

Item no.5

Civil Revisional Jurisdiction

Purnima Halder (Das) & Anr.

-VS-

Mr. A. Sarkar

The opposite party no.1 filed an application for grant of letters of administration of the estate of Late Mohanlal Banerji before the learned District Delegate at Kalyani, Nadia. The same was registered as Misc. Case No.60 of 2017 (L.A.). According to the applicant/opposite party no.1, Late Mohanlal Banerji died intestate leaving his last will and testament and bequeathed the estate to Abhimanyu Bhattacharjee Memorial Trust. The applicant no.1 is the trustee and joint managing director of the said trust. On the strength of said will the application under section 276 of the Indian Succession Act, 1925 (hereinafter referred to as the said Act) was filed. The petitioners filed two applications; one, to contest the proceedings for grant of letters of administration; and the other for inspection of the will. According to the petitioners, the wife of Late Mohanlal Banerji, that is Late Latika Banerjee, by a deed of gift bestowed the property in question to the petitioners. The petitioners have started developing on the same by

entering into a development agreement during the lifetime of Late Latika Banerjee. Subsequently, the petitioners were shocked to discover a notice from the learned court affixed on the property with a intimation that a proceeding for grant of letters of administration of the estate of Late Mohanlal Banerji had been instituted. The petitioners filed two applications as stated hereinbefore. The said applications were considered by the learned court below and by the order impugned dated June 29, 2019 the applications were dismissed by the learned court below on various grounds. The learned court below held that although the deed of gift may have been genuine, yet the petitioners could not have a caveatable interest.

According to the District Delegate, the petitioners/objectors failed to show that they have a caveatable interest in the property. The proceedings could not be termed to have become contentious and as such the District Delegate by the order impugned decided to proceed with the applications for grant of letters of administration without allowing the contentions of the petitioners.

The learned court below held that in view of the decision of the Apex Court in the matter of Krishna Kumar Birla v. Rajendra Singh Lodha & Ors. reported in (2008) 4 SCC 300, in order to make a proceeding contentious, caveatable interest must be shown. The learned court below also observed that the Apex Court had clarified in the said judgement that a statute should be interpreted having regard to the purport and object of the Act. The doctrine of purposive construction must be resorted to in a case of interpreting Section 284 of the Indian Succession Act. The court must place itself in the chair of a reasonable legislator. In doing so, it would not

be permissible for the court to construe any provision in such a manner which would destroy the purpose for which the Act was enacted. The Apex Court further observed that under section 283(1)(c) citations were to be issued calling upon all such persons who claimed to have any interest in the estate of deceased.

The learned court below also distinguished the decision relied upon by the petitioners in the case of *Ajay Kumar Maiti & Ors. V. Dr. Anil Kumar Maiti & Ors.* Reported in (2008) 4 CLT 315. The learned court observed that the facts leading to the decision of the High Court were completely different and not applicable in the facts and circumstances of the case in hand. In the said case before the High Court the petitioners who approached this court was already contesting the proceedings. Thus, in the said case rival contentions for grant of letters of administration was raised by contending parties and the High Court observed that when the proceedings had become contentious where the parties were rival claimants and were contesting the proceedings, then the District Delegate acted without jurisdiction in not returning the papers to be placed before the District Judge and in keeping the matter before him.

The learned court below also dealt with the other decisions of the Calcutta High Court in the case of *Abhiram Das v. Gopal Das* reported in ILR (1890) Cal 48. In the said decision it was observed that a person disputing the right of a deceased testator to deal with certain property as his own could not be properly regarded as having an interest in the estate of the deceased and the term (interest) used would not necessarily refer to any particular property but to the

claim of any person to succeed by inheritance or otherwise to any portion of the estate of the deceased by reason of an interest not on an adverse title to the testator to any particular property but in the estate itself.

Having gone through the various decisions and the points of law and the provisions of the statute, the learned court below came to a specific finding that the petitioners did not have caveatable interest as the petitioners claiming title on the estate of the deceased on the basis of a deed of gift and such claim of the petitioners ought to be made and decided in a regular suit before the civil court. The learned court below also observed that the caveatable interest would normally apply to those persons who have interest by inheritance or a special interest in the estate of the deceased.

I have gone through the order impugned and the provisions of law. For better understanding of the issues involved, some sections of the Act of 1925 are quoted below:-

“284. Caveats against grant of probate or administration – (1) Caveats against the grant of probate or administration may be lodged with the district judge or a district delegate.

(2) Immediately on any caveat being lodged with any District Delegate, he shall send copy thereof to the District Judge.

(3) Immediately on a caveat being entered with a District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

(4) **Form of Caveat** – the caveat shall be made as

nearly as circumstances admit in the form set forth in Schedule V.

285. After entry of caveat, no proceeding taken on petition until after notice to caveator – No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court may think reasonable.

286. District Delegate when not to grant probate or letters of administration – A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation – “Contention” means the appearance of any one in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

287. Power to transmit statement to District Judge in doubtful cases where no contention. – In every case in which where there is no contention, but it appears to the District Delegate doubtful whether the probate or the letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the

Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

288. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court. – In every case in which there is contention, or the District Delegate is of opinion that the probate or the letters of administration should be refused in his Court, the petition, with any documents which may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do; and, in that case, the same shall be sent by him to the District Judge.”

