

CASE NO.:
Appeal (civil) 1257 of 1999

PETITIONER:
Commissioner, Jalandhar Division & Others

RESPONDENT:
Mohan Krishan Abrol & Another

DATE OF JUDGMENT: 02/04/2004

BENCH:
CJI.V.N. KHARE & S.H. KAPADIA.

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL No.1265 OF 1999.

Mohan Krishan Abrol

Versus

State of Punjab

KAPADIA, J.

Both the above civil appeals raise common question of law and fact and, therefore, they are disposed of by this common judgment. For the sake of convenience, facts in Civil Appeal No.1257 of 1999 are mentioned hereinbelow.

Late Sardarni Chanan Kaur widow of Sardar Triloki Nath Singh (deceased) was the owner of a kothi and lands admeasuring 90 kanals bearing khasra No.4971 situated at Circular Road, Kapurthala (hereinafter referred to for the sake of brevity as "the said property"). It is not in dispute that late Sardarni Chanan Kaur was the owner of the said property and that she had executed a registered will on 15.9.1962, whereby she bequeathed the said property to the State Government through Randhir Jagjit Hospital, Kapurthala (hereinafter referred to for short as "the said Hospital"). The bequeath in respect of the said property was made vide paragraph 2 of the will which is reproduced herein below:\027

"I bequeath my bungalow situated at Circular Road, Kapurthala, known as kothi "S. Tirloki Nath Singh" to Randhir Jagjit Hospital, Kapurthala, absolutely and for ever for the use of as a ward of the Hospital patients as and this estate should not be used or utilized for any other purpose than described above. Area of the property is 90 kanals, Khewat No.1/180, Khasra No.4971, consists of 4 servant quarters, 2 garages, 2 kothries, langarkhana with verandah, 2 kothries, one dalan, 2 kothries, maweshikhana, 6 kothries, 2 dalans, pacca well with iron persion well fitted, garden orchard, cultivated lands surmounted by on North, Government landed property south road, East

Garden Diwan Ahudhya Dass \026 West, landed property will not be sold or mortgaged or disposed off in any other way. This property will remain in the name of my late husband S. Triloki Nath Singh, for the maintenance and improvement of this institution. The income derived from this garden, landed properties etc. should be used on the up-keep and maintenance and improvement."

In the will aforesaid, the testatrix appointed three executors. On the basis of the above will, mutation no.3597 was made on 20.4.1970 in favour of the said Hospital. On 15.6.1977, the said Hospital moved an application before the Collector, Kapurthala under sections 4 and 5 of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as "the 1973 Act") for eviction of Mohan Krishan Abrol, respondent no.1 herein, who was alleged to be an unauthorized occupant of the said property. In the meantime, the said respondent instituted a title suit on 2.11.1977 stating that the testatrix had executed a registered lease deed dated 7.6.1962 in his favour and he was the lessee in continuous possession and after the demise of the testatrix on 26.11.1962, he was a tenant in law and under her legal representatives. In the said suit, respondent no.1 alleged that the state government has no connection with the property in dispute as the will was not probated and had not been acted upon. In the said suit, respondent no.1 herein sought a declaration that the state government was not the owner of the said property. He also challenged the genuineness of the above will and prayed for perpetual injunction against the government from taking possession of the said property under the provisions of the 1973 Act. In the said suit, the government submitted that the proceedings for eviction of respondent no.1 from the property were pending before the competent authority under the 1973 Act and, therefore, the suit was barred under sections 10 and 15. It was also pleaded that respondent no.1 herein had no locus standi to challenge its title as the said respondent was a lessee under the lease which stood expired on 7.6.1972.

At this stage, it may be noted that on 25.10.1978, the competent authority found that the property had vested in the said Hospital; that the said property was a public premises under the 1973 Act; that the ownership of the property stood transferred to the Hospital under the will of Smt. Chanan Kaur; that the first respondent herein was a lessee under lease dated 7.6.1962; that the lease was for 10 years; and on expiry of the lease on 7.6.1972, respondent no.1 was a trespasser. The competent authority further found that the lease was not renewed. Accordingly, the impugned order of eviction was passed by the competent authority against respondent no.1 declaring him to be unauthorized occupant of the premises. Being aggrieved by the order of eviction, respondent no.1 preferred appeal to the Commissioner under section 9 of the 1973 Act. By judgment and order dated 8.5.1984, the appeal was dismissed.

