

MANJU PURI

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v.

RAJIV SINGH HANSPAL & ORS.

(Civil Appeal No. 8455 of 2019)

NOVEMBER 14, 2019.

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**[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]**

*Succession Act, 1925: ss. 268, 283, 276 – Probate of Will – Revocation of – Issuance of citation to legal heirs – Requirement of – On facts, testator executed a Will bequeathing immovable property to his eldest daughter – 20 years later probate obtained and no objection certificates of two daughters of the testator and his wife attached – Two years later, suit for partition by younger daughter of testator against the eldest daughter in respect of the immovable property – Written statement by the eldest daughter that the said property was gifted to her by her mother – Dismissal of the partition suit – Subsequently, legal heirs of the eldest daughter sold the property – Thereafter, appellant-daughter of testator's younger daughter filed application for revocation of probate – Rejection of application by the Single Judge as well as the Division Bench of the High Court – On appeal, held: There was no reference about Will nor of probate proceedings in the suit for partition and in the written statement – Rights were claimed on the basis of registered deed of gift executed by the mother in favour of her elder daughter, which cast a doubt on the alleged consent given by the younger daughter in the probate proceedings – It is the appellant's case that she came to know about the probate proceedings only through conveyance deed – No finding of the High Court that on any earlier point of time the appellant had knowledge of the probate proceedings as such there was no inordinate delay in filing the application – Furthermore, the Single Judge erred in not issuing any citation to the younger daughter of the testator in the probate proceedings and without any verification of genuineness of no objection certificates mechanically granted probate which was unsustainable – Even though Single Judge had discretion to issue citation or not but in the facts of the instant case a citation ought to have been issued in exercise of discretion conferred u/s. 283 and the probate granted without issuance of such citation in the*

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- A *facts of the instant case is to be revoked – Thus, the application for revocation of probate is allowed and probate is revoked – Rules of the High Court at Calcutta (Original Side), 1914 – Chapter XXXV.*

**Allowing the appeal, the Court**

- B **HELD:** 1.1. Without adverting to these facts, the High Court could not have jumped on the conclusion that there is inordinate delay in filing the revocation application. Neither there is anything brought on record by respondent Nos. 1, 2 and 3 to indicate that the appellant or her mother had knowledge of probate proceedings on any prior date nor the High Court has returned any finding that the appellant had knowledge of probate proceedings and she is guilty of filing an application with delay. There being no finding of the High Court that on any earlier point of time the appellant had knowledge of the probate proceedings, the observation that the application having been filed with inordinate delay and deserved to be rejected cannot be approved. [Para 20] [841-B-C]
- 1.2 In the facts and circumstances of the instant case, no delay can be imputed on the appellant in filing application for revocation of probate when after getting inspection of the PLA records on 19.05.2011 she immediately filed the application for revocation of the probate in July, 2011 itself. The observation of the High Court that there was inordinate delay is unsustainable. [Para 21] [841-D]
- 1.3 The Will of SS which has been probated is unregistered
- F Will dated 15.06.1961. For the probate of the Will the application was filed by the executor on 27.05.1982 and the Will was probated on 04.06.1982. It is admitted case of the parties that no citation was issued by the Single Judge to any of the legal heirs of deceased. In the instant case counter-affidavit has been filed by respondent Nos.1,2 and 3 where they have taken a specific case that citation was not required to be issued. In the probate proceedings BK consented to grant a probate [Para 25] [842-G-H; 843-A]
- 1.4 Rule 5A of the High Court Rules provides that in all the applications for probate or for letters of administration with
- H the Will annexed the petition shall state the names of the

members of the family or other relatives upon whom the estate would have devolved in case of an intestacy together with their present place of residence. Rule 9 deals with citation to rightful parties which requires issue of citation or an application of letters of administration unless such persons have signified their consent to the application. Rule 9 begins with the words “on an application for letters of administration”. Had Rule making authority wanted to Rule 9 to apply to probate also they ought to have used both the phrases probate or letters of administration. Rule making authority wherever intended to refer both i.e. applications for probate or for letters of administration, the same has been used like in Rule 4, Rule 4A, Rule 4B, Rule 5A, Rule 6 where both the expressions “probate of a Will” and “letters of administration” have been used whereas Rule 7 uses the expression letters of administration. Rule 9 uses only the expression letters for administration. Rule 12 deals with direction in citation to show cause on a certain day. Rule 12 does not refer to either probate or letters of administration and thus, is equally applicable to both the expressions. The applicability of Rule 12 with regard to both letters of administration and probate which is clear from Form V. [Para 27] [844-B-E]

1.5 Respondents submitted that Rule 9 which provides that in case where persons have signified their consent, no citation needs to be issued also applies to the case of probate. The acceptance of the said submission shall be permitting addition of a word “probate” in Rule 9 whereas Rule 9 only uses expression “letters of administration”. The High Court held that Rule 9 of the High Court Rules, is applicable only in case of grant of letters of administration and not applicable to the grant of probate. [Para 28, 29] [844-F-H]

1.6 Reading of s. 283 of the Succession Act, 1925 makes it clear that by the use of word ‘may’ a discretion has been conferred on the District Judge to issue citations calling upon all persons claiming to have any interest in the estate of the deceased. Although, it is true that there is discretion vested to issue citation or not but such discretion has to be exercised with proper care adverting to the facts of each case. [Para 31, 33] [846-B-C; 847-A]

