

ELIZABETH ANTONY

v.

MICHEL CHARLES JOHN CHOWN LENGERA

APRIL 12, 1990

[S. RATNAVEL PANDIAN AND K. JAYACHANDRA
REDDY, JJ.]

Indian Succession Act, 1925: Sections 227, 263, 283-286 & 288: Will—Probate—Letters of Administration—Caveat opposing probate of the Will—Caveatable interest based on Will and Gift—Copies of Gift Deed and Will not filed in the Probate Court—Held caveatable interest not substantiated.

Will—Probate Court—Findings regarding caveatable interest effect of—Findings are relevant only to the extent of granting of probate—Does not deprive of right to invoke jurisdiction of probate court for revocation of probate—Granting a probate is not deciding the disputes to the title—A probate granted can be revoked for just Cause.

The respondent, claiming to be the beneficiary to the estate of deceased 'M' under a will executed by her, filed an application in the Sub Court for Letters of Administration. The petitioner lodged a caveat and opposed the probate of the will on the ground that the will propounded by the respondent was a fictitious one intended to disentitle 'Z', daughter of 'M', from claiming interest in the estate of her mother 'M'. The petitioner based her caveatable interest on the basis of membership of the Trust, a gift-deed and a will executed by 'Z' which was subsequently probated in her favour.

The Subordinate Judge struck off the petitioner's caveat on the ground that she has no caveatable interest.

The petitioner filed a Civil Revision Petition in the High Court and a Single Judge of the High Court confirmed the order of the Subordinate Judge.

In the special leave to this Court it was contended on behalf of the petitioner that the courts below have erred (i) in holding that she has no caveatable interest and in striking off her caveat; (ii) that Z's will in her favour which was subsequently probated established her interest in the estate on the date of entering the caveat.

Dismissing the petition, this Court,

HELD: 1. By granting a probate the Court does not decide the disputes to the title. A probate granted can be revoked under Section 263 of the Indian Succession Act, 1925. [492C]

1.1 In the instant case the findings regarding the caveatable interest of the petitioner have a limited effect and are relevant only to the extent of granting of probate. But they cannot deprive her right to invoke section 263 of the Act. [492D]

2. The order of the Trial Court shows that admittedly neither the original nor a copy of the will said to have been executed by 'Z' was filed. Likewise the registered gift-deed or a copy thereof was not filed. It is also evident that the Trust has come to an end and the same was not in existence. The Trial Court has considered both the documentary and oral evidence in this regard and has rightly held that the petitioner has no existing benefit from the trust. Accordingly, it cannot be held that the petitioner has caveatable interest. [490F-G; 491C]

3. In the instant case it is not known whether the citations were issued to all the persons interested before the grant of the probate. The probate was also granted when the special leave petition was pending in this Court yet the respondent had no notice about this probate proceedings. Under these circumstances it is not expedient to acknowledge this probate proceeding and re-open the matter. [491G-H]

Nabin Chandra Guha v. Nibaren Chandra Biswas and Ors., AIR 1932 Cal. 734; *Gourishankar Chatteraj v. Smt. Satyabati Debi*, AIR 1931 Cal. 470; *Shanti Devi Aggarwala v. Kusum Kumari Sarkar & Ors.*, AIR 1972 Orissa, 178 and *Narayan Sah v. Smt. Devaki*, AIR 1978 Patna 220, referred to.

CIVIL APPELLATE JURISDICTION: S.L.P. (Civil) No. 8896 of 1985.

From the Judgment and Order dated 18.12.1984 of the Madras High Court in Civil Revision Petition No. 5539 of 1983.

WITH

C.M.P. No. 28592 of 1988.

A R.F. Nariman, J.P. Pathak, M.B. Shivraj and P.H. Parekh for the Petitioner.

T.S. Krishnamurthy Iyer and Mrs. S. Dikshit for the Respondent.

B The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. We have heard both the sides and the matter is being disposed of at the admission stage.