During this period, the title suit instituted by respondent no.1 being suit no.124 of 1977 came to be decreed on 15.1.1979 by Senior Sub Judge, Kapurthala

who took the view that respondent no.1 was a lessee and he was entitled to maintain the said suit. The trial Court further held that on the death of testatrix on 26.11.1962, the said property vested in the executors and not in the State and, therefore, the proceedings under the 1973 Act were not maintainable. Being aggrieved, the government preferred Civil Appeal No.29 of 1979 before the lower appellate court which found that respondent no.1 had no locus standi to bring the title suit; that the State was a beneficiary under the will and on the death of the testatrix, the said property had vested in the State as a legatee to which respondent no.1 cannot raise any objection as he had no right to challenge the title of the legatee under the will. The lower appellate Court further found that the executors of the will had never objected to the vesting of the property in the State and the executors never came forward with any objection to such vesting even after the demise of the testatrix and, therefore, by their conduct, the executors had assented to the perfection of the title in the State. It was held that as between respondent no.1 herein and the appellant, no question of title was involved and the only question was whether respondent no.1 was in authorized possession of the property as claimed by him and since no question of title was involved, the Civil Court had no jurisdiction to decree the suit. Accordingly, the lower appellate Court dismissed the suit filed by respondent no.1 on 26.4.1983.

Aggrieved by the order of eviction passed under the 1973 Act and by the dismissal of the suit by the lower appellate Court, respondent no.1 herein approached the High Court by Civil Writ Petition No.2959 of 1984 and by Regular Second Appeal No.1263 of 1983 respectively. Both the proceedings were tagged together and by common impugned judgment, the High Court came to the conclusion that the said property did not vest in the said Hospital in terms of the clause 2 of the will under which the property vested in the executors who were required to maintain a ward in the above hospital from the income arising out of the garden and other landed properties of the testatrix. The High Court further found that the said Hospital was only a beneficiary under clause 2 of the will and since under section 211 of the Indian Succession Act, 1925 (hereinafter referred to as "the 1925 Act"), the property had vested in the executors, the eviction proceedings under the 1973 Act were not maintainable. However, in view of section 15 of the 1973 Act, the High Court held that the suit filed by respondent no.1 was not maintainable and consequently, the High Court dismissed the second appeal preferred by respondent no.1 herein while it allowed Civil Writ Petition No.2959 of 1984 filed by respondent no.1 and accordingly set aside the order of eviction passed under the 1973 Act. Aggrieved, both sides have come by way of civil appeals to this Court.

Mr. H.M. Singh, learned counsel for the appellant submitted that the only question which arises for determination is whether the said property vested in the executors on the death of the testatrix and not as to whether the executors were required to obtain a probate. In this connection it was urged that under section 211, the property vests in the executors by virtue of the will and not by virtue of the probate. On the demise of the testatrix, the property vested in the executors. According to the learned advocate, the word 'vesting' in section 211 was only for the purposes

of representation and it did not refer to vesting of beneficial interest in the property in the executors. Learned counsel submitted that under the will, the said property was bequeathed to the hospital. It was the desire of the testatrix that the said property shall be used as a ward in the hospital in the name of her late husband. While interpreting the will, it was urged, that the Court must sit in the armchair of the testatrix and the said will has to be interpreted in the light of her desire expressed therein. It was urged that the High Court had erred in holding that the ownership of the demised premises did not vest in the said Hospital; that the said Hospital was only a beneficiary under the will and, therefore, the said demised property did not constitute public premises under section 2(e) of the 1973 Act. It was urged that a bare reading of clause 2 of the will shows that the said property was bequeathed absolutely in favour of the said Hospital so that a ward could be set up in that hospital in the name of the deceased husband of the testatrix. It was next contended that even assuming for the sake of argument that the above finding of the High Court was correct, learned counsel submitted that the words "public premises" used in section 2(e) of the 1973 Act have been defined to mean inter alia as the premises belonging to the State Government. It was urged that the words 'belonging to' should be read in the widest possible sense and if so read they would include beneficial interest in the property in favour of the State Government and consequently, the property in dispute would fall in the category of public premises under the 1973 Act. Learned advocate for the appellant next urged that on 7.6.1962, the deceased Smt. Chanan Kaur had let out the said property on lease to respondent No.1 herein for ten years and the lease expired on 7.6.1972; that there was no renewal of the said lease and, therefore, respondent No.1 was in wrongful and illegal use and occupation of the said property, in the nature of unauthorized occupation after 7.6.1972, and, therefore, the eviction proceedings were maintainable under the 1973 Act. It was urged that the High Court was right in dismissing the suit filed by respondent No.1 in view of section 15 of the 1973 Act.

