

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

% **Date of decision: 11th October, 2021.**

+ **CM(M) 95/2019, CM No. 2811/2019 (for stay) & CM No. 16433/2019 (for condonation of delay of 18 days in filing reply)**

KAILASH VOHRA

..... Petitioner

Through: Mr. Rajat Manchanda, Advocate

Versus

THE STATE & ORS

..... Respondent

Through: Mr. Ajay Garg, Ms. Tripti Gola and
Mr. Mani Shankar, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 7th May, 2018 passed by the Probate Court in P.C. No. 50443/16 whereby the impleadment application filed by the respondent no. 4 under Order I Rule 10 of the Code of Civil Procedure, (CPC), 1908, was allowed and respondent no. 4 was allowed to file objections in the Probate proceedings.

2. The litigation between the parties with respect to the estate of deceased testator, Sh. KL Jain, viz. property bearing no. T-4, T-5 and T-6, Usha Chamber, Ashok Vihar, New Delhi hereinafter (Property) has had a chequered history, which is set out hereinafter.

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3. A suit for permanent and mandatory injunction qua the Property was filed by Roopa Vohra, daughter of the petitioner herein, against Sh. K.L. Jain in his lifetime. The said suit was dismissed by the Trial Court vide judgment dated 24th March, 2012. Roopa Vohra filed an appeal bearing no. RCA No. 3/2012 against the said dismissal. During the pendency of the said appeal, Sh. K.L. Jain expired on 15th December, 2013. An application for impleadment of legal heirs of Sh. K.L. Jain was filed, which was allowed vide order dated 26th July, 2014 and respondents no. 2 and 3 being the daughters of Sh. KL Jain, were brought on record. An application was filed by Roopa Vohra (plaintiff in the suit) under section 52 of the Transfer of Property Act, 1882 seeking a direction to restrain respondents no. 2-3 herein and respondent no. 4 herein from creating any third party interest in the Property, which was dismissed vide order dated 26th July, 2014 by the Appellate Court. The Appellate Court, vide order dated 14th October, 2014, dismissed the appeal against the judgment dated 24th March, 2012 of the Trial Court. Roopa Vohra filed a second appeal bearing no. RSA No. 7/2015 against the order dated 14th October, 2014 of dismissal of the first appeal, which was also dismissed by this Court vide order dated 24th March, 2015.

4. The probate petition from which the present petition arises, was filed by the Petitioner on 10th September, 2014 seeking probate of will dated 3rd December, 2013 executed by the deceased testator, Sh. K.L. Jain, in terms of which the petitioner is the beneficiary. Respondents no. 2 and 3 herein being daughters of the deceased testator were made the respondents in the said probate petition. Objections were filed by the respondents no. 2 and 3 to probate petition. Issues were framed by the Probate Court on 19th

November, 2015 and an additional issue was framed on 12th January, 2016 on the application filed by petitioner herein under Order 14 Rule 4, CPC. An application under Order 1 Rule 10, CPC, was filed by respondent no. 4 on 13th November, 2017 seeking impleadment in the probate case. The said application was contested by the petitioner by filing a reply.

5. Vide the impugned order dated 7th May, 2018, the Probate Court allowed the application under Order 1 Rule 10, CPC, filed on behalf of the respondent no. 4 by observing that respondent no.4 has a caveatable interest in the estate of the deceased. Relevant portion of the aforesaid order is set out below:

“Without going into the merits of the claims of the respective parties, to avoid multiplicity of proceedings and to cut short the controversy, I am of the view that the intervenor Rajat Bansal can be allowed to file his objections to the present probate as there appears to be a caveatable interest in the Estate of the deceased. However, the delay needs to be compensated whereby a cost of Rs.10,000/- is imposed on the intervenor subject to which the objections shall be filed. The objections shall be filed within three weeks with advance copy to the opposite party or counsel against acknowledgement. The petitioner may file reply to the objections on or before the next date of hearing with one week advance copy to the objector Rajat Bansal or his counsel. The objector Rajat Bansal shall have the liberty to file the rejoinder, if he so desires.”

