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BASANTI DEVI

v.

RAVIPRAKASH RAMPRASAD JAISWAL

OCTOBER 12, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

*Indian Succession Act, 1925:*

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*ss. 263 & 283(3)—Revoking of probate—Just cause—Held: Application for grant of probate is a proceeding in rem—Being a judgment in rem, a person, who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him—Hindu Succession Act, 1956—ss. 3(f), 8 & 15—Bombay High Court Rules—r. 683.*

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A Will had been executed in favour of Respondent by a Hindu widow. Pursuant to her death, Respondent filed an application for grant of probate in relation to the Will which was granted by the High Court.

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Appellant filed application for revocation of the said grant of probate, *inter alia*, on the premise that although she was one of the heirs of the said deceased widow, no citation was made and that furthermore, a Will had also been executed in her favour. A Single Judge of the High Court dismissed the application for revocation of probate on the ground that though public notice was issued before issuing the probate, Appellant neither filed any caveat nor filed any objection after the publication. Intra-Court appeal filed thereagainst was dismissed by Division Bench of the said Court on the premise that Appellant, being an agnate, was not a legal heir of the deceased widow.

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Appellant contended before this Court that the High Court committed a grave error insofar as it failed to take into consideration that an agnate is also an heir in terms of the provisions of the Hindu

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Succession Act, 1956. It was furthermore contended that the said application should have been entertained having regard to Explanation (c) appended to Section 263 of the Indian Succession Act, 1925 irrespective of the fact as to whether the appellant had any notice of the probate of the said Will. A

The primary question which arose for consideration in the present appeal is whether an application under Section 263 of the Indian Succession Act for revocation of grant of probate would be maintainable, *inter alia*, on the premise that the Appellant's name was not cited in the said application for grant of probate. B

Allowing the appeal and remitting the matter to the Probate Court, this Court C

**HELD:** 1. Parliament enacted the Hindu Succession Act, 1956 to amend and codify the law relating to intestate succession among Hindus. Section 3(f) of the Hindu Succession Act defines 'heir' to mean any person, male or female, who is entitled to succeed to the property of an intestate under the Act. Section 15 of the Act lays down the general rules of succession in the case of female Hindus. For the purpose of ascertaining as to who would be heirs of the husband if the deceased did not leave any sons and daughters or husband; reference has to be made to Section 8 of the Act In view thereof, it is not correct to say that agnates of the deceased are not heirs. [Paras 11 and 12] D E

2. Also, in view of Rule 683 of the Bombay High Court Rules, it is not correct to contend that no citation in regard to the heirs of the deceased Hindu widow was necessary. [Para 14] [453-A, B] F

3.1. The properties left by the deceased widow were situated at two places, one in the State of Maharashtra and another in the district of Pratapgarh in the State of Uttar Pradesh. However, the Respondent, for the reasons best known to him, did not, at the first instance, disclose that any property belonging to the testator was situated at a place other than the State of Maharashtra. Such disclosure was required to be made in terms of sub-section (3) of Section 283 of the Indian Succession Act. Citations were also required to be published by the concerned District H

A Judge in terms thereof. In the application for amendment of the application, a vague statement was made. Even therein it was not disclosed that another property is situated in the District of Pratapgarh in the State of Uttar Pradesh, the reason therefor is beyond anybody's comprehension. [Paras 14, 15 and 16] [453-B, C, D, E]

B 3.2. The provisions contained in sub-section (3) of Section 283 are mandatory in nature. Once the statutory requirements are found to have not been complied with, an application for revocation of the grant of probate would be maintainable in terms of Section 263 of the Act, apart  
C from the fact that non-publication of citation could be one of the grounds to revoke the grant of probate. Explanation (c) appended thereto in a case of this nature would be attracted. It may, therefore, be permissible for the appellant to show that a Will was executed by said deceased widow in her favour also. [Paras 17 and 18] [453-E, F; 454-B]

D 4.1. It was contended that the appellant had given up the right to the property under the said Will. Even if that is so, this Court is not concerned therewith at this stage. [Para 18] [454-B]

E 4.2. Appellant had merely filed an application. The said application has not been entertained although the same should have been done.  
[Para 18] [454-C]

F 5.1. The Probate Court exercises a limited jurisdiction. It is not concerned with the question of title. But if the probate has been granted subject to compliance of the provisions of the Act, an application for revocation would also lie. [Para 20] [454-F]

G 5.2. An application for grant of probate is a proceeding in rem. A probate when granted not only binds all the parties before the Court but also binds all other persons in all proceedings arising out of the Will or claims under or connected therewith. Being a judgment in *rem*, a person, who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him. Therefore, the application for revocation of the

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**grant of probate should have been entertained.**

**[Para 22] [455-D, E, F]**

*Ishwardeo Narain Singh v. Smt. Kamta Devi & Ors.*, AIR (1954) SC 980 and *Chiranjilal Shrilal Goenka v. Jasjit Singh & Ors.*, [1993] 2 SCC 507, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4896 of 2007.