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- A        1.7 The application for probating a Will which is claimed to have been executed 20 years before, the Single Judge ought to have been cautious in proceeding further with the matter. Along with the application for probating the Will which has been brought on the record, the propounder of probate has verified the application along with a consent certificate which was annexed by HK, wife of SS, GH, daughter of SS and no objection of BK, another daughter of SS. Both HK and GH were beneficiary of the Will their no objection to the Will had no adverse effect. The no objection given by BK was material since BK being second daughter of deceased was being dis-inherited from the suit property. Photocopy of the no objection filed by BK has been brought on record along with the rejoinder-affidavit, a perusal of which appears that all the three no objections were notarised by the same Notary. It is not even claimed that the Notary who identified BK was engaged as counsel by BK by executing any Vakalatnama. [Para 34] [847-B-E]
- D        1.8 The factum of filing of suit for partition by BK in the year 1984 where there is neither any reference of the Will of SS nor reference of probate proceedings and further in the written statement filed in the said suit by GH, elder sister of BK there is no mention of Will of SS or probate proceedings to base her right and to the contrary rights were claimed only on the basis of registered deed of gift executed by HK in favour of GH, which cast a doubt on the alleged consent given by BK in the probate proceedings. Had BK given consent in probate proceedings in the year 1982, it ought to have been reflected in the suit or in the written statement filed by GH. The conduct of BK in filing suit in 1984 claiming partition and no reference of probate in the said proceedings clearly indicates that BK was not even aware of the probate proceedings when the suit was filed. In the written statement filed by GH, who was the beneficiary of the Will as well as the probate proceedings which there was no mention of probate proceedings which makes this Court wonder as to why the probate proceedings were not mentioned in the written statement. And if BK has signed as alleged why she was not confronted with the probate proceedings in the written statement. No mention of probate proceedings clearly indicates that neither BK was aware of
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probate proceedings nor she was confronted with such proceedings. In the said proceedings, when a Will is sought to be probated after 20 years of its execution the High Court ought to have more cautiously proceeded with the probate proceedings. [Para 35] [847-E-H; 848-A-C]

1.9 In the facts and circumstances of the instant case, the Single Judge erred in not issuing any citation to BM in the probate proceedings and without any verification of genuineness of no objection certificates mechanically granted probate which was unsustainable. If it is accepted that in probate proceedings persons who have been dis-inherited in the Will on mere no objection certificates by them without either being called by probate court to appear and certify their no objections or to file any pleading will lead to unsatisfactory result and may cause prejudice to persons who were not aware of the proceedings and are yet claimed to have submitted no objections. Even though Single Judge had discretion to issue citation or not but in the facts of the instant case a citation ought to have been issued in exercise of discretion conferred under Section 283 of the Succession Act and the probate granted without issuance of such citation in the facts of the instant case deserves to be revoked and the Single Judge and the Division Bench committed error in rejecting the application for revocation. [Para 36] [848-D-G]

1.10 It was submitted that in view of probate proceedings as well as adverse consequences on the appellant with regard to the dismissal of suit for partition filed by the mother for non-prosecution, this Court may not interfere with the proceedings/order passed by the High Court. The High Court in the impugned judgments has only dealt with the proceedings initiated by the appellant for revocation of probate. The said proceedings need to be considered only insofar as related to application filed by the appellant for revocation of probate. The order passed by the Single Judge as well as Division Bench of the High Court is set aside and the application for revocation of probate is allowed and the probate is revoked. The PLA application is revived before the Single Judge of the High Court which may be considered and decided in accordance with law. [Para 39, 40] [849-E-F]

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- A *Jyotsana Rajgarhia v. Dipak Kumar Himatsingka (2002) ILR 2 Cal 402; Kamona Soondury Dassee v. Hurro Lall Shaha (1882) ILR 8 Cal 570; Shyama Charan Baisya v. Prafull Sundari Gupta AIR 1916 Cal 623; Harimati Debi and another v. Anath Nath Roy Choudhury AIR 1939 Cal 535* – referred to.
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Case Law Reference

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|----------------------|-------------|---------|
| (2002) ILR 2 Cal 402 | referred to | Para 29 |
| (1882) ILR 8 Cal 570 | referred to | Para 31 |
| AIR 1916 Cal 623     | referred to | Para 32 |
| AIR 1939 Cal 535     | referred to | Para 35 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8455 of 2019.

- D From the Judgment and Order dated 13.04.2017 of the High Court at Calcutta in APO No. 94 of 2016 with PLA No. 90 of 1982  
 Siddharth Luthra, Sr. Adv., Hrishikesh Baruah, Pranav Jain, Akshay Sehgal, Kunal Minani, Saif Shams, Advs. for the Appellant.  
 Jayant Bhushan, Jishnu Saha, Sr. Advs., D. N. Mitra, Ms. Sudeshna Bagchi, Ms. Sonia Dube, Ms. Kanchan Yadav, Ms. Sayantika Mitra, M/S. Victor Moses & Associates, Ankit Shroff, Pankaj Jain, Bijoy Kumar Jain, Advs. for the Respondents.

