LAXMIKANT GOPAL CHANDAN
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.21 OF 2024
(APPEAL ST. NO.2572 OF 2024)
IN
INTERIM APPLICATION NO.2541 OF 2023
IN
MISC. PETITION NO.286 OF 2023
[MPT (L) 98 OF 2015]

Abha Dastane - Rao : Appellant (Ori. Appln/ Org. Petitioner)

Vs.

Mr. Prabhakar Deolankar & ors. : Respondents

Ms. Abha Dastane Rao – Appellant in person present.
Mr. S. N. Chandrachood for Respondent No.1.
Mr. Chetan Kapadia, Senior Advocate a/w Ms. Vidisha Rohira and Mr. Kunal Chheda for Bank of Maharashtra.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.

RESERVED ON : 05th FEBRUARY, 2024
PRONOUNCED ON : 14th FEBRUARY, 2024

<u>P.C. : (PER ARIF S. DOCTOR, J.)</u>

1. The challenge in the present Appeal is to an order dated 12th January 2024 by which the Interim Application filed by the Appellant in the captioned Miscellaneous Petition has

partly been allowed and partly rejected. By the said Interim Application, the Appellant had sought to implead Respondent No.5 i.e., the Chief Managing Director of the Bank of Maharashtra as a party Respondent to the captioned Miscellaneous Petition which has been filed under Section 301 of Indian Succession Act 1925 ("Succession Act") i.e., for removal of Respondent No. 1 as the executor of the Will of the late Dr. Narayan Ganesh Dastane. The Appellant is the daughter of the late Dr. Narayan Ganesh Dastane and a legatee under the said Will.

2. We have heard the Appellant who appears in person at great length. It is the contention of the Appellant that Respondent No.5 is guilty of various acts of omission and commission which have caused a direct loss to the estate of the deceased. The Appellant has contended that Respondent No. 5 has acted in collusion with Respondent No. 1 to cause loss to the estate of the deceased and it is thus in order to (a) set right this loss and (b) effectively administer the estate of deceased, the

impleadment of Respondent No. 5 has been sought for. She then submitted that the acts of Respondent No. 5 were inextricably linked to those of Respondent No. 1 and therefore the Appellant would need to prove them to establish the case for removal of Respondent No. 1.

3. The Appellant then invited our attention to the provisions of Section 301 of the Succession Act to submit that the same provided that on removal of an executor, any property belonging to the estate of the deceased would vest in the successor appointed by the Court. It was thus she submitted that Respondent No. 5 was required to be joined as a party to the Miscellaneous Petition so that suitable orders could be passed directing Respondent No. 5 to *inter alia* restitute to the estate those amounts of which the estate had been deprived on account of the collusive acts of Respondent No. 1 and 5. She submitted that this was the only manner in which the successor to Respondent No. 1 would be able to effectually administer the estate of the deceased.

4. The Appellant submitted that that even if Section 301 of the Succession Act did not specifically contemplate joinder of Respondent No.5 as a party to an application for removal of executor, the said relief could always be granted under Section 151 of the Code of Civil Procedure 1908 ("CPC") for ends of justice being met. In support of her contention, she placed reliance upon a judgement of a Learned Single Judge of this Court in the case of ***Rajendra Y. Shah and Ors vs. Amu Shares and Securities Ltd. and Ors.*** [1].

5. We must note here that apart from making the aforesaid submissions and citing the judgment in the case of ***Rajendra Y. Shah and Ors*** (supra). the Appellant did not place reliance on any other judgments. When we put to the Appellant if she could point out any judgement under Section 301 of the Succession Act, which would permit the joinder of a third party as also prayers for recovery of money, in answer she made a mention of the following judgements namely ***Mukesh Ramanlal***

1 Order of this court dated 09/01/2019 in Chamber Summons No.55 of 2009.

Gokal Vs. Ashok Jagjivan Gokal[2] and ***Vasant Narayan Sardal v. Ashita Tham***[3] however the same were not cited.

6. Mr. Kapadia, learned Senior Counsel appearing on behalf of Respondent No.5, submitted that seeking impleadment of Respondent No.5 to the Miscellaneous Petition for removal of executor was entirely misconceived and legally untenable. He pointed out that Respondent No. 5 was neither a necessary nor proper party to such Application. He submitted that the Learned Judge had, placing reliance upon the judgement of the Punjab and Haryana High Court in the case of ***S. B. Ranjit Singh and another Vs. S. Santokh Singh Rais and others***[4] cited by Respondent No. 5, correctly rejected the Application for impleadment of Respondent No. 5 to the captioned Miscellaneous Petition.

7. Mr. Kapadia then pointed out that the only relief that could be granted in a Petition under Section 301 of the

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2 Judgment of this court dated 11th October 2013 in Misc. Petition 66 of 2013
3 2018 SCC OnLine Bom 1225
4 AIR 1951 P&H 318

Succession Act was for removal of executor and nothing else. He pointed out that the procedure contemplated under Section 301 of Succession Act was a summary procedure and the very nature of reliefs sought for by the Appellant would entail evidence and a trial which were beyond the scope of Section 301 of the Succession Act. He then submitted that the main prayer in an Application under Section 301 being for removal of an executor, any ancillary relief must necessarily be in aid of the main prayer i.e. for removal of executor and nothing else.