Per contra, Shri Ranjit Kumar, learned senior counsel appearing on behalf of respondent No. 1 submitted that clause 2 of the said will refers to bequest in favour of the said Hospital only for the specific use of the property as a ward and, therefore, the said Hospital was only a beneficiary under the will and not the owner and, therefore, the eviction proceedings under the 1973 Act were not maintainable. It was contended that a bare perusal of clause 2 of the will shows that a limited right in the property was bequeathed to the hospital. In this connection, it was further contended that the last sentence of clause 2 of the will indicates that the said property was to be maintained out of the income from the landed property of the testatrix, which circumstance shows that the hospital was only a beneficiary. It was urged that mutation of the property in the name of the appellant in the revenue records did not confer title on it. Alternatively, it was submitted that the matter refers to complicated questions of title and, therefore, the matter was not triable under the provisions of the 1973 Act. Learned counsel for respondent No.1 next contended that in the present case the lease was executed on 7.6.1962 by the constituted Attorney of Smt. Chanan Kaur (testatrix) for ten years and under the lease respondent No.1 could make constructions, and

pursuant thereto, respondent No.1 had constructed a factory. Under clause 8, it was urged that the right of renewal was given to respondent No.1. In this connection, it was urged that correspondence had taken place in 1972 between the parties and by letter dated 22nd May 1972, respondent No.1 had sought renewal of the lease. It was contended that request for renewal was made both to the executors as well as to the appellant to which neither replied. It was submitted that in any event, clause 8 provided for automatic renewal and, therefore, there was no need to make an application for renewal. In the circumstances, it was urged that respondent no.1 cannot be said to be in unauthorized occupation of the property. It was contended that respondent No. 1 had leasehold rights in the property prior to the will and even prior to the demise of the testatrix and consequently, the suit filed by respondent No.1 in the civil court was maintainable and the lower appellate court had erred in holding that respondent No.1 had no locus standi to challenge the title of the State. It was submitted that the said property was subject to lease executed before the will coupled with automatic renewal and, therefore, the possession of the property on expiry of the lease cannot be termed as unauthorized under the 1973 Act. In the circumstances, the High Court was right in coming to the conclusion that respondent No.1 cannot be said to be in unauthorized occupation of the premises.

Lastly, it was urged on behalf of respondent No.1 that under section 211 of the 1925 Act, the will which is not probated cannot confer title on the legatee. He submitted that in the present case, the executors had applied for probate which was refused. It was urged that under section 211 read with section 213 of the 1925 Act, the said property had vested in the executors and not in the State and in the absence of probate/letters of administration, the State had no right to administer the estate of the deceased testatrix, including right of action under the 1973 Act.

The first point which arises for determination is whether the said Hospital was the owner or the beneficiary in terms of clause 2 of the will? Clause 2 of the will unequivocally states that the testatrix bequeaths her bungalow to the said Hospital absolutely and forever. The very first sentence of clause 2 indicates that a complete bequest was made in favour of the said Hospital which was to operate for all times in future. Further clause 2 stipulates that the property was to be used as a ward of the hospital and for no other purpose. Section 87 of the 1925 Act stipulates that intention of the testator shall be effectuated as far as possible. In the matter of interpretation of wills, the Court has to look at the wishes of the testator indicated therein. In the present case, the testatrix wanted her bungalow to be bequeathed for all times to the government hospital and she wanted it to be used as a ward of the hospital to be named after her late husband. She further directed that the income derived from the surrounding garden and her landed properties should be used for maintenance and improvement so that in future the continuity of the said ward in the hospital is not adversely affected for want of funds. In our view, the High Court erred in holding that the said Hospital was a beneficiary and not the owner. In the circumstances, the said property constituted public premises under section 2(e) of the 1973 Act. It was however urged on behalf of respondent No. 1 that the said property did not vest in the appellant; that

under section 211 of the 1925 Act, it had vested in the executors who had applied for probate but which was refused by the testamentary court, and, therefore, the said property never vested in the appellant. We do not find any merit in this argument. Sections 211 and 213 of 1925 Act read as follows:\027

"Section 211.\027Character and property of executor or administration as such.\027(1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

Section 213.\027 Right as executor or legatee when established.\027(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 Mohammadans or Indian Christians and shall only apply\027

(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."