The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**

- F 1. This appeal has been filed against the Division Bench judgment dated 13.04.2017 of Calcutta High Court dismissing the appeal filed by the appellant against the judgment and order of learned Single Judge dated 24.08.2015 rejecting the application filed by the appellant for revocation of probate dated 04.06.1982 in relation to Will of one Surjan Singh Randhawa.
- G 2. Brief facts necessary to be noticed for deciding this appeal are:  
 One, Surjan Singh Randhawa had purchased immovable property which was subsequently numbered as 5/1A Belvedere Road, Kolkata along with his brother, Bachittar Singh Randhawa, in the names of their respective wives, Smt. Harnam Kaur Randhawa and Smt. Celia Mary H Randhawa. Surjan Singh Randhawa had two daughters, namely, Smt.

Gian Hanspal and Smt. Beena Kumari Mehra. On 15.06.1961, Surjan Singh Randhawa executed a Will bequeathing the above immovable property to his eldest daughter, Smt. Gian Hanspal. Surjan Singh Randhawa died on 28.11.1962. Registered gift deed dated 25.03.1964 was executed by Smt. Harnam Kaur Randhawa in favour of Smt. Gian Hanspal with regard to above property numbered as 5/1C Belvedere Road, Kolkata on 27.05.1982. Bachittar Singh Randhawa, brother of late Surjan Singh Randhawa filed a probate petition before the Calcutta High Court seeking grant of probate in relation to the Will dated 15.06.1961. Along with probate petition three no objection certificates were attached i.e. certificates of Smt. Gian Hanspal, Smt. Harnam Kaur Randhawa and Smt. Beena Kumari Mehra. Calcutta High Court vide its order dated 04.06.1982 allowed the application and granted probate in favour of Bachittar Singh Randhawa.

3. In April, 1984, Smt. Beena Kumari Mehra filed a suit against Smt. Gian Hanspal for partition of the property including the premises 5/1C Belvedere Road, Kolkata. In the suit Smt. Gian Hanspal was impleaded as defendant. In the suit Smt. Beena Kumari Mehra claimed that after the death of Smt. Harnam Kaur Randhawa, the mother of the plaintiff, she along with her sister, Smt. Gian Hanspal became entitled to share in the property. In the suit written statement was filed by Smt. Gian Hanspal opposing the claim of the plaintiff. It was pleaded in the written statement that Smt. Harnam Kaur Randhawa has gifted the premises 5/1C Belvedere Road, Kolkata by registered Gift Deed dated 25.03.1964, the suit was claimed to be barred by time. Smt. Gian Hanspal died during the pendency of the suit on 24.02.1988 and her heirs were impleaded.

4. Dr. Harbhajan Singh Hanspal, who was substituted in the suit being T.S. No.61 of 1984 filed a written statement reiterating the claim on the basis of the registered gift deed dated 25.03.1964. It was further pleaded that the plaintiff had notice and knowledge of the Will at least from 29.08.1984 when the copy of the written statement was served upon the plaintiff. Smt. Beena Kumari Mehra died on 05.05.2008.

5. The suit filed by Smt. Beena Kumari got dismissed for non-prosecution and application for restoration of the suit also failed. On 28.06.2010, Rajiv Singh Hanspal, son of Smt. Gian Singh and late Dr. Harbhajan Singh Hanspal with two others sold the premises, 5/1C Belvedere Road, Kolkata in favour of one Rungta Mines Limited.

6. The appellant came to know about the conveyance deed and through conveyance deed came to know the probate dated 05.06.1982.

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- A The appellant, daughter of Smt. Beena Kumari Mehra, filed an application G.A. No.2441 of 2011 for revocation of the probate granted on 05.06.1982 impleading respondent Nos.1, 2 and 3 as the legal heirs of Gian Hanspal, respondent No.4, the purchasers of the premises in dispute by conveyance deed and respondent Nos.5 and 6 as *performa* respondents were impleaded. The brothers of the appellant were
- B impleaded as *performa* respondents. In the application the case of the appellant was that after coming to know about the conveyance she got inspected the probate application, records of P.L.A. No.90 of 1982 on 19.05.2011 and came to know that on the basis of no objection certificate of the appellant's mother, late Smt. Beena Kumari Mehra probate was granted. Appellant's case was that probate was obtained upon false representation, without any notice to the appellant's mother who was legal heir of the deceased, Surjan Singh Randhawa. It was further pleaded that signatures of the appellant's mother on the said no objection certificate were forged signatures as the appellant's mother was shown to have signed as Beena Mehra, whereas she used to sign
- C as Beena Kumari Mehra which is apparent from her signatures in Passport, Will and her PAN Card. It was further pleaded that purported Will dated 15.06.1981 was not the genuine Will and was created after his death to deprive her mother of her legal entitlement in the suit property as a legal heir of the deceased. The application of the appellant for revocation of the probate was contested by the respondents. Learned
- E Single Judge vide order dated 24.08.2015 rejected the application for revocation of probate. Learned Single Judge held that the appellant under Indian Succession Act, 1925 is not entitled to any citation. The mother of the appellant who could have possibly objected to the said grant had filed an affidavit for consent. Learned Single Judge further held that moreover, there is an inordinate and inexplicable delay in filing the application. The mother of the appellant never objected the grant during her life time. Application was rejected on these observations.
- G 7. The appeal was filed by the appellant before the Division Bench against the judgment of the learned Single Judge dated 24.08.2015 and which appeal also came to be dismissed by the Division Bench by order dated 13.04.2017 impugned in the present appeal. The Division Bench held that the trial court appears to have considered the matter in its proper perspective and the relevant discretion exercised in rejecting the petition for revocation does not appear to be perverse.
- H 8. We have heard Shri Siddharth Luthra, learned senior counsel, appearing for the appellant and Shri Jayant Bhushan, learned senior

counsel, appearing for respondent Nos.1, 2 and 3. We have also heard Shri Jishnu Saha, learned senior counsel appearing for respondent No.4. A

