

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 22, May 2013

+ **TEST.CAS. 54/2010, I.As. No.9942/2010 (u/O 39 R-1 & 2 CPC), 6191/2011 (u/S 151 CPC), 6192/2011 (u/S 151 CPC), 15409/2011 (of R-2u/O 39 R-4 CPC) & 19685/2011 (of R-2 u/S 151 CPC)**

SHUBHRA SINGHAL

..... Petitioner

Through: Ms. Geeta Luthra, Sr. Adv. with Mr. Harish Malik and Mr. Ashlay Cherian, Advocates.

Versus

STATE & ORS

..... Respondents

Through: Mr. Kaustobh Sinha, Adv. for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This petition under Section 278 of the Indian Succession Act, 1925 seeks Letters of Administration to the properties of late Sh. Vinayak Kumar Marwah who died on 29th December, 2009. The petitioner and the respondent No.3 Ms. Shweta Bhatnagar are the daughters of the deceased from his first marriage. The respondent No.2 Mrs. Madhubala Marwah is the second wife of the deceased.

2. Notice of the petition was issued (citation was not ordered) on 10th August, 2010 and vide the very next order dated 12th August, 2010 on the appearance of the counsel for the respondents, the parties were referred to mediation and also directed to maintain *status quo* in respect of the

properties mentioned in Schedule A to the petition. Mediation has been unsuccessful. Respondent No.3 who is the sister of the petitioner, has not opposed the petition.

3. Objections have been filed by the respondent No.2 to the effect:

(i) that the petitioner and the respondent No.3 being the daughters of the deceased from the first marriage of the deceased had during the lifetime of the deceased severed their worldly relations with the deceased and have thus lost their rights of inheritance and stand disinherited from the estate of their deceased father;

(ii) that the petition is bad for non-impleadment of another member of the family namely Ms. Divya Marwah, being the daughter of the respondent No.2 from an earlier marriage and whom the deceased treated as his own daughter, and who is entitled to a share in his estate and who is described in all records as the daughter of the deceased;

(iii) that the petitioner and the respondent No.3 had filed a suit against the deceased in the year 1993 in respect of the house standing in the name of their mother and which suit came to be settled and decreed on the basis of a Family Settlement reached between the petitioner and the respondent No.3 on the one hand and the deceased on the other hand;

(iv) that serious disputes and differences between the petitioner and the respondent No.3 on the one hand and the respondent No.2 on the other hand require judicial determination in a suit for partition and this petition seeking Letters of Administration is not maintainable;

(v) that the petitioner and the respondent No.3 are settled in their respective matrimonial homes and have unlawfully taken over the valuable estate and business being carried on by the deceased and are not entitled to Letters of Administration for this reason also.

4. The petitioner has filed rejoinder to the aforesaid objections of the respondent No.2 controverting the contents thereof; it is denied that Ms. Divya Marwah is a legal heir of the deceased or has any share in the estate of the deceased; it is pleaded that the petitioner, respondent No.2 and respondent No.3 each have 1/3rd share in the estate.

5. On 8th May, 2013, besides this petition Execution Petition No.125/2010 filed by the petitioner and the respondent No.3 seeking execution of the consent decree in the suit earlier filed by the petitioner and the respondent No.3 against the deceased as well as CCP(O) No.29/2011 in this Testamentary Case were also listed and which were disposed of. It was noticed on that date that more than three rounds of mediation attempted had failed. Attempt at reconciliation was made on that date also but no settlement could be arrived at. Finding the relationship between the parties to be acrimonious and contentious, it was enquired from the counsel for the petitioner on that date as to how the remedy of Letters of Administration is the appropriate remedy and it was *prima facie* observed that a suit for partition would be a more appropriate remedy as Letters of Administration could not be granted to one heir who is inimical to others.

6. The Supreme Court in *Illachi Devi (by LRs) Vs. Jain Society, Protection of Orphans India* (2003) 8 SCC 413 held that the object behind

granting ample discretion to the Court under Section 218(2) in the matter of grant of Letters of Administration in the matter of intestacy is that the grantee is responsible to the Court and is required to carry out such directions faithfully, diligently and effectively; that the administrator would avoid the occurrence of personal considerations in the matter of administration and would perform various duties and functions with all efficiency, integrity and honesty; that the administrator is entrusted to act in a fiduciary capacity.

