

CASE NO.:
Appeal (civil) 4890 of 2007

PETITIONER:
Kanwarjit Singh Dhillon

RESPONDENT:
Hardyal Singh Dhillon and Ors.

DATE OF JUDGMENT: 12/10/2007

BENCH:
TARUN CHATTERJEE & DALVEER BHANDARI

JUDGMENT:
JUDGMENT

ORDER

1. Delay condoned.

2. Leave granted.

3. This appeal is directed against the judgment and final order dated 22nd of March, 2004 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Revision No.3861 of 2002 whereby an order dated 18th of January, 2000 of the learned Civil Judge, Jalandhar, dismissing a suit for declaration and permanent injunction of the appellant, was affirmed.

4. Originally, the suit properties stood in the name of Ishar Singh (paternal grandfather of the appellant) which was subsequently mutated in the name of his two sons, S.Hazara Singh and S.Kirpal Singh. Late S.Kirpal Singh was the father of the appellant. Late S.Kirpal Singh died leaving behind some properties, both movable and immovable comprising agricultural land measuring 48 Kanal 10 Marlas situated at Jalandhar, a residential house bearing No.148, Sector 27A, Chandigarh and two deposits of Rs.20,000/- and Rs.10,000/- respectively [hereinafter referred to as "the suit properties"]. According to the appellant, the suit properties left behind by late S.Kirpal Singh were their ancestral properties. After eight years of the death of late S.Kirpal Singh, the respondent No.1 propounded an unregistered Will left behind by late S.Kirpal Singh and applied for probate thereof in the High Court of Punjab and Haryana. As per the said Will executed by late S.Kirpal Singh, the suit properties, both movable and immovable, were bequeathed by late S.Kirpal Singh in favour of respondent No.1 herein. Only a right of residence was given in favour of the widow of late S.Kirpal Singh and his unmarried daughter. In the aforesaid probate proceeding, objections were, however, filed by the appellant alleging that the said Will was a forged and fabricated one. However, the probate was granted to the respondent No.1 by the High Court and thereafter, the matter came up before this Court which also affirmed the order of the High Court granting probate in respect of the Will executed by late S.Kirpal Singh. Subsequent to the grant of probate of the Will of late S.Kirpal Singh in respect of the suit properties more precisely on 9th of March, 1995, the appellant instituted a civil suit for declaration and injunction wherein the appellant sought a declaration to the effect that the suit properties were joint Hindu family properties.

5. In the suit filed at the instance of the appellant, the respondent No.1 raised a preliminary issue by filing an application saying that after the probate having been granted of the Will executed by late S.Kirpal Singh, the Civil Court had no jurisdiction to proceed with the suit for declaration of title and permanent injunction and accordingly the suit should be dismissed. The preliminary issue framed by the Civil Court is to the following effect :

"Whether this Court has jurisdiction in view of the probate granted by the Hon'ble Punjab & Haryana High Court vide order dated April 5, 1991, confirmed by the Divisional Bench of Punjab & Haryana High Court on 1st December, 1993 and confirmed by the Hon'ble Supreme Court of India on 2.7.1994."

6. By an order dated 18th of January, 2000, the learned Civil Judge, Jalandhar dismissed the suit on a finding that once the probate was granted by a competent probate court, and in view of the fact that in the suit the appellant had not challenged the probate proceeding, the Civil Court cannot have any jurisdiction to entertain the suit on the aforesaid ground and the suit was dismissed.

7. Feeling aggrieved, a revision petition was filed before the High Court and the High Court by the impugned judgment and order had also affirmed the order of the Civil Court holding that the suit was not maintainable after the grant of probate by the competent probate court. The present special leave petition has been filed against the aforesaid order of the High Court in respect of which leave has already been granted.

8. In our view, the High Court as well as the Civil Court have acted illegally and with material irregularity in the exercise of their jurisdiction in dismissing the suit on the aforesaid preliminary issue by holding that after the probate having been granted by the competent probate court and affirmed by this Court, the Civil Court had no jurisdiction to proceed with the suit.

9. It is true that probate of the Will executed by late S.Kirpal Singh has been granted by the competent probate court which relates to the suit properties. But we have to look into the allegations made in the plaint. The plaint clearly states that the civil suit was for a declaration to the effect that the suit properties were joint Hindu family properties of the HUF of which the appellant and his two brothers Hardyal Singh Dhillon and Harbans Singh Dhillon, mother Surjit Kaur and unmarried daughter Amarjit Kaur were the members. Consequential relief for permanent injunction was also sought restraining the respondent No.1 from alienating the suit properties, in any manner, whatsoever. Besides claiming that the suit properties were the joint family properties, it was also averred in the plaint that late S.Kirpal Singh was the Karta of the aforesaid HUF and by utilizing the income from their ancestral agricultural land had acquired various properties including the suit properties.

