

BABULAL KHANDELWAL & ORS.

v.

BALKRISHAN D. SANGHVI & ORS.

(Civil Appeal No. 6124 of 2008)

OCTOBER 16, 2008

**[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]**

*Administration suit – Suit filed by Respondent No.1 for administration of the Estate of his deceased parents, who died intestate – Deceased parents of Respondent No.1, during their lifetime, had entered into transactions with Appellants – High Court allowed amendment to the plaint and thereby impleaded Appellants as parties to the suit – Challenge to – Held: The Court while appointing an Administrator in an administration suit to administer the Estate of the deceased, who dies intestate, may be required to examine transactions involving properties of the Estate to determine assets of the Estate as on date of death of the owner thereof – Consequently, impleadment of persons who may be involved in some transaction or the other concerning the Estate of the deceased, may become necessary for a decision in an administration suit – High Court did not commit any error in allowing amendments to the plaint which had the effect of impleading Appellants as parties to the administration suit filed by Respondent No.1 and permitting Respondent No.1 to question transactions entered into by owners of the Estate with third parties – Code of Civil Procedure, 1908 – O.VI, & 17.*

**The question which arose for consideration in the present appeal is whether in a suit filed by Respondent No.1 for administration of the Estate of his deceased parents, who died intestate, transactions entered into and concluded by them during their lifetime with Appellants could not be called into question and the High Court erred in allowing amendment to the plaint and thereby impleading the Appellants as parties to the said administration suit.**

A Dismissing the appeal, the Court

HELD:1.1. One is unable to accept objections to the impleadment of Appellants as necessary parties in the administration suit filed by Respondent No.1, particularly when both his parents had died intestate. [Para 10] [530F]

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1.2. In an administration suit, the Court, while considering the grant of authority to an individual having an interest in the Estate of the deceased to administer the Estate, has also to determine the extent of the estate of the deceased at the time of his death to facilitate the distribution of the estate to all the heirs of the deceased. During such enquiry the Court is not called upon to determine the right and title of the parties in the properties of the Estate, but to ascertain the extent of the properties of the Estate. However in administration suits in respect of a person who dies intestate, the position is different. The Court while appointing an Administrator in an administration suit to administer the Estate of the deceased, who dies intestate, may be required to examine transactions involving the properties of the Estate in order to determine the assets of the Estate as on the date of death of the owner thereof. Consequently, the impleadment of persons who may be involved in some transaction or the other concerning the Estate of the deceased, may become necessary for a decision in an administration suit. [Para 11] [530-G-H, 531-A-C]

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1.3. The High Court has correctly indicated that in an administration suit, the dispute between the parties relating to the title of the deceased in respect of his properties, can be gone into in an administration suit and that there is no bar to a Court determining the validity of transactions allegedly entered into by or on behalf of the deceased, whose Estate is to be administered. In Appendix "D" to the Code of Civil Procedure which deals with the forms of decrees in different suits, Form 17 indicates the

form in which preliminary decrees in Administration Suits are to be passed. Paragraph 3 of the Form deals with suits filed by the next of kin of the deceased who dies intestate, as in the instant case, and provides for an inquiry to be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin in the moveable properties of the Estate. However, if the moveable properties of the deceased are found to be insufficient for carrying out the objects of the suit, then by virtue of paragraph 10 of the Form the Court may order an inquiry as to what immovable property the deceased was seized of or entitled to at the time of his death and what encumbrances, if any, affect the immovable property of the deceased or any part thereof. The said inquiry might also include the transactions with the appellants which had purportedly been concluded by the owners of the properties themselves during their life time, in order to ascertain whether the said properties continued to form part of the Estate of the deceased at the time of their death. The High Court had not committed any error in allowing the amendments to the plaint which had the effect of impleading the appellants as parties to the administration suit filed by the respondent No.1 and permitting the respondent No.1 to question the transactions entered into by the owners of the Estate with third parties. [Paras 12, 13] [531 F-H, 532 A-E]

*Sunil Gupta v. Kiran Girhotra* (2007) 8 SCC 506; *Chiranjilal Shrilal Goenka v. Jasjit Singh & Ors.* (1993) 2 SCC 507; *Ghulam Qadir v. Special Tribunal and Ors.*(2002)1 SCC 33 and *Krishna Kumar Birla v. Rajendra Singh Lodha and Ors.* (2008) 4 SCC 300 – distinguished.