9. Shri Luthra contended that probate was granted on 04.06.1982 within a week from filing of the application on 27.05.1982 without issuing any citation to mother of the appellant who was younger daughter of Surjan Singh Randhawa, a legal heir. No objection certificate which was appended with the probate application alleged to have been signed by Beena Kumari was a forged no objection certificate. Beena Kumari, the mother of the appellant used to sign as Beena Kumari Mehra. It is further submitted that a suit was filed for partition of the suit property by Beena Kumari in April, 1984 in which suit written statement was filed by Smt. Gian Hanspal where there was no reference to probate dated 04.06.1982. The claim of the suit premises was on the basis of the gift deed dated 25.03.1964 executed by Smt. Harnam Kaur Randhawa in favour of Smt. Gian Hanspal. It is submitted that had Beena Kumari given consent in the probate proceedings there was no question of her filing suit for partition. The factum of filing of suit for partition by appellant's mother clearly indicates that neither she has filed no objection certificate nor she was aware of such proceedings. It is submitted that the application filed by the appellant who is daughter of Smt. Beena Kumari Mehra was fully covered under the grounds for revocation under Section 263. The proceeding for obtaining the grant of probate was fraudulent proceeding which ought to have been set aside by the High Court. It is submitted that for grant of probate it is necessary to issue a citation to legal heirs and no citation having been issued in the present case the entire proceeding deserved to be set aside. B C D E

10. Shri Siddharth Luthra has also referred to Chapter XXXV of the Rules of the High Court at Calcutta (Original Side), 1914 (hereinafter referred to as "High Court Rules") dealing with the Testamentary and Intestate Jurisdiction. Shri Luthra submits that Rules contemplate issuance of citation. F

11. Shri Jayant Bhushan, learned senior counsel, appearing for respondent Nos.1,2 and 3 submits that for grant of probate it is not mandatory to issue a citation. He submits that use of word 'may' in Section 283 of Indian Succession Act, 1925 clearly indicates that it is in the discretion of the District Judge to issue or not to issue citation. Mere non-issuance of citation does not lead to any illegality. Referring to Rule 9 of Chapter 35 of the Rules of the High Court at Calcutta (Original Side), 1914, Shri Jayant Bhushan submits that issuance of citation is contemplated for letters of Administration unless such person G H

- A signifies consent, which Rules also provide for grant of probate. He submits that there being no objection by Smt. Beena Kumari Mehra there was no occasion of issuance of any citation as well and there is no illegality found in the above probate.
12. He further submits that probate proceedings were initiated by Bachittar Singh Randhawa, brother of deceased. He further submits that the suit for partition filed in April, 1984 was dismissed for non-prosecution and the matter was not further carried by Smt. Beena Kumari Mehra, it is clear that she never wanted to prosecute the matter any further. After the death of Smt. Beena Kumari Mehra it is not open to the appellant to file an application for revocation of probate after 30 years of grant when both Smt. Beena Kumari Mehra and Smt. Gian Hanspal are dead. He further submits that in view of the dismissal of suit for partition any claim for possession of the suit premises is barred and no useful purpose shall be served in exercising jurisdiction under Article 136 in the facts of the present case. Mother's suit for partition having been dismissed for non-prosecution, suit by daughter is clearly barred.
13. Learned counsel appearing for respondent No.4 submits that respondent No.4 is a bona fide purchaser for value who purchased the property on the strength of probate granted in favour of the vendors. He submits that the rights of respondent No.4 need to be protected and it cannot suffer due to fight between the appellant and respondent No.1,2 and 3. He further submits that in any view of the matter the revocation of probate shall operate prospectively not affecting any of the rights of respondent No.4.
14. Learned counsel for the parties have also referred to and relied on some judgments which we shall notice hereinafter.
- F 15. We have considered the submissions of the learned counsel of the parties and perused the material on record.
- G 16. The main issue needs to be considered and answered in the appeal is as to whether sufficient grounds were made out in the application for revocation of probate filed by the appellant and the High Court committed error in rejecting the application as well as dismissing the appeal.
- H 17. There is no dispute regarding relationship of the parties. The appellant is a daughter of Smt. Beena Kumari Mehra who was the youngest daughter of Surjan Singh Randhawa, the deceased whose Will was probated by the High Court. Respondent Nos.1,2 and 3 are legal

heirs of eldest daughter of deceased Surjan Singh Randhawa, Smt. Gian A  
Hanspal.