10. The High Court by the impugned order, relying on a decision of this Court in the case of Smt. Rukmani Devi and Ors. v. Narendra Lal Gupta, [1985] 1 SCC 144 affirmed the order of the civil court by holding that a probate granted by a competent probate court was conclusive of the validity of the Will of late S.Kirpal Singh until it was revoked and no evidence could be admitted to impeach the said Will except in a proceeding taken for revoking the probate. According to the High Court, a decision of the probate court would be a judgment in rem which would not only be binding on the parties to the probate proceeding but would be binding on the whole world. Upon the aforesaid finding, the High Court had affirmed the order of the civil court holding that the suit must be dismissed in view of the fact that the probate court had already granted probate in respect of the Will executed by late S.Kirpal Singh relating to the suit properties. We are not in a position to agree with the views expressed by the High Court in the impugned order nor are we in agreement with the order passed by the civil court. As noted herein earlier, the suit for declaration of title and injunction has been filed by the appellant inter alia on the allegations that the suit properties are joint family properties of the HUF of which the appellant and his two brothers Hardyal Singh Dhillon and Harbans Singh Dhillon, mother Surjit Kaur and unmarried daughter Amarjit Kaur are members. It has also been claimed by the appellant in the suit that by utilizing the income from the ancestral agricultural land, various

properties including the suit properties were acquired. Such being the allegations made in the plaint which can only be decided on trial after parties are permitted to adduce evidence in respect of their respective claims, it is difficult to hold that only because probate of the Will of late S.Kirpal Singh has been granted, the suit for title and injunction must be held to be not maintainable in law. It is well settled law that the functions of a probate court are to see that the Will executed by the testator was actually executed by him in a sound disposing state of mind without coercion or undue influence and the same was duly attested. It was, therefore, not competent for the probate court to determine whether late S.Kirpal Singh had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his Will. The probate court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the Will were joint ancestral properties or acquired properties of the testator.

11. In Chiranjilal Shrilal Goenka v. Jasjit Singh and Ors., [1993] 2 SCC 507, this Court while upholding the above views and following the earlier decisions of this Court as well as of other High Courts in India observed in paragraph 15 at page 515 which runs as under :-

"In Ishwardeo Narain Singh v. Smt. Kamta Devi this Court held that the court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate court. Therefore, the only issue in a probate proceeding relates to the genuineness and due execution of the will and the court itself is under duty to determine it and peruse the original will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus, it does no more than establish the factum of the will and the legal character of the executor. Probate court does not decide any question of title or of the existence of the property itself".
(Emphasis supplied).

That being the position and in view of the nature of allegations made in the plaint, we do not find any reason as to how the High Court as well as the civil court could come to a conclusion that after the probate of the Will executed by late S.Kirpal Singh was granted, the suit for declaration for title and injunction on the above allegation could not be said to be maintainable in law. The High Court also while holding that the suit was not maintainable, in view of the probate granted of the Will of late S.Kirpal Singh had relied on a decision of this Court, as noted herein earlier, in the case of Rukmani Devi (supra). We are not in a position to agree with the High Court that this decision could at all be applicable in the facts and circumstances of the present case. A plain reading of this decision would not show that after the grant of probate by a competent court, the suit for title and permanent injunction cannot be said to be maintainable in law. What this Court held in that decision is that once a probate is granted by a competent court, it would become conclusive of the validity of the Will itself, but, that cannot be decisive whether the probate court would also decide the title of the testator in the suit properties which, in our view, can only be decided by the civil court on evidence. It is true that the probate of the Will granted by the competent probate court would be admitted into evidence that may be taken into consideration by the civil court while deciding the suit for title but

grant of probate cannot be decisive for declaration of title and injunction whether at all the testator had any title to the suit properties or not.

12. Such being the position, we, therefore, hold that the High Court as well as the trial court had acted illegally in dismissing the suit of the appellant on the aforesaid sole ground after framing the preliminary issue. For the reasons aforesaid, the judgments of the High Court as well as of the trial court are set aside. The appeal is allowed to the extent indicated above. The trial court is now directed to decide the suit after framing issues, including the issue of maintainability of the suit after the probate being granted, if not already framed in the meantime and dispose of the same within a year from the date of production of a copy of this order before the trial court.

13. Before parting with this judgment, we may express one more aspect. As noted herein earlier, a suit was dismissed by the trial court which was affirmed by the High Court in revision after framing preliminary issue which we have already noted herein earlier. A question may arise whether the preliminary issue could be raised without deciding the other issues and the suit could be dismissed in view of Order XIV, Rule 2 of the Code of Civil Procedure. In view of our decision in this matter, we do not feel it proper to dwell on this aspect which is kept open for future consideration.

14. For the aforesaid reasons, the impugned order is set aside. The appeal is allowed. There will be no order as to costs.