CASE LAW REFERENCE

(2007) 8 SCC 506	distinguished	Para 6	
(1993) 2 SCC 507	distinguished	Para 7	
(2002)1 SCC 33	distinguished	Para 7	
(2008) 4 SCC 300	distinguished	Para 7	H

A CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 6124 of 2008

From the final Judgment and Order dated 13.2.2006 of the High Court of Judicature at Bombay in Chamber Summons No. 1270 of 2005 in Suit No. 457 of 2005

B Mohit D. Ram and Meenakshi Arora for the Appellants.

S.S. Hariharan and Subramonium Prasad for the Respondents.

C The Judgment of the Court was delivered by

**ALTAMAS KABIR, J.** 1. Leave granted.

D 2. On 14<sup>th</sup> February, 2005, the Respondent No.1, Balkishan D. Sanghvi, filed suit No. 457 of 2005 in the Bombay High Court for administration of the Estate of his deceased parents Dwarkadas Sanghvi and Vimlaben Sanghvi, who were also the parents of the Respondents No.1, 2, 3 and 6. While the Respondents Nos. 1, 2 and 6 are the sons of the deceased, the Respondent No.3 is their daughter and the Respondents Nos. 4 and 5 are her husband and son respectively.

E 3. During the pendency of the suit, the Respondent No.1/ Plaintiff filed Chamber Summons No.1270 of 2005 for impleading the Appellants herein as parties to the suit and to challenge the alienation of two properties, one to Prolific Consultancy Services (Mumbai) Pvt. Ltd. and the other to the Appellants herein. By judgment and order dated 13<sup>th</sup> February, 2006, the learned Single Judge of the Bombay High Court allowed the Chamber Summons and permitted the plaint to be amended as a result whereof the appellants herein stood impleaded as defendants Nos.7 to 12 in the suit on the ground that they were necessary parties to the suit, despite their objection that the Respondent No.8 is a company in which the Appellants were only share-holders and that they were in no way related to any of the parties to the suit.

H 4. The amendment of the plaint, also had the effect of al-

lowing the Respondent No.1 to challenge the transactions concluded by Dwarkadas Sanghvi and Vimlaben Sanghvi and the Appellants herein, before their death.

5. Questioning the legality of the order, Ms. Meenakshi Arora, learned advocate, submitted that in a suit for administration of the Estate of a deceased, transactions concluded by the deceased during his lifetime cannot be called into question. Consequently, those with whom such transactions had been entered into were not necessary parties in such suit. Ms. Arora submitted that the High Court had committed a fundamental error in holding that transactions entered into and concluded by the deceased during their lifetime could be questioned after their death in administration proceedings of their Estate, and thereby erroneously impleaded the appellants as parties to the administration suit.

6. In support of her submissions, Ms. Arora firstly referred to the decision of this Court in Sunil Gupta vs. Kiran Girhotra, [2007 (8) SCC 506], where an almost identical question, as has been raised in this matter, had arisen in respect of a probate proceeding. The question posed in the said matter was whether a purchaser of a property belonging to the deceased testator should be impleaded as a party in a probate proceeding. While answering the said question, this Court held that since a probate can be granted only to an Executor appointed by a Will, a transferee of a property during the pendency of such a proceeding is not a necessary party.

7. As an offshoot of her main argument, Ms. Arora submitted that, in any event, in a probate proceeding the Court does not decide any question of title in respect of the Estate of the deceased and any order passed in the proceedings acts as an order in rem. Ms. Arora submitted that even on such score, the appellants were not necessary parties to the administration suit and their impleadment in the suit by the High Court was wholly erroneous. In support of her said argument, Ms. Arora referred to and relied upon the judgment of this Court in the case of

- A Chiranjilal Shrilal Goenka vs. Jasjit Singh & Ors. [1993 (2) SCC 507], wherein Ms. Arora's submissions are fully reflected with approval. Reference was also made to the decision of this Court in (1) Ghulam Qadir vs. Special Tribunal and Ors., [2002 (1) SCC 33] and (2) Krishna Kumar Birla vs. Rajendra Singh Lodha and Ors. [2008 (4) SCC 300], where the same views have been expressed.