18. Both the learned Single Judge and the High Court in rejecting the application filed by the appellant for revocation had observed that there was inordinate delay in filing the application. The probate of the Will was granted on 04.06.1982 and the application for revocation of probate was filed by the appellant with affidavit which is dated 27.07.2011. From the conveyance deed she claimed to know about the case being No. PLA No.90 of 1982 where the High Court granted probate of the Will of 04.06.1982. In paragraph 15 of the application the details of coming to know about the probate proceedings have been mentioned which are relevant to be reproduced:

“15. After coming to know of the said facts your petitioner instructed her advocate on record to Institute suitable legal proceedings for cancellation of the said Indenture. However, she was advised that before instituting the legal proceedings it was necessary to take inspection of proceedings in which probate to the purported last Will of the said deceased was granted to ascertain whether the petitioner’s mother had consented to grant of the said probate and whether the Will of the said deceased was genuine. As advised your petitioner come down to Kolkata and took inspection of the records of PLA No.90 of 1982 on 19.5.2011. From the records of the said PLA it appears that the same was filed on 27.5.1982 and that a purported no objection certificate of your petitioner’s mother notarised on 19.4.1982 upon identification by one Dilip Kumar Basu said to be practicing as Advocate in the Learned Chief Metropolitan Magistrate’s Court, was filed in order to show as if your petitioner’s mother had given no objection to grant of probate of the said Will. Your petitioner also inspected the said no objection certificate which your petitioner’s mother is alleged to have signed as “Beena Mehra”. The said signature is not of your petitioner’s mother. Your petitioner’s mother always signed as “Beena Kumari Mehra”. The copies of PAN Card and Passport of your mother issued in July 1982 both bearing her genuine signatures are annexed thereto and collectively marked Annexure “E”. Prior to her death on 5.5.2008 your petitioner’s mother had made her last Will dated 30<sup>th</sup> June 2005 which was registered. The said Will also bears her genuine signatures. A copy of the said Will is annexed hereto and included in Annexure “E”. The handwriting

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- A under which the said words "Beena Mehra" have been written is not of your petitioner's mother. From the records of the said PLA it further appears that purported no objections of the said Harnam Kaur Randhawa and Gian Hanspal also notarised by the same Notary in April 1982 were filed. Your petitioner's advocate has obtained, a certified copy of the application in said PLA a copy whereof is annexed hereto and marked Annexure "F"."
- B 19. In the application also details of Suit No.61 of 1984 filed by Beena Kumari Mehra, mother of the appellant, have been mentioned wherein written statement was filed by Smt. Gian Hanspal. The filing of suit for partition by Smt. Beena Kumari Mehra is not denied nor
- C filing of written statement by Smt. Gian Hanspal is denied. The copy of the plaint of Suit No.61 of 1984 has been brought on record as Annexure 'P-4'. It is indicated that the appellant's mother claimed that after the death of her mother on 12.04.1982 she and her elder sister, defendant No.1 became co-sharer to the extent of  $\frac{1}{2}$  share each in the property. There was no reference of probate dated 04.06.1982 or
- D no objection given by Beena Mehra in the written statement filed by Smt. Gian Hanspal, the defendant No.1, although in paragraph 1 there is mention of registered gift given by Smt. Harnam Kaur Randhawa in favour of the Smt. Gian Hanspal which is to the following effect:
- E "1. The allegations of paragraph 1 of the plaint are not correct. Mrs. Harnam Kaur Randhawa long before her death made a gift of the house and premises No.5/1C Belvedere Road by a registered instrument dated 25.03.1960. After that defendant has been the sole and absolute owner of the said premises. The defendant having been in possession of the said property from 1964 March to date on the basis of and on a claim of title, the
- F plaintiff's claim of succession as an heir of the mother is not tenable in law and fact."
- G 20. But there was no mention in the entire written statement about the probate dated 04.06.1982. The pleadings in the above proceedings clearly indicate that neither there was knowledge of any probate proceedings nor even claim of probate proceedings was taken by Smt. Gian Hanspal in the written statement which was filed in the year 1984. The suit filed by Smt. Beena Kumari Mehra got dismissed in default on 26.03.1986 and an application for restoration of the suit was also dismissed for default on 19.08.2006. Smt. Beena Kumari Mehra died on 05.05.2008. When the case was set by the appellant in the
- H application for revocation that she came to know about the probate

proceedings only through conveyance deed executed by respondent Nos.1,2 and 3 in favour of respondent No.4 dated 28.06.2010 and she got inspection of the records of PLA No.90 of 1982 on 19.05.2011 and came to know about the probate proceedings and alleged no objections by her mother, Smt. Beena Kumari Mehra. Without adverting to these facts, the High Court could not have jumped on the conclusion that there is inordinate delay in filing the revocation application. Neither there is anything brought on record by respondent Nos.1, 2 and 3 to indicate that the appellant or her mother had knowledge of probate proceedings on any prior date nor the High Court has returned any finding that the appellant had knowledge of probate proceedings and she is guilty of filing an application with delay. There being no finding of the Calcutta High Court that on any earlier point of time the appellant had knowledge of the probate proceedings, the observation that the application having been filed with inordinate delay and deserved to be rejected cannot be approved.

21. We, thus, are of the view that in the facts and circumstances of the present case no delay can be imputed on the appellant in filing application for revocation of probate when after getting inspection of the PLA records on 19.05.2011 she immediately filed the application for revocation of the probate in July, 2011 itself. The observation of the High Court that there was inordinate delay is unsustainable.

