Kanta Yadav vs Om Prakash Yadav on 24 July, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5556, AIRONLINE 2019 SC 749, 2020 (1) ADR 447, (2019) 2 CLR 568 (SC), (2019) 2 WLC(SC)CVL 656, (2019) 3 HINDULR 24, (2019) 3 ICC 890, (2019) 3 RECCIVR 874, (2019) 4 CIVILCOURTC 210, (2019) 4 CIVLJ 392, (2019) 5 ANDHLD 188, (2019) 9 SCALE 812, (2020) 138 ALL LR 253, (2020) 1 ALL RENTCAS 263, (2020) 205 ALLINDCAS 223, AIR 2020 SC (CIV) 653

Author: Hemant Gupta

Bench: Hemant Gupta, L. Nageswara Rao

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5823 OF 2019
(ARISING OUT OF SLP (CIVIL) NO. 19096 OF 2017)

KANTA YADAV .....APPELLANT(S)

VERSUS

OM PRAKASH YADAV & ORS. .....RESPONDENT(S)

JUDGMENT

HEMANT GUPTA, J.

Leave granted.

2) Challenge in the present appeal is to an order passed by the Division Bench of Delhi High Court on February 13, 2017 whereby an intra court appeal against the order dated March 14, 2016 passed by the learned Single Bench was accepted. The learned Single Bench allowed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 holding that the suit for declaration and permanent injunction is not maintainable in view of Section 213 of the Indian Succession Act, 19251.

1 for short, ‘Act’

3) The brief facts leading to the present appeal are that one Zorawar Singh was owner of certain immoveable property in New Delhi. He executed a Will dated June 16, 1985 and codicil dated October 21, 1995 bequeathing a self-acquired property in favour of both the parties. Zorawar Singh died on January 4, 1986. Two suits came to be filed; one by the present respondents bearing CS (OS) No. 3310 of 2012 claiming declaration and permanent injunction in respect of the Will and codicil executed by Zorawar Singh and also will dated June 18, 2009 executed by Smt. Ram Pyari, wife of Zorawar Singh; and the other suit filed by the present appellant bearing CS (OS) No. 430 of 2012 claiming natural succession.

4) The Division Bench of the High Court held that the bar under Section 213 of the Act is not applicable and, therefore, set aside the order of rejection of plaint and directed that both the suits be clubbed and common evidence be led together.

5) The short question to be examined is whether it is necessary to seek probate or letter of administration in respect of a Will in terms of Section 213 of the Act in the National Capital Region of Delhi.

6) It is undisputed that the present National Capital Region Delhi was part of erstwhile State of Punjab prior to November 1, 1966. The argument raised by the respondents is that Section 57 of the Act is applicable where the properties and parties are situated in the territories of Bengal, Madras or Bombay, therefore, it is not necessary to seek probate or letter of administration in respect of properties or the persons when they are not located in the States of Bengal, Madras or Bombay. To examine the said question, certain statutory provisions are relevant to quote hereunder:

> "Section 213 - Right as executor or legatee when established.-(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.
>
> (2) This section shall not apply in the case of Wills made by Muhammadans, and shall only apply-
>
> (i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and
>
> (ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962.) where such Wills are made within the local limits of the [ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immovable property situated within those limits.] Section 57 – Application of certain provisions of Part to a class of Wills made by Hindus, etc. - The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply-

(a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits; and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):

Provided that marriage shall not revoke any such Will or codicil."

7) The said provisions have been examined and come up for consideration time and again before the Punjab and Haryana High Court and Delhi High Court. In Ram Chand v. Sardara Singh & Ors.2, the Punjab High Court held as under:

"4. ...The clear effect of these provisions appears to be that the provisions of section 213(1) requiring probate do not apply to wills made outside Bengal and the local original jurisdictional limits of the High Courts at Madras and Bombay except where such wills relate to immovable property situated within those territories.

5. There remains to be considered the decision of Shamsher Bahadur, J., in the case mentioned above, which is apparently based on the decision of a Full Bench in Ganshamdoss Narayandoss v. Gulab Bi Bai, [I.L.R. 50 Mad. 927.] . I find, however, on perusing this judgment that what has been held is that a defendant resisting a claim made by the plaintiff as heir-at-law cannot rely in defence on a will executed in his favour at Madras in respect of property situate in Madras, when the will is not probated and no letters of administration with the will annexed have been granted. This is clearly in accordance with the provisions of sections 213 and 57(a) of the Act, and the only point on which the matter was referred to the Full Bench was whether a will could be set up in defence in a suit without probate.

2 AIR 1962 P&H 382

6. As I have said the clear reading of the provisions of the Act leave no doubt whatever that no probate is necessary in order to set up a claim regarding property either movable or immovable on the basis of a will executed in the Punjab and not relating to property situated in the territories mentioned in section 57(a). I accordingly accept the revision petition and set aside the order of the lower Court requiring the petitioner to obtain probate. The matter may now be disposed of by the lower Court, where the parties have been directed to appear on the 4th of December, 1961. The parties will bear their own costs in this Court."