A bare reading of section 211 shows that the property vests in the executors by virtue of the will and not by virtue of the probate. Will gives property to the executor; the grant of probate is only a method by which the law provides for establishing the will. In the case of Kulwanta Bewa v. Karamchand reported in [AIR 1938 Calcutta 714] it has been held that section 211 provides that the estate of

the deceased vests in the executor; that the vesting is not of the beneficial interest in the property; but only for the purposes of representation. In the case of *Meyappa Chetty v. Supramanian Chetty* reported in [43 Indian Appeals 113], the Privy Council has held that an executor derives his title from the will and not from probate. The personal property of the testator (including right of action) vests in the executor(s) on the death of the testator. For purposes of deciding this matter, section 336 of the Act is also relevant as it provides for assent of the executor to the legacy after the death of the testator. It provides that an executor gets divested of his interest as an executor from the death of the testator when he assents to a specific legacy. Section 213 acts as a bar to the establishment of rights under the will by an executor or a legatee unless probate or letters of administration have been obtained. This bar comes into play only when a right as an executor or a legatee under will is sought to be established. However an un-probated will can be admitted in evidence for collateral purposes in any other proceedings apart from a probate proceedings. (See: *Cherichi v. Ittiamam* reported in [AIR 2001 Kerala 184]). Therefore, on the demise of the testatrix, the said property vested in the executors. The question which arises for determination on the facts of this case is whether the executors assented to the vesting of the said property in the Hospital in terms of section 336 of the 1925 Act. In this case, the facts show that the executors never objected to the vesting of the said property in the hospital. Three executors were appointed under the will. They never objected to the legacy. Several meetings of the executors had taken place both before the death of the testatrix on 26th November 1962 and even thereafter for updating the accounts and to obtain probate and at no stage they objected to the vesting of the property in the Hospital. Although application for probate was made, the State was not a party respondent. In fact, mutation was made in favour of the hospital as far back as 2nd April 1970 to which the executors never objected. In the circumstances, the executors had assented to the legacy in favour of the Hospital. Looking to the terms of clause 2 of the will, we hold that the hospital was not a beneficiary, but a full owner of the property; that on the demise of the testatrix the property vested in the executors who assented by their conduct to the legacy of the demised premises in the hospital and consequently, the eviction proceedings were maintainable under the 1973 Act.

The only question, therefore, which remains to be decided is whether the competent authority was right in coming to the conclusion that respondent No.1 was in unauthorized occupation of the property as defined under section 3(b) and, therefore, liable to be evicted under section 5 of the 1973 Act?

As stated above, during the lifetime of Smt. Chanan Kaur, a lease was executed in favour of respondent No.1 on 7.6.1962 for ten years. Clause 8 provides for renewal and not for extension of lease. Hence, respondent no.1 was required to apply for renewal which he never did. The so-called application dated 22.5.1972 for renewal merely states that there was a lease deed dated 7.6.1962 and on its expiry, the lessee would continue. In this case, the intention of the testatrix under the will was to bequeath her bungalow to the hospital absolutely and free of all encumbrances and for all times. She wanted her bungalow

to be used as a ward in the government hospital. In the circumstances, we are of the view that on expiry of the lease, respondent No.1 was in wrongful and illegal use and occupation of the property in the nature of unauthorized occupation and, therefore, the competent authority was right in passing the impugned order of eviction under the 1973 Act.

Before concluding we may point out that during the pendency of proceedings before this Court, an intervention application was made on behalf of Smt. Reba Kapur (respondent no.2). That application was granted by the earlier order passed by this Court. Shri Rajiv Sharma, learned counsel submitted on behalf of respondent No.2 (intervener) that if the appellant herein succeeds, it may proceed against respondent No.2 under the 1973 Act. He contended that the property in question surrounding the bungalow is quite substantial, a portion whereof is in possession of respondent No.2. We do not wish to go into the arguments advanced on behalf of respondent No.2 as eviction order, if any, against respondent No.2 is not the subject matter of challenge before us. It is not even clear as to whether any such proceedings have been taken against respondent No.2. In the present case, we are only concerned with the order of eviction passed against respondent No.1 by the competent authority under the 1973 Act. Hence, we are confining our judgment to the facts of this case.

For the aforestated reasons, we hold that the High Court was right in dismissing Regular Second Appeal No.1263 of 1983 filed by respondent No.1. However, it had erred in allowing Civil Writ Petition No.2959 of 1984 filed by respondent no.1 and in setting aside the order of eviction under the 1973 Act. We accordingly set aside judgment under challenge and allow Civil Appeal No.1257 of 1999 filed by the State Government and dismiss Civil Appeal No.1265 of 1999 filed by respondent No.1. There shall be no order as to costs.