22. Now, we come to the submission that as to whether issuance of citation to the legal heir is contemplated according to the provisions of the Indian Succession Act, 1925 as well as the High Court Rules. Chapter III of the Succession Act deals with alteration and revocation of grants. Section 263 provides for revocation or annulment for just cause which is to the following effect:

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

Explanation.-

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Illustrations

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(i) .....

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The will of which probate was obtained was forged or revoked.

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23. Chapter IV of the Succession Act contains a heading “OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION”. Section 268 of the Act provides that proceedings of the Court of the District Judge in relation

B to the granting of probate and letters of administration shall, save as hereinafter otherwise provided; be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908.

24. Section 276 deals with petition for probate. Section 283 deals with the powers of District Judge. Section 283 is as follows:

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**“283. Powers of District Judge.**-(1) In all cases the District Judge or District Delegate may, if he thinks proper,—

(a) examine the petitioner in person, upon oath;

(b) require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be;

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(c) 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.

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(2) The citation shall be fixed up in some conspicuous part of the court-house, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

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(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.”

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25. We may revert back to the proceedings which were undertaken in the present case. The Will of Surjan Singh Randhawa which has been probated is unregistered Will dated 15.06.1961. For the probate of the Will the application was filed by the executor on 27.05.1982 and the Will was probated on 04.06.1982. It is admitted case of the parties that no citation was issued by the learned Single Judge

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to any of the legal heirs of deceased. In the present case counter-

affidavit has been filed by respondent Nos.1,2 and 3 where they have taken a specific case that citation was not required to be issued. In the probate proceedings since Smt. Beena Kumari Mehra consented to grant a probate, in paragraph 3(y) of the counter-affidavit following has been stated:

“3(y)The said Smt. Harnam Kaur Randhawa, and Gian Hanspal came to know about the Will in the year 1981. Immediately thereafter, the said Smt. Harnam Kaur Randhawa took steps for obtaining the probate of the Will. Since Beena Kumari Mehra consented to the grant of probate, there was no occasion to serve any citation on her. Under Indian Succession Act, citation is served only upon dissenting heirs of the testator.”

26. Shri Jayant Bhushan, learned senior counsel, appearing for the respondent Nos.1,2 and 3 has submitted that it was not mandatory for District Judge to issue citation where no objection certificate/consent has been filed by the legal heirs of the deceased. Section 283 as extracted above deals with the power of District Judge. In Section 283(1) the word ‘may’ has been used which as submitted by the learned counsel for the respondents gives discretion to District Judge to issue citation or not. The power given to the District Judge under Section 283 governs both petition for probate which is provided in Section 276 and petition for letters of administration as provided in Section 278. The Calcutta High Court has framed Rules, namely, Rules of the High Court at Calcutta (Original Side), 1914, Chapter XXXV of which relates to Testamentary and Intestate Jurisdiction. Rules 5A, 9 and 12 of the Rules which are relevant are as follows:

“**5A.** In all applications for probate or for letters of administration with the will annexed the petition shall state the names of the members of the family or other relatives upon whom the estate would have devolved in case of an intestacy together with their present place of residence.

**9. Citation to rightful parties.** - On an application for letters of administration, unless otherwise ordered, a citation shall issue to all persons having a right to take the grant prior or equal to that of the applicant, unless such persons have signified their consent to the application.

**12. Direction in citation to show cause on a certain day.** - All citations shall, unless otherwise ordered, direct the persons cited to show cause on the fourth day from the day of service

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- A where the parties to be cited reside within the town of Calcutta, or on such day certain as the Judge shall direct where they reside outside Calcutta; and, where they cannot be served in the manner provided for service of process, may be served by the insertion as an advertisement in such local newspapers as may be directed, of a Notice in Form No. 5."
- B 27. Rule 5A provides that in all the applications for probate or for letters of administration with the Will annexed the petition shall state the names of the members of the family or other relatives upon whom the estate would have devolved in case of an intestacy together with their present place of residence. Rule 9 deals with citation to rightful
- C parties which requires issue of citation or an application of letters of administration unless such persons have signified their consent to the application. Rule 9 begins with the words "on an application for letters of administration". Had Rule making authority wanted to Rule 9 to apply to probate also they ought to have used both the phrases probate or letters of administration. Rule making authority wherever intended to
- D refer both i.e. applications for probate or for letters of administration, the same has been used like in Rule 4, Rule 4A, Rule 4B, Rule 5A, Rule 6 where both the expressions "probate of a Will" and "letters of administration" have been used whereas Rule 7 uses the expression letters of administration. Rule 9 uses only the expression letters for administration. Rule 12 deals with direction in citation to show cause on a certain day. Rule 12 does not refer to either probate or letters of administration and thus, is equally applicable to both the expressions. The applicability of Rule 12 with regard to both letters of administration and probate which is clear from Form V which uses the expression:
- E "Petition for probate  
Letters of Administration"

- F 28. Learned counsel for the respondents has submitted that Rule 9 which provides that in case where persons have signified their consent, no citation needs to be issued also applies to the case of probate. The acceptance of the above argument shall be permitting addition of a word "probate" in Rule 9 whereas Rule 9 only uses expression "letters of administration".
- G 29. The Calcutta High Court has already taken the view that Rule 9 of the High Court Rules, Chapter XXXV is applicable only in case of grant of letters of administration and not applicable to the grant of probate. In **Jyotsana Rajgarhia vs. Dipak Kumar Himatsingka**,
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**(2002) ILR 2 Cal 402**, the High Court had occasion to consider a case where revocation of a probate was asked for. In the above case also the person seeking for revocation for grant of a probate was claimed to have consented to such grant and it was contended that since the party has consented for grant of probate it was not entitled for issuance of any citation. In paragraphs 1 and 2 of the judgment facts of the case are noted which are to the following effect:

