

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 3420 OF 2022
IN
APPEAL NO. 125 OF 2022
IN
PETITION NO. 379 OF 1985

Arvind Parmanand Karwat	...Applicant
<i>In the matter between</i>	
Arvind Parmanand Karwat	...Appellant
<i>Versus</i>	
Mahendra Parmanand Karwat & Anr	...Respondents

Mr Vaibhav Charalwar, *with Rohida Kazi, for the Applicant/*
Appellant.
Mr BB Parekh, *with Palak Ranka, for Respondent No. 1.*

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 5th August 2022

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1. The Appeal is against an order of 25th February 2022. The order was made on an Interim Application filed by one Mahendra Parmanand Karwat seeking removal of the Respondent, Arvind Parmanand Karwat, as the executor. Obviously Mahendra and Arvind are related: they are step-brothers.

2. The Will in question is dated 4th December 1979. It is of the two persons' father, Parmanand Mohanlal Karwat. He died on 25th January 1985. The Will appoints four executors. Two relinquished or renounced executorship, leaving one Vinodkumar Parmanand Karwat and Arvind as the surviving executors. These two applied for and obtained Probate in 1985. Vinodkumar Karwat, the other named executor died on 14th September 2020.

3. Prayer clause (e) of the Interim Application sought Arvind's removal inter alia on the ground that he created a fictitious rent receipt in the name of his mother in respect of flat Nos. 10 and 11 of an immovable property. The impugned order records that Arvind was served or attempted to be served several times but stayed away. Hence, and only for this reason, the allegations in the Interim Application went uncontroverted. It was allowed and the son of the Applicant, Kamlesh Parmanand Karwat was appointed an executor along with Kishor Karwat, another legal heir.

4. In Appeal, Arvind Karwat points out that this application was made some 30 odd years after the date of the death of the deceased and several decades after Probate was obtained in 1985. He accepts that he was served and given notice. In fact he engaged an advocate who filed a vakalatnama, an aspect that does not seem to have been noted in the impugned order. He says that his Advocate missed the listing of the case (in fact, missed it twice) and that is how the impugned order came to be passed.

5. This Appeal should actually have been an application for recall before the learned Single Judge. All that Arvind Karwat seeks is an opportunity of being heard and of filing his Affidavit in Reply.

6. We will allow the Appeal partly only in the interests of justice and only to the extent that it removes Arvind Karwat as an executor. That order is held in abeyance. It is not quashed or set aside. This is pending the disposal of the Interim Application filed by Mahendrakumar Karwat. His Interim Application No. 1360 of 2021 is restored to file and remitted for a reconsideration on merits. The Appellant, Arvind Karwat will file an Affidavit in Reply by 29th August 2022. He will not seek an adjournment. We permit a Rejoinder in that Interim Application by 8th September 2022. The learned Single Judge is requested to dispose of the matter on merits at his earliest convenience but we are fixing no time schedule for this having regard to the pressure on the learned Single Judge's board.

7. As regards the question of the appointment of the other two persons as joint executors in place and stead of the Appellant, we are making no order today but we leave it to the Appellant to make an appropriate application before the learned Single Judge.

8. The reason we do not set aside or even stay the second part of the impugned order appointing two new executors is simply because, even on his own showing, the Appellant was remiss not once, but twice. It is also always open to the Appellant to simply renounce the executorship. The estate however, has to be protected and it is therefore necessary that some person or persons should

continue as executors. It goes without saying that the appointment of the two executors in the second part of the impugned order is subject to the outcome of Mahendrakumar's Interim Application which we have just restored and also subject to the result of any fresh Interim Application that the Appellant may be advised to file for removing the two new executors while reinstating the Appellant as the sole surviving executor.

9. The other reason for making this order and in this manner is because we believe that instead of filing an Appeal, the Appellant should more properly have moved an Interim Application before the learned single Judge to recall the impugned order.

10. All contentions are left open. The Appeal is disposed of in these terms. No costs.

(Gauri Godse, J)

(G. S. Patel, J)