

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.769 OF 2022

Digitally
signed by
BALAJI
GOVINDRAO
PANCHAL
Date:
2022.01.25
17:29:56
+0530

Ms. Rita Christian and Anr.

..Petitioners

Versus

NIL

..Respondent

Mr. Atharva A. Dandekar, for the Petitioners.

CORAM : NITIN W. SAMBRE, J.

DATE : 25th JANUARY, 2022

PC.

1. Heard Mr. Atharva Dandelar, learned counsel for the petitioners. His contentions are the powers in the matter of grant of probate arising out of the will dated 22nd February, 2019 after death of testator viz. Ms. Stella Edwin Vyas on 03.10.2019 was exercised by District Delegate. The District Delegate has no powers to reject the prayer of grant of probate in view of scheme of Sections 287 and 288 of the Indian Succession Act, 1925, which reads thus :-

“287. Power to transmit statement to District Judge in doubtful cases where no contention.—In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or 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 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 purpose 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.”

2. I am informed by the counsel for the petitioners, though citation was issued, objections were not submitted by third party to the probate proceedings and as such, claim remained uncontested.

3. In the aforesaid background, having regard to the scheme of Sections 287 and 288 of the Indian Succession Act, 1925, primarily it appears that the impugned order is not sustainable as it is contrary to the aforesaid two schemes in Sections 287 and 288 of the Indian Succession Act, 1925.

4. The order impugned dated 6th April, 2021 is hereby quashed and set aside.
5. The District Delegate is directed to proceed ahead with the probate proceedings initiated by the petitioners keeping in mind the aforesaid provisions of Sections 287 and 288 and other relevant provisions of the Indian Succession Act, 1925.
6. That being so, petition stands partly allowed.
7. Liberty to the petitioners to appear before the Court below on 22nd February, 2022.

[NITIN W. SAMBRE, J.]