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“1. This is an application for revocation of the probate granted by this Court dated February 10, 1987 in No. 17 of 1987 in the Goods of Smt. Usha Devi Himatsingka and further recalling the order dated January 21, 1987 granting probate. The probate was granted without any contest admittedly. The Petitioner and the Respondent No. 2, viz., Anita Fetehpuria are two sisters. The Respondent No. 2 is supporting the Petitioner and also asking for revocation of grant of probate.

2. The short case of the Petitioner is that the probate was obtained fraudulently and without serving any citation and/or notice of filing of such application. Consent which was recorded at the time of grant of probate was fraudulent and no lawyer was engaged either on behalf of the Petitioner or on behalf of the Respondent No. 2 to give consent. She had no knowledge of passing of the impugned order of granting probate until May 1999 when a letter was communicated by M/s. Sinha and Co. together with copies of the application on which probate was granted to the last Will and testament of her mother dated September 17, 1981. She has also stated that she never engaged any lawyer nor executed any Vakalatnama in favour of Mr. Pulak Lahiri or any other person. The said Vakalatnama allegedly executed in favour of Pulak Lahiri is forged one. As such Pulak Lahiri did not have any authority either to appear or give consent on behalf of the Petitioner to grant probate.”

30. On service of citation it was contended before the High Court that in view of Rule 9 service of citation was not necessary which argument was repelled by the High Court in the following words:

“36.....Moreover it is noticed that grant is also defective as no citation either special; or general was served upon the applicant under Section 283(1)C and (2) of Indian Succession Act 1925. It is contended by Mr. A.K. Mitra that, since consent was signified by the applicant under f. 9 of Chapter XXXV of

- A the Original Side Rule, service of citation was not necessary. I am unable to accept this contention, as the above Rule is applicable in case of grant of Letters of Administration, not probate.”
- B 31. A plain reading of Section 283 makes it clear that by the use of word ‘may’ a discretion has been conferred on the District Judge to issue citations calling upon all persons claiming to have any interest in the estate of the deceased. Although, it is true that there is discretion vested to issue citation or not but such discretion has to be exercised with proper care. The Calcutta High Court in **Kamona Soondury Dassee v. Hurro Lall Shaha, (1882) ILR 8 Cal 570**, had occasion
- C to consider pari materia provision of Section 250 of the Succession Act, 1865 where discretion was vested in the District Judge to issue citation or not. Calcutta High Court had observed in the said case that when Will is propounded which alters the devolution of property, a special citation should be directed. Further the discretion vested with the District Judge has to be exercised with proper care. Following observation was
- D made by the Calcutta High Court:
- “.....Section 250 of the Succession Act vests the District Judge with full discretion, which should be exercised with proper care: and when a will is propounded which alters the devolution of property, a special citation should be directed to be served upon the person or persons who is or are immediately affected by the will. ....”
- E 32. The Calcutta High Court in another judgment in **Shyama Charan Baisya vs. Prafull Sundari Gupta, AIR 1916 Cal 623**, in a case where provisions of Probate and Administration Act, 1881 came for consideration, held that when a Will is propounded which alters the devolution of property, the District Judge should, in the exercise of the discretion, should direct the special citation. Following was held in the judgment:
- F “.....as observed in the case of *Nistariny v. Brahmomyi, (1891) 18 Cal. 45*, when a will is propounded which alters the devolution of property, the District Judge should, in the exercise of the discretion vested in him by S.69 of the Probate Act as to the mode of issuing citations, direct special citations to persons whose rights are immediately affected by the will. ....”
- G 33. In the present case although there cannot be any dispute to
- H the legal proposition that discretion is vested under Section 283 to issue

citation or not but such discretion has to be judicially exercised with A proper care adverting to the facts of each case.

34. In the case before us the Will was dated 15.06.1961, probate application was filed on 27.05.1982, that is almost after 20 years. The application for probating a Will which is claimed to have been executed 20 years before, learned Single Judge ought to have been cautious in proceeding further with the matter. We notice that along with the application for probating the Will which has been brought on the record as Annexure P-2, the propounder of probate has verified the application along with a consent certificate which was annexed by Smt. Harnam Kaur Randhawa wife of Surjan Singh Randhawa, Smt. Gian Hanspal wife of Dr. Harbhajan Hanspal daughter of Surjan Singh Randhawa and no objection of Smt. Beena Mehra wife of V.K. Mehra another daughter of Surjan Singh Randhawa. Both Smt. Harnam Kaur and Smt. Gian Hanspal were beneficiary of the Will their no objection to the Will had no adverse effect. The no objection given by Smt. Beena Mehra was material since Beena Mehra being second daughter of deceased was being dis-inherited from the suit property. Photocopy of the no objection filed by Smt. Beena Mehra has been brought on record along with the rejoinder-affidavit, a perusal of which appears that all the three no objections were notarised by the same Notary, an Advocate, Shri Dilip Kumar Basu. It is not even claimed that Shri D.K. Basu who identified Beena Mehra was engaged as counsel by Beena Mehra by executing any Vakalatnama. E