8) The said view was affirmed by the Division Bench of Punjab and Haryana High Court in M/s. Behari Lal Ram Charan v. Karam Chand Sahni & Ors.3:

> "3. From a bare perusal of these two sections it is apparent that the objection of defendant No. 1 on the preliminary issue raised by him in the trial Court was without any substance. Clause (a) of section 57 read with sub-section (2) of section 213, it would appear, applies to those cases where the property and parties are situate in the territories of Bengal, Madras and Bombay, while clause (b) applies to those cases where the parties are not residing in those territories but the property involved is situate within those territories. Clause (c) of section 57, however, is not relevant for the present purposes. Therefore, where both the person and property of any Hindu, Budhist, Sikh or Jaina, are outside the territories mentioned above, the rigour of section 213, sub-section (1), is not attracted. Reference was made by the learned referring Judge to a decision of the Supreme Court in Mrs. Hem Nolini v. Mrs. Isolve Sarojbashini Bose, AIR 1962 Supreme Court 1471, but the parties in that case were Christians (to whom it is agreed section 57 does not apply) and their Lordships only considered the implications of sub-section (1) of section 213 of the Act and not of sub-section (2) of that section read with section 57 clauses (a) and (b). The learned Single Judge probably felt the difficulty because 3 1968 AIR (Punjab) 108 of the view taken by Shamsher Bahadur, J. In Kesar Singh and others v. Tej Kaur, 1961 P.L.R. 473, but that judgment was considered by Falshaw, J. (as he then was) in Ram Chand v. Sardara Singh, 1962 P.L.R. 265, who differed from the view taken by Shamsher Bahadur, J., in the above-mentioned case, holding that no probate was necessary in order to set up a claim regarding property either movable or immovable on the basis of a will executed in the Punjab and a succession certificate could be granted on the ground of a will without obtaining probate. While referring to the decision of Shamsher Bahadur, J., in Kesar Singh's case, Falshaw, J., observed that the view taken by Shamsher Bahadur, J., was apparently based on the decision of a Full Bench in Ganshomdass v. Gulab Bi Rai, ILR 50 Madras 927 where it was held that a defendant resisting a claim made by the plaintiff as heir-at-law could not rely in defence on a will executed in his favour at Madras in respect of property situate in Madras, when the will was not probated and no letters of administration with the will annexed had been granted. The Madras case was clearly in accordance with section 213 read with section 57 of the Act. We agree with the view taken by Falshaw, J., in Ram Chand's case. A similar view was expressed by Jai Lal, J., in Sohan Singh v. Bhag Singh, AIR 1934 Lahore 599, and by me in C.R. 340-D/1965 (Radhe Lal v. Ladli Parshad) decided on 24th August, 1965. Even a cursory glance at sections 213 and 57 of the Act leaves no room for doubt that the view taken by Shamsher Bahadur, J., in the case mentioned above was erroneous.

It appears that the case of Sohan Singh v. Bhag Singh (supra), referred to above, was not brought to his notice."

9) In Mrs. Winifred Nora Theophilus v. Mr. Lila Deane & Ors.4, a Single Bench of Delhi High Court held as under:

> "11. On interpretation of Section 213 read with Section 57 (a) and (b), the Courts have opined that where the will is made by Hindu, Buddhist, Sikh and Jaina and were subject to the Lt. Governor of Bengal or within the local limits of ordinary, original civil jurisdiction of High Courts of Judicature at Madras and 4 AIR 2002 Delhi 6 Bombay or even made outside but relating to immovable property within the aforesaid territories that embargo contained in Section 213 shall apply. From this it stands concluded that if will is made by Hindu, Buddhist, Sikh or Jaina outside Bengal, Madras or Bombay then embargo contained in Section 213 shall not apply. This is what the various judgments cited by the learned counsel for the defendants decide.

Therefore, there is no problem in arriving at the conclusion that if the will is made in Delhi relating to immovable property in Delhi by Hindu, Buddhist, Sikh or Jaina, no probate is required."

10) The Division Bench of Delhi High Court in Shri Rajan Suri & Anr.

v. The State & Anr.5 referred to the Division Bench judgment in Behari Lal's case and certain other Single Bench judgments of Delhi High Court to conclude as under:

> "33. The result of the aforesaid is that complete line of judgment referred by the learned counsel for the petitioner in support of the submission that probate is mandatory would have no application to the facts of the present case and thus findings arrived at in the collateral proceedings in the suit to which the petitioners were parties would bind the petitioners."

> 11) Learned counsel for the respondents also referred to the Supreme Court judgment in Clarence Pais & Ors. v. Union of India6 wherein, validity of Section 213 of the Act was challenged as unconstitutional and discriminatory against the Christians. This Court held as under:

> "6. ... A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(a) and (b), sub-section (2) of 5 AIR 2006 Delhi 48 6 (2001) 4 SCC 325 Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories.

The result is that the contention put forth on behalf of the petitioners that Section 213(1) of the Act is applicable only to Christians and not to any other religion is not correct."

12) The statutory provisions are clear that the Act is applicable to Wills and codicils made by any Hindu, Buddhist, Sikh or Jain, who were subject to the jurisdiction of the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay - {clause (a) of Section 57 of the Act}. Secondly, it is applicable to all Wills and codicils made outside those territories and limits so far as relates to immoveable property within the territories aforementioned - Clause (b) of Section 57. The clause (c) of Section 57 of the Act relates to the Wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which provisions are not applied by clauses (a) and (b). However, sub-section (2) of Section 213 of the Act applies only to Wills made by Hindu, Buddhist, Sikh or Jain where such Wills are of the classes specified in clauses (a) or (b) of Section 57. Thus, clause (c) is not applicable in view of Section 213(2) of the Act.

13) In view thereof, the Wills and codicils in respect of the persons who are subject to the Lieutenant-Governor of Bengal or who are within the local limits of ordinary original civil jurisdiction of High Court of Madras or Bombay and in respect of the immoveable properties situated in the above three areas. Such is the view taken in the number of judgments referred to above in the States of Punjab and Haryana as well as in Delhi as also by this Court in Clarence Pais.

14) In view of the above, we do not find any error in the judgment passed by the Division Bench of the Delhi High Court. Consequently, the appeal is dismissed.

.....J. (L. NAGESWARA RAO) .....J. (HEMANT GUPTA) NEW DELHI;

JULY 24, 2019.