

CASE NO.:
Appeal (civil) 1520-1522 of 2004

PETITIONER:
GURSWAROOP JOSHI

RESPONDENT:
BEENA SHARMA & ORS.

DATE OF JUDGMENT: 25/04/2006

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

A Will was executed on 3.1.1980 by one Harbans Lal Joshi. He passed away on 5.3.1981 leaving behind the following heirs and legal representatives:

I. Smt. Pushpawati Joshi, widow.
II. Late Shri Basant Kumar Joshi (deceased son of Shri H.L. Joshi) through:

- (1) Smt. Chandrakala Joshi widow of Shri Basant Kumar Joshi.
- (2) Gunjan Joshi d/o Shri Basant Kumar Joshi.
- (3) Siddarth Joshi s/o Shri Basant Kumar Joshi.

III. Dr. Sahib Swarup Joshi s/o Shri H.L. Joshi.

IV. Shri Gurswarup Joshi s/o Shri H.L. Joshi.

V. Shri Prem Swarup Joshi s/o Shri H.L. Joshi.

VI. Smt. Beena Sharma d/o Shri H.L. Joshi.

VII. Smt. Shanti Devi d/o Shri H.L. Joshi

In 1984, the 1st respondent herein filed an application purported to be under Section 276 of the Indian Succession Act, 1925 ('the Act', for short) for grant of probate in respect of the said Will. Objections were filed thereagainst. By an order dated 28.2.1996, the learned Additional District Judge, Delhi held that the said Will executed by the afore-mentioned Harbans Lal Joshi, was valid in law and had been executed by him in sound disposing mind. The prayer for grant of probate as made by the 1st respondent was, therefore, allowed. The widow of Shri Harbans Lal Joshi, Smt. Pushpawati Joshi, respondent No.2 \026 Smt. Chandra Kala Joshi, widow of deceased B.K. Joshi s/o Harbans Lal Joshi and respondent No.7\026Dr. Sahib Swarup Joshi preferred an appeal against the said judgment and order dated 28.2.1996 before the Delhi High Court. It was registered as F.A.O.No.248 of 1996. Smt. Pushpawati, the widow of Late Harbans Lal Joshi died on 12.1.1999. The appellant herein filed an application for her transposition and/or substitution as an appellant in place of Late Pushpawati. The said application has been rejected by the Registrar of the Delhi High Court. One of the appellants in the said appeal, namely, Dr. Sahib Swarup Joshi moved an application for withdrawal from the said appeal and his name was deleted from the array of the appellants and was transposed to the category of a respondent.

It is not in dispute that certain stipulations made in the said Will are vague. The parties found it difficult to work out the said Will.

A learned Single Judge of the Delhi High Court noticed the said fact in an order dated 6.2.2003.

It is also not in dispute that various Interlocutory Applications were moved before the learned Judge hearing the matter.

By the afore-mentioned order dated 6.2.2003, the learned Judge opined:

"Since there is an unusual clause in the Will couched in a slightly vague words, arguments on the point that what shall be the effect of such a clause in a Will, which cannot be implemented on account of unwillingness of a person in a reasonable time, who has just accepted an onerous will to raise the construction. It may be part and parcel of the Will.

Appellant No.4 Sahib Swaroop Joshi shall remain present in person for it appears that he is responsible for causing the problem by not constructing his portion. This court may be inclined to stuck off his defence in case he fails to appear to answer specific question about the date when he intends to construct his portion. If he is not ready to construct, then the counsel for all parties shall take this aspect into consideration while making written submissions."