From the final Judgment and Order dated 29.8.2006 of the High Court of Judicature at Bombay in Appeal No. 544 of 2006 in Misc. Petition No. 1/2000 in T. & I.J. Petition No. 734/1996.

Raju Ramachandran, Arun. K. Sinha, Rakesh Singh and Mukesh Kumar Sinha for the Appellant.

R.P. Bhatt, Mukesh Kumar and Chirag M. Shroff for the Respondent.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

2. A short but interesting question which arises for consideration in this appeal is as to whether an application under Section 263 of the Indian Succession Act for revocation of grant of probate would be maintainable, *inter alia*, on the premise that the appellant's name was not cited in the said application for grant of probate.

3. The basic fact of the matter is not in dispute.

4. A Will was executed by one Lakhpati Devi widow of late Mahadeo Jaiswal in favour of the respondent herein who was one of the grand sons of late Bhagwatidina, one of the brothers of late Mahadeo Prasad. Appellant herein claimed that the said Lakhpati Devi had executed another will on or about 12.3.1996. The said Lakhpati Devi admittedly expired on 13.03.1996. Whereas the appellant did not file any application for grant of probate in relation to the aforementioned will dated 12.03.1996, the respondent did so on 6.9.1996. In the said application, it was contended that the properties under the Will are situated in Bombay stating :

A “That the said deceased at the time of her death had a fixed place of abode at Room No.10-11, Bharat Building, Sonapur Lane, Chira Bazar, Mumbai – 400 002 and left property within Greater Bombay in the State of Maharashtra.”

B It was furthermore stated :

“That no application has been made to any District Court or District Delegate or to any other High Court for probate of any will of the said deceased or for Letter of Administration with or without the Will annexed to her property and credits.”

C 5. However, an application for amendment of the application for grant of probate was filed in the said testamentary proceedings which was allowed. On the basis of the averments made by the respondent in the amended application, citations were published only at Bombay on 28.1.1997. Respondent, however, filed an application for amendment of the petition for grant of probate on 21.03.1997, *inter alia*, stating :

D “That the said deceased at the time of her death had a fixed place of abode at Room No.10-11, Bharat Building, Sonapur Lane, Chira Bazar, Mumbai -400 002 and left property within Greater Bombay in the State of Maharashtra and elsewhere in Union of India.”

E It was, therefore, not disclosed at what other places the properties are situated.

F 6. It was furthermore averred that there was no heir known to the petitioner on the side of husband of the deceased. The schedule of assets allegedly left by the deceased was also inserted in the schedule of the properties stating :

G 1. All that piece and parcel of pension tax land of ground (since redeemed) with the messauges tentament or dwelling house standing thereon situate lying behind at Sonapur Street Girgaum Road outside the Fort of Bombay in the Registration Sub-

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- District of Bombay in the land of the Bombay  
contained by admeasurement 243 (two  
hundred and forty three) square yards or  
thereabouts and registered in the Books of  
Collector New No. 980 New Survey  
No.8158 and Cadastral Survey No.567 of  
Bhuleshwar Division and in the books of the  
Collector of Municipal Rates and Taxes  
under (C) wards No.3385 and Street No.6  
and bounded as follows : that is to say on  
towards the East by the properties bearings  
Cadastral Survey Nos.570, 571, 572, 573  
and 574 on or towards the west partly by the  
properties bearing Cadastral Survey No.565  
and 566 and partly by a passage on or  
towards the north by the property bearing  
Cadastral Survey No.568 and or towards the  
south by the Sonapur Street Valued at Rs.1,00,000/-  
Accrued gross rent of the above immoveable  
property from the date of death till filing of  
this petition Rs. 7,500/-
2. S.B. A/c No.21416 with Bank of India,  
Kolabadevi Branch Mumbai-2 standing in the  
name of deceased with accrued interest upto  
date of filing this petition Rs. 1,000/-
3. Amount standing to the credit of the  
deceased in current A/c No.31080 with  
Bank of India Kolabadi Branch Mumbai  
standing in the name of M/s Mahadeo  
forthwith in which deceased was sole  
Proprietor Rs. 3,000/-
4. The Milk shop being shop No.1/11 situated  
at Bharat Building Sonapur lane Chira Bazar  
Mumbai-2 currently infrastructure in the name

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A & style of Mahadeo farm : together with  
valued at Rs. 50,000/-

*IN THE STATE OF UTTAR PRADESH*

B 5. One open piece of land situate at Dist. Pratap  
Gad, Village – Mahadeo Nagar, (U.P.)  
Valued at Rs. 1,000/-

The above plot does not fetch any rent of  
income.