7. It was felt during the hearing on 8th May, 2013 that the petitioner who does not see eye to eye with the respondent no.2 cannot be expected to administer the estate in which the respondent no.2 admittedly has a share without animosity towards the respondent no.2 and without personal considerations swaying her actions as an administrator and thus is not a fit person to whom Letters of Administration should be granted. As far back as in *Maung Ba Han Vs. Maung Tun Yin* MANU/ RA/ 0169/ 1934 it was held that it is incumbent upon the Court to before granting administration of estate to anyone, determine expeditiously the status and fitness of such person to administer the estate. Similarly, the Division Bench of the Calcutta High Court in *Annapurna Kumar Vs. Subodh Chandra Kumar* AIR 1970 Cal 433 held that the Court should immediately take action under Section 298.

8. The counsel for the petitioner on that date had sought time to consider. The matter was accordingly adjourned to 21st May, 2013. On 21st May, 2013, the counsel for the petitioner did not appear and sent a request for adjournment. The matter was accordingly adjourned to today. Today

also the counsel for the petitioner did not appear when the matter was called out and sent a request for passover which was denied as the request for passover was found to be an attempt to derail the hearing which had commenced on 8th May, 2013 and when queries were raised from the counsel for the petitioner. However, subsequently the senior counsel for the petitioner has appeared and has been heard. However, she is not aware of the queries raised as recorded in the order dated 8th May, 2013 and has merely invited attention to Section 295 of the Indian Succession Act, 1925 providing for the procedure in a contentious case as that of a regular suit and has referred to *Lachman Singh Vs. Kirpa Singh* AIR 1987 SC 1616 and *Noel Dominic Pereira Vs. Mrs. Pamela Ethel Kuhn* AIR 2011 Bombay 27 on the aspect of Ms. Divya Marwah having no share in the estate of the deceased.

9. The only relief which can be provided in the present proceedings, even if the same were to be tried as a suit, would be the relief of grant of Letters of Administration of the estate. Though, Section 218 of the Succession Act provides for grant of Administration of the estate in the event of intestacy to any person who according to the rules for the distribution of the estate applicable in the case of such deceased would be entitled to the whole or any part of such deceased's estate but Section 298 commencing with a non-obstante clause vests discretion in the Court to make an order refusing any such grant, of course for reasons to be recorded in writing.

10. From the proceedings before the Court on 8th May, 2013, it had appeared that no purpose would be served by keeping these proceedings

pending, trying it as a contentious suit and deciding whether Letters of Administration should be granted to the petitioner as sought or not when the factum of acrimonious and contentious relations between the parties for the reason whereof the question whether the petitioner is a suitable person or not to administer the estate has arisen, is already evident from the record.

11. That brings me to the nature of the estate qua which administration is sought. The said estate, according to the petitioner, comprises of the following immovable properties:

- (a) Ground Floor of House No.C-36A, Kalkaji, New Delhi;
- (b) Property No.1597 admeasuring 250 sq. yds. in Sector 28, Faridabad, Haryana;
- (c) Property in Uttranchal:
 - (1) Property at Dehradun, Chandrauti Village, P.O.-Sinola, Dehradun admeasuring 1200 sq. yds.;
 - (2) Khasra No.200, Gangol, Panditwadi, P.O. Ghangoda, Dehradun admeasuring 1000 sq. yds.;
 - (3) Property at Haridwar of Doon Valley Borewells of which the deceased was a proprietor at plot No.79, Sector-II, Sidcul, Haridwar admeasuring 450 sq. yds.;
 - (4) Property admeasuring 1250 sq. ft. in Dwarka Vihar Colony, Sidcul Highway Road, Haridwar;

and the following movable properties:

- (i) Current Account with Syndicate Bank, Nehru Place, New Delhi in the name of Technika Engineering;
- (ii) Saving Account with Syndicate Bank, Nehru Place, New Delhi;
- (iii) Locker with Syndicate Bank, Nehru Place, New Delhi;
- (iv) Fixed deposit in Syndicate Bank;
- (v) Current Account with Syndicate Bank, Haridwar, Uttrakhand;
- (vi) Current Account with ICICI Bank, Rani Modh, Haridwar, Uttrakhand;
- (vii) Current Account in the name of Technika Engineering with Syndicate Bank, Dehradun, Uttrakhand;
- (viii) Three cars in the name of the deceased;
- (ix) LIC Policies and PPF account in the name of the deceased;
- (x) Factory, Assets, Truck and Rural Electricity Bonds of Rs.12.3 lakhs.