C This petition is directed against the order of a learned Single Judge of the Madras High Court confirming the order passed by the Subordinate Judge, Nilgiris. The matter arises under the Indian Succession Act, 1925 ('Act' for short) and the facts that give rise to the petition are as follows:

D The testatrix Mary Aline Browne was the wife of Herbet Evan-
der Browne who was the eldest son of one John Browne. The testatrix
had a daughter of the name of Zoe Enid Browne and she died on
8.10.1977. The respondent claiming to be the beneficiary to the estate
of Mary Aline Browne who died on 28.3.1972 under the terms of a will
said to have been executed by her on 12.3.1962 filed an application for
E letters of Administration with a copy of the will annexed in the Sub
Court, Nilgiris. The same is numbered as O.S. No. 23 of 1980. Along-
with the application the respondent also filed an affidavit of an attestor
of the Will. In that proceeding, the petitioner and her deceased
husband lodged a caveat on the ground that the said Mary Aline
Browne did not execute any will and the will propounded by the
F respondent was a fictitious and forged one, intended to disentitle Zoe
Enid Browne, daughter of the testatrix from claiming interest in the
estate of her mother. The petitioner also claimed that Zoe Enid
Browne executed a will dated 23.6.1975 in favour of the petitioner and
that she also executed a gift-deed in her favour. The petitioner also
claimed that she was a trustee of John Browne Trust and that there-
fore, the petitioner has caveatable interest. Thus they opposed the
G probate of the will. Before the Sub-Court, several documents were
filed. The respondent herein contested the caveat stating that the
petitioner herein has no interest in the estate. The learned Subordi-
nate Judge held that the petitioner is not in any manner related either
to Mary Aline Browne or Zoe Enid Browne. The learned Single Judge
of the High Court in an elaborate order having considered the rival
H contentions dismissed the Civil Revision Petition holding that the

petitioner cannot claim to be a person who has a caveatable interest in the estate of the deceased testatrix Mary Aline Browne. We are told that the will has subsequently been probated and the letters of Administration have been granted.

The learned counsel for the petitioner contended that both the courts below have erred in holding that the petitioner has no caveatable interest. It is submitted that the petitioner is executor and legatee of the will dated 23.6.1975 executed by Miss Zoe Enid Browne daughter of Mrs. Mary Aline Browne and that Miss Zoe has also executed a registered gift-deed dated 29.3.1974 in respect of the second item of the estate and that the petitioner was also appointed a trustee of John Browne Trust on 11.6.1975 and therefore, in law the petitioner has an interest in the property which is the subject-matter of the will and thus have caveatable interest.

Under Section 283 of the Act, the District Judge or District Delegate may, if he thinks proper, issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. Section 284 provides for lodging caveat against grant of probate or administration. Section 285 lays down that no proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered until the notice has been given to the caveator. Section 286 deals with the power of a District Delegate and lays down that he shall not grant probate or letters of administration in any case in which there is "contention" as to the grant, or in which it otherwise appears to him that probate or letters of administration, ought not to be granted in this Court. Under Section 288 where there is contention or where the District Delegate thinks that probate or letters of administration should be refused, the documents shall be returned to the applicant. In the instant case the Sub-Judge comes within the meaning of the District Delegate and the necessary powers were conferred on him by a notification which is not in dispute. According to the learned counsel the petitioner duly lodged a caveat against the grant of probate and that both the courts below have not properly appreciated the effect of such a contention and erred in striking off the petitioner's caveat.

In *Nabin Chandra Guha v. Nibaran Chandra Biswas and Ors.*, AIR 1932 Calcutta 734, the Division Bench held that a person who has a real interest in the estate which is or is likely to be prejudicially

- A affected or adversely affected by the will can oppose the grant of probate or letters of administration. In *Gourishankar Chatteraj v. Smt. Satyabati Debi*, AIR 1931 Calcutta 470, it is held that the petitioner therein who was related to the deceased through a common ancestor, can be said to have interest in opposing the application for probate. In *Shanti Devi Aggarwalla v. Kusum Kumari Sarkar & Ors.*, AIR 1972
- B Orissa 178, Justice Ranganath Misra, as he then was, held that the vendor legatee is entitled to enter caveat and the purchaser having stepped into the shoes of vendor is also entitled to enter the caveat. In *Narayan Sah v. Smt. Davaki*, AIR 1978 Patna 220, considering the locus standi of a person to oppose grant, it is held that any interest, however, slight and even a bare possibility of an interest is sufficient to entitle a person to enter caveat in a probate proceeding.

