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A.No.391 of 2023

**A.No.391 of 2023**  
**in**  
**C.S.No.238 of 2022**

**SENTHILKUMAR RAMAMOORTHY, J.**

The suit was filed for recovery of a sum of Rs.5,05,10,706/- from the defendant. The suit claim relates to the alleged 50% share of the plaintiff in the compensation paid in land acquisition proceedings relating to the property described in the schedule to the petition.

2. The defendant has presented this application to reject the plaint on the ground that the suit claim is founded on a registered Will dated 05.09.2003, in respect of which neither probate nor letters of administration were granted.

3. Learned senior counsel for the applicant submits that the dispute is between the younger brother/plaintiff and the elder brother/defendant. The suit claim of the respondent/plaintiff hinges on the registered Will dated 05.09.2003, which was purportedly executed by the father of the plaintiff. Learned senior counsel submits that the plaintiff issued a receipt dated



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30.12.2020 in full and final settlement of his 50% share in the amounts received as compensation. Besides, he submits that the plaint is liable to be rejected in view of the prohibition contained in Section 213 of the Indian Succession Act 1925 (the Succession Act). In support of this contention, he relies upon the judgment of the Hon'ble Supreme Court in *Mrs.Hem Nolini Judah v. Mrs.Isolyne Sarojbashini Bose & Others*, AIR 1962 SC 1471 (**Hem Nolini Judah**). In particular, he places reliance upon paragraph 7 of the said judgment wherein the Hon'ble Supreme Court concluded that Section 213 is not restricted to cases where the claim is made by a person who claims directly as a legatee. Learned senior counsel submitted that it was further held that any person who wishes to establish any right under a Will cannot do so unless probate or letters of administration were granted in respect of the said Will.

4. In response to these submissions, learned counsel for the respondent/plaintiff submits that Section 213 does not impose a bar to the institution of the suit. In order to substantiate this contention, he relied upon the judgment of the Hon'ble Supreme Court in *Binapani Kar Chowdhury v.*



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*Sri Satyabrata Basu & Another (2006) 10 SCC 442 (Binapani Kar*

**Chowdhury**), particularly paragraph 5 thereof. He also relied upon a recent judgment of the Hon'ble Supreme Court in *Gurdev Singh v. Harvinder Singh*, 2022 LiveLaw (SC) 963, for the proposition that a plaint cannot be rejected on the ground that the relief claimed is not sustainable. By referring to paragraph 10 of the proof affidavit of the defendant in LAOP No.23 of 2005, learned counsel submitted in conclusion that the defendant admitted the entitlement of the plaintiff under the registered Will dated 05.09.2003.

5. The question raised in this application turns on an interpretation of Section 213 of the Succession Act. Section 213(1) is as under:

*“(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.”*

From the text of Section 213(1), it is clear that no right as executor or



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legatee can be established in a court of law unless probate or letters of administration were granted in respect of the relevant Will. As indicated earlier, learned senior counsel placed reliance on **Hem Nolini Judah** to contend that Section 213 constitutes a bar to the institution of the suit. In **Hem Nolini Judah**, the Hon'ble Supreme Court was considering an appeal against a decree passed in civil proceedings. In that context, the Hon'ble Supreme Court held that the rights of a legatee or executor under a Will cannot be established unless probate or letters of administration were granted in respect of the Will.

6. By contrast, at this juncture, the plaintiff is not required to establish entitlement to the money decree prayed for. The limited exercise undertaken now is to examine whether the suit is barred on the basis of statements made in the plaint. Undoubtedly, the plaintiff has placed reliance on the registered Will dated 05.09.2003. In addition, the plaintiff has relied upon the alleged admissions by the defendant with regard to the plaintiff's entitlement under the Will. Whether the plaintiff is entitled to the suit claim is a matter to be considered in course of final disposal after evidence is



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recorded. The language of Section 213 of the Succession Act certainly does not lead to the inference that the very institution of the suit is barred by law.

Indeed, it appears that this position is no longer *res integra*. It is instructive to set out the relevant part of paragraph 5 of the judgment in **Binapani Kar Chowdury** which reads as under:

*“5. Therefore, where the right of either an executor or a legatee under a Will is in issue, such right can be established only where probate (Where an executor has been appointed under the Will), or letters of administration (where no executor is appointed under a Will), have been granted by a competent court. Section 213 does not come in the way of a suit or action being instituted or presented by the executor or the legatee claiming under a Will. Section 213, however, bars a decree or final order being made in such suit or action which involves a claim as an executor or a legatee, in the absence of a probate or letters of administration in regard to such a Will....”*

7. The plaintiff has stated that O.P.(Diary) No.18667 of 2023 was



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filed for the grant of letters of administration in respect of the relevant Will.

Depending on the outcome of the said petition, the objections of the applicant may warrant consideration in course of final disposal. At present, as stated earlier, there is no threshold bar.

8. For reasons set out above, the plaint is not liable to be rejected.

Consequently, A.No.391 of 2023 is dismissed without any order as to costs.

**21.02.2023**

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