12. The respondent No.2 in her objections, with respect to the aforesaid list of assets, has stated:

- (A) that the deceased, besides the Ground Floor of C-36A, Kalkaji, New Delhi also has rights above the second floor of the property;
- (B) that property No.1597, Section 28, Faridabad was jointly owned by the respondent No.2 and the deceased;
- (C) that the property at Chandrauti Village, Dehradun is also jointly owned by the respondent No.2 with the deceased;

- (D) that the respondent No.2 has no knowledge of the property at Ghangoda, Dehradun;
- (E) that the petitioner and the respondent No.3 have forcibly taken over the property of Doon Valley Borewells at Sidcul, Haridwar;
- (F) has admitted to the property in Dwarka Vihar Colony, Haridwar being in the sole name of the deceased;
- (G) that the balance in the current account in the name of Technika Engineering with Syndicate Bank, Nehru Place is Rs.96,920/- and in the savings bank account with the same Bank is Rs.20,670/-;
- (H) that the contents of the locker which was in the sole name of the deceased are not known;
- (I) that the fixed deposits in Syndicate Bank, Nehru Place are not in the knowledge of the respondent No.2;
- (J) that the respondent No.2 was the nominee in the current account with Syndicate Bank, Haridwar and has already received the balance amount in the current account;
- (K) that the balance in the current account with ICICI Bank, Haridwar is Rs.2,57,902/-;
- (L) that the respondent No.2 has no knowledge of the current account in the name of Technika Engineering with Syndicate Bank, Dehradun;

(M) that of the three cars, one was under finance from HDFC Bank, New Delhi and the same and another car are in the use of the respondent No.2 and the third car is in repair at Haridwar;

(N) that similar information with respect to the policies and the Rural Electricity Bonds has been given;

(O) with respect to the factories and truck, it is stated that the same have been taken over by the petitioner;

It is further the stand of the respondent No.2 that none of the assets is in the need of any administration.

13. The petitioner as aforesaid has failed to answer the query raised as to how the petitioner can be said to be an appropriate person fit for grant of Letters of Administration. Rather, as pleaded by the respondent No.2 also, the remedy of a partition suit appears to be a more appropriate remedy and in which all disputes arising between the parties can be adjudicated.

14. The grant of a Letter of Administration requires the grantee to whom the grant is made to collect the estate and to distribute the same amongst the rightful claimants. In the facts of the present case where relationship is bitter to the extent that attempts at mediations by the best Mediator of this Court have failed and the parties are unwilling to see eye to eye on any matter, the petitioner or for that matter even the respondent No.2 cannot be expected to as Administrator fairly distribute the estate between all the rightful claimants. Issues have arisen even as to shares in the estate which comprises of immovable properties. I have for this reason wondered as to

why the Court time should be taken first in deciding this petition when ultimately partition is the only remedy.

15. The senior counsel for the petitioner, of course to somehow or the other keep the matter alive, states that administration may be given jointly to the petitioner, the respondents No.2 and respondent No. 3. I have however enquired from her as to what they will then do, whether they will be able to divide the estate between themselves mutually and amicably. Though the senior counsel for the petitioner again seeks mediation, the counsel for the respondent No.2 states that no purpose would be served and it is impossible for the parties to mutually amongst themselves divide the estate.

16. The extent of the acrimony between the parties is evident from the fact that even after possession of the first floor of the property at Kalkaji New Delhi being delivered to the petitioner and the respondent No.3 in pursuance to the consent decree in an earlier suit filed by the petitioner and the respondent No.3 against the deceased, directions were sought from the Court about various matters relating to the use by the parties of the said property and which were in the order dated 8th May, 2013 in Execution Petition No.125/2010 found to be beyond the scope of execution. In this state of affairs, the Administrator, whosoever, even if appointed, cannot be expected to administer the estate.

17. It is settled principle of law that the Court will not allow its time and resources to be taken by a proceeding which is to ultimately abort. (See *Liverpool & London S.P. & I Asson. Ltd. Vs. M.V. Sea Success I* (2004) 9 SCC 512 and *ITC Ltd. Vs. Debts Recovery Appellate Tribunal* (1998) 2

SCC 76). I do not see any reason as to why the petitioner is not interested in filing a suit for partition instead of flogging this proceeding, which will not serve any purpose for either of the parties. In a partition suit, directions against Banks with whom the deceased may have accounts, regarding release of the amount, can always be issued. The scope of an Administration suit clearly is to collect the assets of the deceased to pay off the debts and other charges and to find out what is the residue of the estate available for distribution amongst the heirs of the deceased. The petitioner in the present case has not explained as to what estate of the deceased has to be collected and from whom and what administration thereof is required. Rather the *lis* to be adjudicated between the parties is of partition of the estate. A suit for partition is distinct from an administration suit. Though administration of the estate may ultimately after accounts are taken also entail partition but where it is found that there is no need for administration and what is in effect sought is partition only, the Court would be entitled in exercise of discretion under Section 298 supra to refuse the grant of Letters of Administration and to relegate the parties to the remedy of partition.

18. I therefore, do not find the petitioner entitled to the relief of grant of Letters of Administration and dismiss the petition.

No costs.

MAY 22, 2013
bs..

RAJIV SAHAI ENDLAW, J