8. Ms. Arora's submissions were opposed by Mr. Hariharan and Mr. Subramonium Prasad, learned advocates, who appeared for the respondent No.1. It was submitted that when the Estate of a deceased is involved, the Court in seisin of the proceedings relating to the administration of the said Estate was entitled to scrutinize transactions which had taken place in respect of any property forming part of such Estate. It was submitted that, in fact, such a course of action was also pragmatic as it would eliminate the prospect of multiplicity of proceedings.

9. Mr. Subramonium Prasad submitted that the High Court had quite correctly allowed the impleadment of the appellants in the suit filed by the respondent No.1 where all questions relating to and involving the Estate of Dwarkadas Sanghvi and Vimlaben Sanghvi would be resolved with finality.

10. Having considered the rival submissions of the parties, we are unable to accept Ms. Arora's objections to the impleadment of the appellants as necessary parties in the administration suit filed by the respondent No. 1, particularly when both Dwarkadas Sanghvi and Vimlaben Sanghvi had died intestate.

11. It is well settled that in an administration suit, the Court, while considering the grant of authority to an individual having an interest in the Estate of the deceased to administer the Estate, has also to determine the extent of the estate of the deceased at the time of his death to facilitate the distribution of the estate to all the heirs of the deceased. It is equally well settled that during such enquiry the Court is not called upon to deter-

mine the right and title of the parties in the properties of the Estate, but to ascertain the extent of the properties of the Estate. The decision in Chiranjilal Shrilal Goenka's case (supra), applies to probate proceedings where it has been held that the probate Court does not decide any question of title or even the existence of the property itself. In administration suits in respect of a person who dies intestate, the position is different. The Court while appointing an Administrator in an administration suit to administer the Estate of the deceased, who dies intestate, may be required to examine transactions involving the properties of the Estate in order to determine the assets of the Estate as on the date of death of the owner thereof. Consequently, the impleadment of persons who may be involved in some transaction or the other concerning the Estate of the deceased, may become necessary for a decision in an administration suit. The High Court has noted this fact while allowing the prayer of the respondent No.1 for impleading the appellants as parties to the administration suit.

12. The decisions cited by Ms. Arora are in relation to Probate proceedings where either probate is to be granted or Letters of Administration are to be given to an applicant having an interest in the Estate of the deceased. The circumstances in an administration suit where a person dies intestate are, however, different. The learned Single Judge of the High Court has correctly indicated that in an administration suit, the dispute between the parties relating to the title of the deceased in respect of his properties, can be gone into in an administration suit and that there is no bar to a Court determining the validity of transactions allegedly entered into by or on behalf of the deceased, whose Estate is to be administered. In Appendix "D" to the Code of Civil Procedure which deals with the forms of decrees in different suits, Form 17 indicates the form in which preliminary decrees in Administration Suits are to be passed. Paragraph 3 of the Form deals with suits filed by the next of kin of the deceased who dies intestate, as in the instant case, and provides for an inquiry to be made and account taken of what or of what

A share, if any, the plaintiff is entitled to as next-of-kin in the moveable properties of the Estate. However, if the moveable properties of the deceased are found to be insufficient for carrying out the objects of the suit, then by virtue of paragraph 10 of the Form the Court may order an inquiry as to what immovable property the deceased was seized of or entitled to at the time of his death and what encumbrances, if any, affect the immovable property of the deceased or any part thereof. The said inquiry, in our view might also include the transactions with the appellants herein which had purportedly been concluded by the owners of the properties themselves during their life time, in order to ascertain whether the said properties continued to form part of the Estate of the deceased at the time of their death.

13. We, therefore, have little hesitation in holding that the High Court had not committed any error in allowing the amendments to the plaint which had the effect of impleading the appellants as parties to the administration suit filed by the respondent No.1 and permitting the respondent No.1 to question the transactions entered into by the owners of the Estate with third parties. The order of the High Court does not warrant any interference and the appeal must, therefore, be dismissed.

14. We, accordingly, dismiss the appeal and affirm the judgment and order of the High Court allowing the amendments to the plaint for impleading the appellants as parties to the administration suit filed by the respondent No.1 and for scrutinizing the transactions which were alleged to have been concluded by the parents of the respondent Nos. 1 to 4 during their lifetime.

15. There will, however, be no order as to costs.

G B.B.B.

Appeal dismissed.