

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No. 52 of 2019****Reserved on 20.01.2021**
Pronounced on 27.01.2021

- Suresh Goel S/o Late Hariram Goel Aged About 69 Years R/o Hari Chhaya Shankar Nagar, Raipur, Tehsil And District Raipur Chhattisgarh.,

---- Appellant**Versus**

- General Public

---- Respondent

For Appellant	:	Shri Ankur Agrawal, Advocate
For Respondent	:	Notice dispensed with.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V Order**

1. Challenge to this Appeal is the order dated 26.03.2019 passed by the District Judge, Raipur in unregistered case No.0/2019 whereby the application filed by the appellant under Section 276 of the Indian Succession Act (hereinafter referred to as 'the Act') (wrongly mentioned therein as Section 222 of the Act) for grant of probate of Will has been rejected holding it to be not maintainable as the same has been executed in relation to the properties situated beyond the territorial jurisdiction provided under clauses (a) and (b) of Section 57 of the Act.

2. Learned counsel for the appellant submits that the order impugned as passed by the Court below rejecting the application filed under Section 276 of the Act holding it to be not maintainable is apparently contrary to law. According to him, the issuance of certificate for grant of probate of Will executed in relation to the properties, which are beyond the territorial jurisdiction provided under clauses (a) and (b) of Section 57 of the Act is although not required to be issued

necessarily but, it is an optional one. Therefore, in absence of any specific bar, the application for grant of probate of Will ought not to have been rejected and the same cannot be held to be not maintainable.

3. I have heard learned counsel for the appellant and perused the entire papers annexed with this appeal carefully.

4. A deed of Will dated 07.10.2016 was executed by one Smt. Ginni Devi in favour of her son Suresh Goel, the appellant herein, and his brothers and sisters. The properties, which were bequeathed to the appellant, were situated at Timber Market, Fafadih, Raipur and also at village Jalso of Raipur District. Based upon the alleged Will, an application enumerated under Section 276 of the Act has been made by the appellant seeking grant of probate of the alleged Will. The application so made was rejected by the trial Court while referring to the provisions prescribed under Section 57 and 213 of the Act. It has been observed by the trial Court that the alleged Will was executed in relation to the properties, which do not fall within the territorial jurisdiction as provided under clauses (a) and (b) of Section 57 of the Act, therefore, it is not necessary to issue the grant of probate of the alleged Will, in view of sub-section (1) of Section 213 of the Act. As a consequence of it, the Court below has rejected the appellant's said application.

5. In order to examine the validity of the aforesaid order rejecting the said application holding it to be not maintainable in view of the provisions prescribed under Sections 57 and 213 of the Act, it is necessary to examine both the provisions, which read as under:-

“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 it relates to immovable property situate within those territories or limits; [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.”

“213. Right as executor or legatee when established.- (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in [India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

[(2) This section shall not apply in the case of Wills made by Muhammadans [or Indian Christians], or and shall only apply--

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the [ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immovable property situated within those limits.]”

6. By virtue of sub-section (1) of Section 213 of the Act, it is evident that the executor or legatee cannot establish his right based upon the Will unless a Court of competent jurisdiction in India has granted probate on it. This provision is, however, not applicable in relation to the Wills made by Muhammadans or Indian Christians as evidenced by sub-section (2) of it. A bare perusal of the aforesaid provisions would, therefore, suggest that if the Will executed by a Hindu is not covered by clauses (a) and (b) of Section 57 of the Act, the question of application of sub-sections (1) and (2) of Section 213 of the Act would not arise. As such, if

the Will is not executed within the territorial jurisdiction mentioned in clause (a) of Section 57 of the Act or if the Will does not relate to the property situated within the territorial jurisdiction of clause (b) of the said provision, the provision of sub-section (1) of Section 213 would not be attracted and the probate of Will would not, therefore, be necessary.

7. The combined effect of sub-sections (1) and (2) of Section 213 read along with Section 57 is only that in respect of such Wills as are executed by a Hindu outside the specified territories of Bombay, Calcutta and Madras and in respect of properties situated outside those territories, probating the Will is not compulsory. But, rejecting the application for grant of probate of Will holding it to be not maintainable merely on the ground that since it was executed in relation to the properties which do not fall from the territorial jurisdiction of clauses (a) and (b) of Section 57 of the Act, and therefore, issuance of probate is not essential by virtue of sub-section (1) of Section 213 of the Act, however, cannot be held to be sustainable in the eye of law.

8. A combined reading of both the aforesaid provisions, as observed herein above, would just suggest that the grant of probate of Will is compulsorily to be obtained by the testator or legatee for establishing the right based upon the Will only when it relates to the territories provided under clauses (a) and (b) of Section 57 of the Act. In other words, sub-section (2) of Section 213 read with Section 57 of the Act would make it clear that where both the persons and property of any Hindu, Buddhist, Sikh or Jaina are outside the territories mentioned in Section 57, the rigours of Section 213 of the Act would not be applicable in relation to the Wills executed beyond the territory of the said provision. It is thus, evident that if the Will is executed beyond the territorial jurisdiction as provided therein, no probate of Will is required to be obtained compulsorily and the testator or legatee would not be debarred from claiming his right on the basis of a Will. However, it does not mean

that he is precluded from moving an application for grant of probate of Will and, therefore, by any stretch of imagination, it cannot be said that the application for grant of probate would be maintainable only in relation to the Wills which come within the ambit of Section 57 of the Act and would not be maintainable if it is executed beyond the ambit of the said provision. Even otherwise, in absence of any specific bar provided in the scheme of the Act, it cannot be said that the application seeking for grant of probate of a Will under Section 276 is not maintainable.

9. Consequently, the appeal is allowed and the impugned order dated 26.03.2019 passed by the learned District Judge, Raipur in unregistered Case No.0/2019 is hereby set aside. The matter is remitted back to the District Judge/concerned Court, Raipur with a direction to register the said application for grant of probate in its number and shall decide the same in accordance with the law. The appellant shall appear before the concerned trial Court on 22.02.2021.

Sd/-
(Sanjay S. Agrawal)
Judge