C TOTAL Rs.1,62,500/-

D 7. However, no citation was made in the State of Uttar Pradesh. A  
probate was granted in favour of the respondent by the High Court by  
order dated 7.4.1997. An application for revocation of the said grant of  
probate was made by the petitioner herein, *inter alia*, on the premise  
that although she was one of the heirs of the said Lakhpati Devi, no citation  
was made. Furthermore, a Will had also been executed in her favour.

E 8. A learned Single Judge of the Bombay High Court dismissed the  
application for revocation of probate filed by the petitioner which was  
marked as Miscellaneous Petition No.1 of 2000 by a judgment and order  
dated 23.6.1996 opining :

F “The requirements for letter of administration and grant of probate  
are different. It is an admitted position that public notice was issued  
before issuing a probate. The petitioner neither filed any caveat nor  
filed any objection after the publication. Therefore, this petition does  
not survive for consideration.”

G 8. On an intra court appeal having been preferred thereagainst, a  
Division Bench of the said Court, on the premise that the appellant was  
not a legal heir of the deceased being an agnate, dismissed the same.

H 9. Mr. Raju Ramachandran, learned senior counsel appearing on  
behalf of the appellant, *inter alia*, would submit that the High Court  
committed a grave error in passing the impugned judgment insofar as it  
failed to take into consideration that an agnate is also an heir in terms of  
the provisions of the Hindu Succession Act. It was furthermore contended

that the said application should have been entertained also having regard to Explanation (c) appended to Section 263 of the Indian Succession Act irrespective of the fact as to whether the appellant had any notice of the probate of the said Will or not. Even on the ground of non-compliance of the requirement of Sub-section (3) of Section 283 of the Indian Succession Act, the learned counsel would contend, probate was granted without complying with the requirements of law.

10. Husband of late Lakhpatri Devi late Mahadeo Prasad was one of the five sons of Vindeshwari Prasad-Ganesh Jaiswal; his brothers being late Bhagwatidina, late Gayadin, late Mahavir Prasad and late Kailash. Late Bhagwatidina had three sons, namely, late Mata Prasad, late Ram Prasad and late Moti Lal. Respondent herein is one of the sons of late Rama Prasad. Late Ramaprasad died leaving behind his widow Sursati and three sons, Suresh, Ramesh and Ravi Prakash (Respondent). Other brothers of Mahadeo Prasad have died leaving behind their respective heirs and legal representatives. Late Mahabir Prasad had six sons. Appellant is widow of late Harihar Prasad, one of the sons; other sons being being late Ganga Prasad, Jamuna Prasad, Babulal, Late Amrit Lal and Surya Lal.

11. Parliament enacted the Hindu Succession Act, 1956 to amend and codify the law relating to intestate succession among Hindus. Section 3(f) of the Hindu Succession Act defines "heir" to mean any person, male or female, who is entitled to succeed to the property of an intestate under the Act. Section 15 of the Act lays down the general rules of succession in the case of female Hindus in the following terms :

*"15. General rules of succession in the case of female Hindus.—*(1)The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16.—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

- A (2) Notwithstanding anything contained in sub-section (1),--
- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
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- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”
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D 12. For the purpose of ascertaining as to who would be heirs of the husband if the deceased did not leave any sons and daughters or husband; reference has to be made to Section 8 of the Act which reads as under:

“Section 8. *General rules of succession in the case of males.*—  
The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

- E (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- F (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.”

G It is, therefore, not correct to say that agnates of the deceased are not heirs.

13. Mr. R.P. Bhatt, senior counsel appearing on behalf of the respondent, however, would contend that in terms of the Rules framed by the Bombay High Court, it was not necessary to make any citation in

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the State of Uttar Pradesh. Rule 683 of the Bombay High Court Rules A  
reads as under :

“683. Notice to next-of-kin – In all applications for Probate,  
Letters of Administration and Succession Certificate, Notice of the  
application shall be given to all the heirs and next-of-kin of the B  
deceased mentioned in the Petition except to those whose consent  
has been filed in the proceedings.”

