant Singh v. Smt. Tej Kaur, AIR 1961 Punj 509, that no succession certificate can be granted to a person unless he had obtained a probate of the will. In that case it was assumed that the provisions of Ss. 212 and 213(2) were attracted to the case.”

14. In *Santosh Kakkar & Others vs Ram Prasad & Others* 71 (1998) DLT 147 this Court noted:-

“A reading of these provisions make it clear that Section 213(1) requiring probate does not apply to Wills made outside Bengal and the local limits of the ordinary original jurisdiction of the High Courts of Madras and Bombay except where such Wills relate to immovable properties situated within those territories. This has also been so held by this Court in the case of Arjun Dass (supra), by the Punjab High Court in Ram Chand Vs. Sardara Singh AIR 1982 Pun. 382 and M/s. Bihari Lal Ram Charan (supra) and by Allahabad High Court in Bhajji (supra).

15. Lastly in *Manicherry Saseendran vs Smt.P.V.Leela & Others* AIR 2011 Ker 158 it was held:-

“8. The proceedings for the issue of succession certificate are summary in nature. That does not mean that the court cannot allow the parties to produce documents and to adduce evidence. The grant of succession certificate does not involve final determination of the title set up by the parties. It is also not necessary to decide finally the disputed questions of fact and law. The succession certificate only enables the party to

whom the certificate is granted to collect any debt or security belonging to the deceased. For that purpose, the court has to ascertain whether the person to whom the certificate is to be granted has a prima facie right for the same. A decision rendered by the Court in a Succession O.P. would not constitute res judicata as between the parties to the proceedings in a subsequent suit between the same parties.

9. *In Madhvi Amma Bhawani Amma and others v. Kunjikutty Pillai Meenakshi Pillai and others*, MANU/SC/0393/2000: 2000 (2) KLT 518 : AIR 2000 SC 2301, it was held thus:

13. *This sub-section reveals two things, first adjudication is in a summary proceedings and secondly if the question of law and fact are intricate or difficult, it could still grant the said certificate based on his prima facie title. In other words the grant of certificate under it is only a determination of prima facie title. This as a necessary corollary confirms that it is not a final decision between the parties. So, it cannot be construed that mere grant of such certificate or a decision in such proceedings would constitute to be a decision on an issue finally decided between the parties. If that be so how could principle of res judicata be made applicable to a case in a subsequent suit?....*

...

16. *This leaves no room for doubt. Thus any adjudication made under Part X of this Act which includes Section 373 does not bar the same question being raised between the same parties in any subsequent suit or proceedings....*

10. *In Madhwapathi Venkatakrishna Rao v. Panditha Narasubhai and another*, MANU/AP/0038/1954 : AIR 1954 AP 23, it was held that the fact that complicated questions of fact and law arise in an application for the issue of succession certificate does not entitle the Judge to dismiss the application. *In Firm of Patnam Lakshminarayana Chetti, represented by Managing Partner, Patnam Lakshminarayana Chetti v. Grandhe Seshamma and others*, MANU/TN/0137/1942 : AIR 1942 Mad 709, the Madras High Court held that dismissal of an application for the issue of succession certificate for the reason that the questions involved in the case are too complicated to be decided in summary proceedings is not a valid reason in view of subsection (3) of Section 373 of the Indian Succession Act. It was further held that under Section 373(2) of the Indian Succession Act, the Court can make the order after going into the merits of the case. But, under Section 373(3), the Court need not determine questions of law or fact, which are too intricate and difficult for determination in summary proceedings, though the Court is expected to make an order. *In Narayana Pillai v. Krishna Pillai*, MANU/KE/0215/1985 : 1985 KLT 204, it was held that "Sections 370 to 373 of the

Indian Succession Act do not provide for converting an application for succession certificate into a suit. Under Section 373, the provision is to decide the application in a summary manner and the question to be decided is the right to the succession certificate.... The Court is only called upon to make a summary enquiry about the right to the succession certificate and not in respect of title to the assets." Subsection (3) of Section 373 of the Indian Succession Act provides that "if the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto."