35. The factum of filing of suit for partition by Smt. Beena Kumari Mehra in the year 1984 where there is neither any reference of the Will of Surjan Singh Randhawa nor reference of probate proceedings and further in the written statement filed in the said suit by Smt. Gian Hanspal, elder sister of Smt. Beena Kumari Mehra there is no mention of Will of Surjan Singh Randhawa or probate proceedings to base her right and to the contrary rights were claimed only on the basis of registered deed of gift dated 25.03.1964 executed by Smt. Harnam Kaur Randhawa in favour of Smt. Gian Hanspal, which cast a doubt on the alleged consent given by Smt. Beena Kumari Mehra in the probate proceedings. Had Smt. Beena Kumari Mehra given consent in probate proceedings in the year 1982, it ought to have been reflected in the suit or in the written statement filed by Smt. Gian Hanspal. The conduct of Smt. Beena Kumari Mehra in filing suit in 1984 claiming partition and no reference of probate in the said proceedings clearly indicates that Smt. Beena Kumari Mehra was not even aware of the H

- A probate proceedings when the suit was filed. In the written statement filed by Smt. Gian Hanspal, who was the beneficiary of the Will as well as the probate proceedings which there was no mention of probate proceedings which makes us wonder as to why the probate proceedings were not mentioned in the written statement. and if Smt. Beena Kumari Mehra has signed as alleged why she was not confronted with the
- B probate proceedings in the written statement. No mention of probate proceedings clearly indicates that neither Smt. Beena Kumari Mehra was aware of probate proceedings nor she was confronted with such proceedings. In the said proceedings, when a Will is sought to be probated after 20 years of its execution the High Court ought to have more cautiously proceeded with the probate proceedings. The Calcutta High Court in **Harimati Debi and another vs. Anath Nath Roy Choudhury, AIR 1939 Cal 535**, in concurring judgment of Latifur Rahman, J. held that where an unregistered Will is sought to be propounded after the lapse of more than 20 years it is required that all manner of doubt and suspicion is removed.
- D 36. We are of the view that in the facts and circumstances of the present case, learned Single Judge erred in not issuing any citation to Smt. Beena Mehra in the probate proceedings and without any verification of genuineness of no objection certificates mechanically granted probate which was unsustainable. If it is accepted that in probate proceedings persons who have been dis-inherited in the Will on mere no objection certificates by them without either being called by probate court to appear and certify their no objections or to file any pleading will lead to unsatisfactory result and may cause prejudice to persons who were not aware of the proceedings and are yet claimed to have submitted no objections. We, thus, conclude that even though learned
- E Single Judge had discretion to issue citation or not but in the facts of the present case a citation ought to have been issued in exercise of discretion conferred under Section 283 of the Succession Act and the probate granted without issuance of such citation in the facts of the present case deserves to be revoked and learned Single Judge and the Division Bench committed error in rejecting the application for revocation
- F G filed by the appellant.
- H 37. Learned senior counsel appearing for respondent No.4 who is the purchaser of the property from respondent Nos.1,2 and 3 by conveyance deed dated 28.06.2010 has contended that the rights of respondent No.4 be protected since he is a bona fide purchaser with value. Although, the respondent No.4 was impleaded as one of the

parties, we are of the view that at this stage it is not necessary to advert to the submission of the learned counsel for respondent No.4. In view of our conclusion as noted above that revocation application filed by the appellant deserves to be allowed, the order dated 04.06.1982 granting probate in PLA No.90 of 1982 deserves to be set aside and the probate proceedings shall stand revived before the learned Single Judge and it is yet to be considered by the learned Single Judge as to what orders are to be passed in the proceedings in PLA No.90 of 1982 and all the contentions which are sought to be raised by respondent No.4 are to be adverted in the above proceedings.

38. The submission raised by respondent No.4 needs no consideration in these proceedings which were initiated by the appellant only for revocation of probate. Learned counsel for respondent Nos.1, 2 and 3 has further submitted that the appellant had already filed a suit being Title Suit No.59/2013 in the Court of First Civil Judge(Senior Division) at Alipore where a declaration is claimed that the indenture of conveyance dated 28.06.2010 executed and registered in favour of respondent No.4 is void, illegal and invalid.

39. Shri Jayant Bhushan submits that in view of probate proceedings as well as adverse consequences on the appellant with regard to the dismissal of suit for partition filed by the mother for non-prosecution, this Court may not interfere with the proceedings/order passed by the Calcutta High Court. The Calcutta High Court in the impugned judgments has only dealt with the proceedings initiated by the appellant for revocation of probate, we need to consider the said proceedings only insofar as related to application filed by the appellant for revocation of probate dated 04.06.1982. We allow this appeal, set aside orders passed by the learned Single Judge as well as Division Bench of the Calcutta High Court, application for revocation of probate is allowed, probate dated 04.06.1982 is revoked. The application PLA No.90 of 1982 is revived before the learned Single Judge of the High Court which may be considered and decided in accordance with law.

40. The case being old one, we request the High Court to expeditiously dispose of the proceedings. Parties shall bear their own costs.