14. It is, therefore, not correct to contend that no citation in regard  
to the heirs of Lakhpati Devi was necessary. The properties left by the  
deceased Lakhpati Devi were situated at two places, one in the State of C  
Maharashtra and another in the district of Pratapgarh in the State of Uttar  
Pradesh.

15. We have noticed hereinbefore that the respondent, for the  
reasons best known to him, did not, at the first instance, disclose that any D  
property belonging to the testator was situated at a place other than the  
State of Maharashtra. Such disclosure was required to be made in terms  
of sub-section (3) of Section 283. Citations were also required to be  
published by the concerned District Judge in terms thereof.

16. In the application for amendment of the application, a vague  
statement was made. Even therein it was not disclosed that another E  
property is situated in the District of Pratapgarh in the State of Uttar  
Pradesh, the reason therefor is beyond anybody's comprehension.

17. The provisions contained in sub-section (3) of Section 283 are  
mandatory in nature. Once the statutory requirements are found to have F  
not been complied with, an application for revocation of the grant of  
probate would be maintainable in terms of Section 263 of the Act, apart  
from the fact that non-publication of citation could be one of the ground  
to revoke the grant of probate. Explanation (c) appended thereto in a  
case of this nature would be attracted. The said provision reads thus :

*263. Revocation or annulment for just cause.*—The grant of G  
probate or letters of administration may be revoked or annulled  
for just cause.

*Explanation.*—Just cause shall be deemed to exist where—

(a) & (b) ...

A (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or  
(d) to (e) ...”

B 18. It may, therefore, be permissible for the appellant to show that a Will was executed by said Lakhpati Devi in her favour also on 12.03.1996. Mr. Bhat contends that the appellant had given up the right to the property under the said Will. Even if that is so, this Court is not concerned therewith at this stage.

C Appellant had merely filed an application. The said application has not been entertained although the same, in our opinion, should have been done. The question, therefore, is as to whether the said application should have been entertained.

D 19. Reliance has been placed by Mr. Bhat on a decision of this Court in *Ishwardeo Narain Singh v. Smt. Kamta Devi & Ors.*, AIR (1954) SC 980 wherein, *inter alia*, it was held :

E “The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate Court.”

F 20. The Probate Court, indisputably, exercises a limited jurisdiction. It is not concerned with the question of title. But if the probate has been granted subject to compliance of the provisions of the Act, an application for revocation would also lie.

G 21. In *Chiranjilal Shrilal Goenka v. Jasjit Singh & Ors.*, [1993] 2 SCC 507, whereupon again Mr. Bhat relied upon, this Court held :

H “On a conspectus of the above legal scenario we conclude that the Probate Court has been conferred with exclusive jurisdiction to grant probate of the will of the deceased annexed to the petition (suit); on grant of refusal thereof, it has to preserve the original Will

produced before it. The grant of probate is final subject to appeal, A  
if any, or revocation if made in terms of the provisions of the  
Succession Act, It is a judgment in rem and conclusive and binds  
not only the parties but also the entire world. The award deprives  
the parties of statutory right of appeal provided under Section 299.  
Thus the necessary conclusion is that the Probate Court alone has B  
exclusive jurisdiction and the Civil Court on original side or the  
Arbitrator does not get jurisdiction, even if consented to by the  
parties, to adjudicate upon the proof or validity of the Will  
propounded by the executrix, the applicant. It is already seen that  
the executrix was nominated expressly in the will is a legal C  
representative entitled to represent the Estate of the deceased but  
the heirs cannot get any probate before the Probate Court. They  
are entitled only to resist the claim of the executrix of the execution  
and genuineness of the Will. The grant of probate gives the executrix  
the right to represent the estate of the deceased, the subject-matter D  
in other proceedings. We make it clear that our exposition of law  
is only for the purpose of finding the jurisdiction of the arbitrator  
and not an expression of opinion on merits in the "probate suit"."

22. It is now well settled that an application for grant of probate is  
a proceeding in rem. A probate when granted not only binds all the parties E  
before the Court but also binds all other persons in all proceedings arising  
out of the Will or claims under or connected therewith. Being a judgment  
in rem, a person, who is aggrieved thereby and having had no knowledge  
about the proceedings and proper citations having not been made, is  
entitled to file an application for revocation of probate on such grounds F  
as may be available to him. We are, therefore, of the opinion that the  
application for revocation of the grant of probate should have been  
entertained.

23. The impugned judgment, therefore, is set aside and the appeal  
is allowed and the matter is remitted to the learned Single Judge of the G  
Probate Court with costs. However, we make it clear that we have not  
entered the merit of the matter.

B.B.B.

Appeal allowed.