11. In view of the provision in sub-section (3) of Section 373 of the Indian Succession Act and also in the light of the aforesaid decisions, I am of the view that the trial court was not justified in holding that the Succession O.P. cannot be decided on the merits since complicated questions of fact and law are involved.

12. to 16. xxx xxx

17. For the aforesaid reasons, I am of the view that the mere fact that the petitioner claims right under a Will does not preclude him from getting a succession certificate."

16. Hence the law discussed above does not put an embargo on recording of evidence by a Succession Court and also if the petitioner claim right under a Will it shall not preclude him from getting a succession certificate.

17. I may also refer to annexure R-9 annexed to CM Application No.28049/2018, viz a copy of application dated 02.03.2006 under Order VII Rule 10 CPC filed by the petitioner herein with a prayer *the matter be looked into by the ACJ as he has the only jurisdiction to grant succession certificate.* It was only at the instance of the petitioner herein, the learned Additional District Judge passed an order dated 05.07.2006 allowing the application under Order VII Rule 10 CPC and sent the file to the learned District Judge, Delhi for transfer of the same to the Court of subordinate Judge. It was in these

circumstances, the matter came up before the learned ACJ (Succession Court.)

18. The learned ACJ(Succession Court) vide order dated 17.09.2008 after noting down the facts directed such a controversy cannot be decided without obtaining the evidence from both sides, and thus posted the matter for evidence of the parties.

19. The evidence is now going on since the year 2008 but the instant application was moved in the year 2014. However, the order dated 17.09.2008 was never challenged by the petitioner. This fact has also been noted by the learned Trial Court in the impugned order dated 01.02.2018 while dismissing the application of the petitioner under Order VII Rule 11 CPC.

20. Now, if the petitioner was so vigilant about her rights, she ought to have been moved an application under Order VII Rule 11 CPC immediately after passing of order dated 17.09.2008 but she never challenged the order dated 17.09.2008 passed by the learned Trial Court whereby the parties were directed to lead evidence hence it has been rightly held by the learned Trial Court that now it is too late for the petitioner to agitate the procedure nor she has any cogent right to stall the proceedings before the learned Trial Court.

21. As alleged the evidence of the respondents herein (petitioners before the learned Trial Court) is since completed and even three witnesses on behalf of the petitioner herein (respondent before the learned Trial Court) has since been examined. The petitioner herein is

being examined as RW4 and her cross examination is at the last leg. Thus at this stage, it would not be appropriate to stall entire proceedings by allowing the application under Order VII Rule 11 CPC after about ten years of evidence. It appears only to avoid her cross examination, the instant application was filed by the petitioner.

22. I would not say much, except in *Krishna Sobti* (supra) having identical facts, the succession certificate was sought under Section 372 of the Indian Succession Act consisting of both movable and immovable properties and this Court held that since a Will is not required to be probated in Delhi, the application for grant of succession certificate was very much maintainable.

23. The present case falls in Section 57(c) of the Indian Succession Act where in Delhi one is not precluded to obtain succession certificate in respect of movable and immovable as described in the Will.

24. Hence, in the overall circumstances where the petitioner herself has invited an order laying down the procedure in the year 2006, now cannot claim in the year 2017 such order was illegal when she herself has examined four witnesses, including herself.

25. Though non compliance of Order XXXIX Rule 3 CPC was also alleged but since I see no cogent reason to upset the impugned order passed by the learned Trial Court, this petition itself is dismissed being devoid of merits. The pending application(s), if any, also dismissed. No order as to costs.

26. Before parting with this order, seeing the pendency of matter, the learned Trial Court shall endeavour to dispose of the petition as early as possible, preferable in six months from the receipt of copy of this order.

27. Copy of this order be communicated forthwith to the learned Trial Court for information and compliance.

YOGESH KHANNA, J.

MAY 02, 2019

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