On a conjoint reading of these provisions, it appears that caveats against grant of probate may be lodged with a District Delegate. Immediately on a caveat being lodged with the District Delegate he shall send a copy to the District Judge. No proceedings shall be taken on the petition for probate, letters of administration after a caveat against the grant thereof has been entered with the Judge on District Delegate until after such notice to the person by whom the same has been entered.

A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or Letters of Administration ought not to be granted.

Contention has been explained as appearance of any one in person, or by his recognised agent or by a pleader duly appointed to act on his behalf, to oppose the proceedings. The District Delegate also has the power to transmit doubtful cases to the District Judge. Finally, in every case where there is contention or the District Delegate is of the opinion that the probate or Letters of Administration should be refused in his court, petitions and documents which may have been filed, shall be returned to the person by whom the application was made in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary for the purpose of justice to impound the same which he was authorised to do.

Thus, according to the statute the District Delegate if he thinks that there was a contention, he shall not decide the issue of grant of probate but send the entire matter before the learned District Judge.

Contention has to be given a purposive construction for carrying out the provisions of the statute. A person who was an interloper or stranger to the estate of the deceased could not be allowed to raise an objection and render the proceedings as contentious. Objections under the statute can only be raised in terms of section 284 of the said Act. Sections 284 and 286 cannot be read in isolation. If caveats are lodged and the District Delegates finds there is a contention, only then the District Delegate loses authority to grant letters of administration and should send the papers to the District Judge. He cannot act as a mere post officer. Such interpretation of the authority/discretion of the learned District Delegate would be a frustration of the provisions of the Indian Succession Act, 1925. Moreover, section

288 clearly provides that in every case where there is a contention or the District Delegate is of the opinion that the probate or Letters of Administration should be refused in his court, he shall return papers to the applicant in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary for the purpose of justice to impound the same. Thus unless the District Delegate is of the opinion that there is a contention he shall not return the papers to be presented before the District Judge.

Reference is made to a decision of a Division Bench of this Court in this regard. In *Re v. Mira Ray* dated May 13, 1992, wherein a Division Bench held that the very fact that the District Delegate is a judicial officer is an index of the legislative intent that the functionary must not act mechanically as a post officer but one, who would be having ability to apply his mind to satisfy himself as to the bona fide of the caveator.

In the decision of *K.K. Birla case (supra)*, the Apex Court has clarified that ‘contention’ could be raised only by a person who had a caveatable interest. The dictionary meaning of “contention” cannot have any application in the proceedings under the said Act. The statute confers discretion upon the District Delegate to invite persons to watch the proceedings and to issue citation. It would be an absurd proposition of law to conclude that the District Delegate did not have authority to decide whether the proceeding had become contentious on the basis of the objections raised by persons who may or may not have caveatable interest.

Moreover, the decision of this court rendered in *A.K. Maiti (supra)* cannot give any aid to the petitioners.

As the facts were contrary to the case in hand. In the said case the genuineness of the will was under consideration. The impugned order was an order recalling grant of Letters of Administration to a particular party. The District Delegate observed that grant of Letters of Administration by the earlier order needed to be recalled as the same was granted on a mistake of fact, but when the opposite parties who were challenging the genuineness of the will requested the return of the plaint to be placed before the District Judge, the same was refused. The said refusal to return the papers to the applicant by the District Delegate to be placed before the District Judge was under challenge before the High Court and while deciding this issue, the High Court observed that the District Delegate in that case had no option but to return papers to be placed before the District Judge in terms of the statute. A judgment is an authority for what it decides and the observations made in it or observations which naturally flow from it cannot be held to be binding. Reference is made to the decision of K.K. Birla (supra) in which the Apex Court had laid down the proposition of law on the point of caveat and the caveatable interest, namely, (a) to sustain a caveat, a caveatable interest must be shown; (b) the test required to be applied is, does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms of whereof the caveator asserted his right? (c) it is a fundamental nature of probate proceeding that whatever would be interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by "Will" on ground outside the law of succession would be a stranger to the probate

proceeding, inasmuch as, none of such right could effectively be adjudicated therein.

The claim of the petitioners under the circumstances is a claim for title on the basis of a registered deed of gift which is beyond the scope of probate proceeding and as such the petitioners do not have a caveatable interest. Moreover, decisions of the Apex Court in the matter of K.K. Birla (supra) has an overriding effect over all the decisions relied upon by the petitioners.

The order impugned does not call for any interference.

However, it is made clear that the refusal by this court to entertain the revisional application does not have any effect on the genuineness and validity of the deed of gift through which the petitioners' claim. It is also made clear that the petitioners have every right to file a civil suit which shall be decided independently in accordance with law with regard to their title on the basis of the deed of gift. It is also made clear that if the petitioners pray for revocation of the will after the Letters of Administration is granted, the question of caveatable interest will not arise.

Under the circumstances, I do not find any reason to interfere with the order impugned. The revisional application is disposed of with the observations as above.

[Shampa Sarkar, J]