- C
- Relying on these decisions the learned counsel urged that the petitioner in the instant case has substantial interest in the estate. The learned counsel for the respondent did not dispute the legal position. He, however, contended that there was absolutely no material before the Courts below to substantiate the alleged interest of the petitioner in the estate. It is submitted that the so-called will said to have been executed by Miss Zoe Enid Browne, daughter of Mrs. Mary Aline Browne has not been filed. Likewise, the gift-deed also was not filed. Coming to the trust of John Browne it is submitted that the trust does not exist and got extinguished. The learned counsel for the respondent
- E further submitted that except mentioning these three aspects in a bare manner no other material was placed before the Court. Having gone through both the orders we are inclined to agree with the learned counsel for the respondent that the petitioner did not establish her caveatable interest. We have perused the entire order of the trial court in this context. Admittedly neither the original nor a copy of the will
- F said to have been executed by Zoe Enid Browne, was filed. Now coming to the trust, it is in the evidence of P.W. 1 that John Browne Trust has come to an end in March, 1972 and the same was not in existence. The trial court has considered both the documentary and oral evidence in this regard and has rightly held that the petitioner has no existing benefit from the trust. Likewise the registered gift-deed or
- G a copy of it has not been filed. Before the learned Single Judge of the High Court also same contentions were put forward. The learned Judge observed that from the objections filed by the caveator she desires the Court in the probate proceedings to uphold her title on the strength of a gift-deed and the Trust deed. It is observed:

- H "Equally, the petitioner has not placed before the Court

the will dated 23.6.1975 stated to have been executed by Zoe Enid Browne to establish that under the will dated 12.3.1962 stated to have been executed by Mary Aline Browne some interest given to the petitioner under the will dated 23.6.1975 of Zoe Enid Browne, is liable to be in any manner affected or otherwise displaced, by the grant of letters of administration in respect of the will dated 12.3.1962 stated to have been executed by Mary Aline Browne.”

Accordingly the learned Judge held that the petitioner has not established that she has a caveatable interest justifying her opposition to the probate proceedings for grant of letters of administration. In this state of affairs, we are unable to agree with the learned counsel that the petitioner has caveatable interest.

Learned counsel, however, submitted that the will executed by Zoe Enid Browne on 23.6.1975 in favour of the petitioner though not filed but was subsequently probated in the year 1989 and the fact that probate is granted can be taken into consideration by this Court as a subsequent happening, as the appeal before this Court, is only a rehearing or the continuation of the matter. Reliance is placed on Section 227 of the Act which reads thus:

“Effect of Probate—Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.”

It is submitted that since the will executed by Zoe Enid Browne in favour of the petitioner is probated it must be deemed that it was existing since the death of the testatrix namely Miss. Zoe Enid Browne and that validates all intermediary acts. According to the learned counsel, the effect of such a probate is that the petitioner's interest in the estate gets established even on the date of entering caveat. We are unable to see any force in this submission. The said probate, admittedly, took place in a court in the Madras City. We do not know whether the citations were issued to all the persons interested. This probate also admittedly was granted when the special leave petition was pending in this Court yet the respondent had no notice about this probate proceeding. Under these circumstances, exercising our jurisdiction under Article 136 we do not see that it is expedient to acknowledge this probate proceeding and re-open the matter.

A Lastly an attempt was made to show that the Sub-Court has no jurisdiction but we find that there a necessary notification issued by the High Court conferring powers on the Sub Court. We see no force in any one of these submissions.

B The learned counsel, however, lastly submitted that the petitioner inspite of having substantial interest in the estate is losing her right, to prove that the alleged will by Miss Zoe Enid Browne is not a genuine one and that it is a fictitious one. We must point out that by granting a probate, the court is not deciding the disputes to the title. Even with regard to a probate granted, it can be revoked as provided under Section 263 of the Act in any one of the cases mentioned

C therein. But the learned counsel for the petitioner submits that the findings of the Sub Court and the High Court regarding the caveatable interest will come in the petitioner's way in seeking revocation of the grant of probate. It is needless to say that the findings regarding the caveatable interest of the petitioner have a limited effect and are relevant only to the extent of granting of probate. But they cannot deprive

D his right, if he has any, to invoke Section 263 of the Act and it is upto the petitioner to satisfy the Court.

With these observations, the special leave petition is dismissed.

T.N.A.

Petition dismissed.