8. Mr. Kapadia submitted that Respondent No. 5 was merely a bank in which the estate of the deceased was opened by Respondent No.1 through Respondent No.4 and nothing more. He submitted that if in every case of removal of executors, third parties were to be joined as parties to such Application, the same would wreak havoc on the entire summary procedure contemplated under Section 301 of the Succession Act.

9. Basis the above, he submitted that the Learned Judge

had correctly rejected the application for impleadment of Respondent No.5.

10. Mr. Chandrachood, learned counsel appearing on behalf of Respondent No.1, adopted the submissions of Mr. Kapadia and in addition submitted that the application for removal of executor was entirely *malafide.* He pointed out that the Appellant had infact consented to the grant of probate of the said Will pursuant to which this Court had granted probate. He submitted that apart from the captioned Interim Application, Respondent Nos. 2 and 3 had filed an Application for revocation of grant of Probate which was pending for the past 16 years which was not being pursued.

11. After the matter was fully argued, the Appellant mentioned the matter at 2.30 p.m. and sought leave to file written submissions. We at that time made it expressly clear to the Appellant that the submissions, if any, ought to be very concise and not exceeding two or three pages. Despite this, the

Appellant has filed written arguments running into about 16 pages, and along with the same tendered a compilation of judgments, none of which except the judgment in ***Rajendra Y. Shah*** (supra), were cited or relied upon by the Appellant at the time of oral arguments. The Appellant thereafter filed corrections/clarifications to the said written arguments.

12. After having heard the Appellant in person, learned Senior Counsel for Respondent No. 5 and learned counsel for Respondent No.1, we find no infirmity of any kind whatsoever in the Impugned Order. Thus, the present Appeal deserves to be dismissed for the following reasons:-

A. It is not in dispute that proceedings under Section 301 of the Succession Act are (i) summary in nature and (ii) only for removal of an executor. The Appellant has been unable to point out a single judgement which would permit the joinder of a third party and/or permit orders for recovery of money in proceedings filed under Section 301 of the

Succession Act. In the present case, the Appellant has sought the impleadment of Respondent No. 5 *inter alia* on the basis of alleged acts of omission and commission which, according to the Appellant, have caused loss to the estate of the deceased and has deprived the Appellant from effectively administering the estate of deceased. It is thus that the Appellant has prayed for restitution of amounts which the Appellant contends belong to the estate of the deceased. Thus, even if we were to accept the Appellant's contentions as being correct, the question which arises is as to whether the reliefs sought for by the Appellant against Respondent No. 5 could ever be granted in proceedings under Section 301 of the Succession Act. The answer in our opinion, for the reasons already indicated above, is no. We find that even the judgements in the case of ***Mukesh Ramanlal Gokal*** (supra) and ***Vasant Narayan Sardal*** (supra) to which the Appellant alluded would be of no assistance since in neither of the cases has a third party been joined to a Petition under

Section 301 of the Succession Act. Infact, we find that the Learned Judge has correctly appreciated the legal position as laid down in the judgment of the Punjab and Haryana High Court in the case of ***S. B. Ranjit Singh*** (supra) which held that section 301 of Succession Act proceedings being summary in nature, the court would not enter into arena of prolong inquiry in order to decide the complicated question like adding a person as a party. We are in respectful agreement with the view taken by the Punjab and Haryana High Court.

B. Also, the Appellant's reliance upon Section 151 of the CPC is equally misplaced. Section 151 cannot be invoked to change the very nature of the proceedings. It can be invoked only to supplement and not override or evade the express provisions of law as held by the Hon'ble Supreme Court in the case of _ ***State of U.P. v. Roshan Singh***[5]. In the present case, it is precisely this what the Appellant is attempting to do, given that the Appellant has *inter alia*

5 2008 SCC OnLine SC 124

alleged various acts of omission and commission against Respondent No. 5 and *basis that* sought recovery of those amounts from Respondent No. 5. Thus, the effect of the amendment would undeniably result in changing the very nature of the Miscellaneous Petition from one for removal of an Executor to one for recovery of money. This, in our view, would be plainly beyond the limited scope of Section 301 of the Succession Act.

C. Additionally, the entire premise of the Appellant that the alleged acts of Respondent No. 5 are inextricably linked to those of Respondent No. 1 and thus the Appellant will have to prove/establish the same to succeed in the Petition for removal of Respondent No. 1 is entirely untenable. As we have noted above, the proceedings under Section 301 of the Succession Act being summary in nature, the Appellant will only have to establish/make out a ground/s for removal of Respondent No. 1. It is entirely immaterial if the acts of Respondent No. 1 are in collusion and/or at the instance of a third party as it is the conduct of Respondent No. 1 alone that is material and in question and which have to be tested on their own merits. The Appellant always, has an independent remedy available in law against Respondent No. 5, should the Appellant so desire to avail of the same. We must note that the Appellant's reliance upon the judgement in the case of ***Rajendra Y. Shah and Ors.*** (supra) is also entirely misplaced since in the said case, the powers under Section 151 of the CPC had been resorted to in view of the breach of injunction in those proceedings itself. Those proceedings being Execution proceedings, the nature thereof did not in any manner changed nor was the scope thereof expanded in any manner.

13. For the aforesaid reasons, the Appeal is dismissed with no order as to costs.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**