Interim orders were also passed on 13.3.2003 and 20.3.2003. In the latter order it was directed:

"The appellant and other respondents being bound by the terms of the will are restrained from raising any objection to the sanctioning of the plan by respondent No.5 which will be submitted by the respondent No.5 in terms of the order dated 13th March, 2003 and in terms of the will of the deceased Shri Harbans Lal Joshi. The other parties to the will excepting Shri Gurswaroop Joshi, respondent No.2, can also apply to get the plan sanctioned for raising construction, in respect of their portion. Shri Gurswaroop Joshi failed to pay the amount in terms of the will and not willing to pay now at the market rate to compensate his brothers etc. As such he cannot be permitted as consequences of non-payment have come into effect. However, the MCD is supposed to sanction plan in accordance with rules."

The contention of Ms. Sandhya Goswami, learned counsel appearing on behalf of the appellant is that by reason of interim orders, vested right of a party cannot be taken away. It was urged that having regard to the order dated 6.2.2003, as it was clearly opined that the terms of the Will was vague and this was void on the ground of uncertainty, the same could not have been directed to be enforced by reason of interim orders, particularly, when the appeal as against the order granting probate in respect of the Will is still pending.

The learned counsel appearing on behalf of respondent Nos.2, 3, 5 and 6 supported the contention of the appellant.

Mr. L.D. Adhlakha, the learned counsel appearing on behalf of the 1st

respondent, on the other hand, would submit that the appellant herein having accepted the genuineness of the Will in the Court of the Additional District Judge, now cannot turn round and question the validity thereof. It was urged that the appellant was neither an appellant, nor any order had been passed against him and, thus, this appeal should be dismissed.

It is not in dispute that the legality or otherwise of the judgment of learned Additional District Judge, directing grant of probate in respect of the Will dated 3.1.1980 executed by Late Shri Harbans Lal Joshi, is in question. The said appeal has been entertained by the High Court. It is, therefore, required to be disposed of on merit

The contents of the said Will are alleged to be vague. Whether the terms stipulated therein are capable of being implemented, would be a matter of construction of the Will at the hands of the High Court. The High Court, therefore, was first required to determine the validity or otherwise of the said Will. Sections 81 and 89 of the Indian Succession Act read thus:

"81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.-Where there is an ambiguity or deficiency on the face of a will, no extrinsic evidence as to the intentions of the testator shall be admitted.

xxx

xxx

xxx

89. Will or bequest void for uncertainty.- A will or bequest not expressive of any definite intention is void for uncertainty."

Thus, if the contents of the Will are found to be vague despite the genuineness thereof, the grant of probate in favour of the 1st respondent may, ultimately, be declined. It is in that view of the matter, the High Court must be held to be not justified in passing interim orders in mandatory form in terms of which not only the appeal preferred by the respondent Nos.2, 3, 5 and 6 herein would become infructuous, the parties would also be forced to give effect to the provisions of the said Will, although, they may have reservations in relation thereto. Grant of mandatory injunction on the aforementioned premise, in our opinion, therefore, suffers from manifest error. [See Union of India & Ors. vs. Modiluft Ltd. (2003) 6 SCC 65, Para 11 and Srikrishna & Ors. vs. Aniruddha Singh & Ors. (2005) 12 SCC 389.]

In any event, the order of the learned Additional District Judge would merge in the order of the Appellate court which may ultimately be passed and thus, it is necessary that before the stipulations made in the said Will are directed to be given effect to, the contentions raised by the appellant, as also the respondent Nos.2, 3, 5 and 6 should receive proper consideration by the High Court.

In Chandi Prasad & Ors. vs. Jagdish Prasad & Ors. (2004) 8 SCC 724, this Court held that when an Appellate court exercises its power and passes a judgment, the same would replace the judgment of the lower court and only its judgment would be treated as final.

For the foregoing reasons, the impugned orders cannot be sustained, which are, accordingly, set aside. However, having regard to the peculiar facts and circumstances of this case, we would request the High Court to consider the desirability of disposing of the appeal as expeditiously as possible and preferably within a period of two months from the date of communication of this order. The High Court, indisputably while disposing of the appeal, would take into account the effect of various interim orders passed at different stages.

The appeals are allowed with the afore-mentioned observations and

directions.

No costs.

JUDIS