6. The counsel for the petitioner contends that respondent no. 4 had no caveatable interest in the proceedings and therefore, the impleadment application filed by respondent no. 4 ought not to have been entertained. It is further contended that the alleged sale transaction in favour of respondent no. 4, on the basis of which the impleadment application has been filed by respondent no. 4, could not be executed in favour of respondent no. 4 in view of the interim stay granted vide order dated 23rd April, 2012 in appeal no. RCA No. 3/2012.

7. The counsel appearing on behalf of the respondents no. 2 to 4 submits that respondent no. 4 has a caveatable interest in the estate of the deceased testator, as he was a *bonafide* purchaser of the Property from the deceased testator. The possession of the said Property was given to the respondent no. 4 by the deceased testator on 27th August, 2013 in his lifetime. Since the said Property was a lease hold property, no sale deed was executed however, other registered documents, such as Agreement to Sell and GPA were executed in his favour, along with a registered will dated 27th August, 2013, in which daughter of the deceased testator, respondent no. 2 was also a witness.

8. The counsel for the respondents no. 2 to 4 has also drawn attention of this Court to the Order dated 26th July, 2014 passed by Appellate Court to contend that the petitioner was aware of the interest of respondent no. 4 in the Property, and therefore, sought an injunction against the respondent no. 4 in RCA No. 3/2012, which was rejected. Yet, the petitioner did not make respondent no. 4 a party in the probate petition.

9. The counsel for the respondents no. 2 to 4 has also drawn my attention to the order dated 12th January, 2016 in the probate proceedings where the following additional issue had been framed:

“Whether deceased Sh. K.L Jain left behind a registered Will dt. 27.08.2013 in favour of Sh. Rajat Bansal, as so averred in rejoinder/reply of respondents 2 and 3, filed in rebuttal to the petition of the petitioner? OP on respondents 2 & 3.”

10. I have heard the rival contentions.

11. The Supreme Court in **G. Gopal vs. C. Bhasker** (2008) 10 SCC 489 has held that if a person who has even a slight interest in the estate of the deceased testator is entitled to file caveat and contest the grant of probate of will of the deceased testator. The fact that the petitioner himself had sought an injunction against the respondent no.4 in respect of the aforesaid Property clearly demonstrates that the petitioner was aware of the interest of the petitioner in the aforesaid Property. Further, an additional issue has been framed in the probate petition in respect of the registered Will dated 27th August, 2013 in favour of the respondent no. 4. Therefore, it cannot be said that the respondent no.4 does not have a caveatable interest in the estate of the deceased. That being so, the petitioner has a right to be impleaded in the probate petition.

12. While considering the impleadment application filed by the respondent no. 4, it was not for the Probate Court to consider whether the sale was conducted in favour of respondent no. 4 in violation of the interim order dated 23rd April, 2012. At that stage, Probate Court only had to see if respondent no. 4 had a caveatable interest in the estate of the deceased

testator so as to be impleaded as a party. The Probate Court has clearly observed that the impleadment application filed on behalf of respondent no. 4 is being allowed without going into the merits of the respective claims of the parties. Questions with regard to validity of the respective wills propounded by the parties will be ultimately decided in the Probate proceedings.

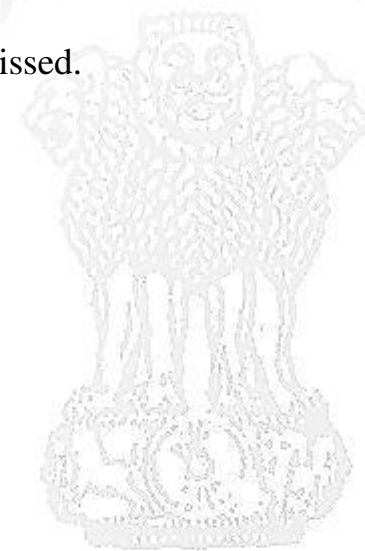
13. There is no infirmity in the impugned order that warrants interference of this Court in its jurisdiction under Article 227 of the Constitution of India.

14. The petition is dismissed.

AMIT BANSAL, J

OCTOBER 11, 2021

Sakshi R.



सत्यमेव जयते