

PETITIONER:
MRS. NALINI NAVIN BHAGWATI & ORS.

Vs.

RESPONDENT:
MR. CHANDRAVADAN M. MEHTA

DATE OF JUDGMENT: 11/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

These appeals by special leave arise from the judgment of the Gujarat High Court dated August 14, 1995 made in Civil Revision Application Nos. 1142 and 1148 of 1995 and the order dated July 18, 1995 made in Civil Application Nos. 2825 & 2829 of 1995 in CRA Nos. 1142 & 1148 of 1995.

The admitted facts are that one Manvantra Mehta owned Plot No. 13 in Krishna Cooperative Housing Society at Ahmedabad and also an open plot No. 14 in the said society. He died on 16.1.1995 leaving behind his widow Kamlaben and five children, namely, Narendra, Chandravadan (respondents herein) and Nalini, Chandrakalaben and Vasantben (petitioners herein). In other words, he left behind him three daughters and two sons. Plot No. 13 was in the name of Narendra Mehta who died on August 8, 1971. But his wife was not known. Kamlaben also died on September 16, 1984. The respondents filed C.M. Application No. 123 of 1985 in the Civil Court at Ahmedabad and obtained probate to the will left by Kamlaben, their mother. The probate was granted on January 16, 1987. The appellants on coming to know of the said probate filed an application to revoke the probate. The Civil Judge, City Civil Court, Ahmedabad was prayed to convert the application into a regular suit. It was rejected by the trial Court. On revision, the High Court by order dated July 18, 1995 held that there was proper explanation for the delay in filing the application for revocation of the probate but directed to treat the application as a suit filed under Section 295 of the Indian Succession Act, 1925 (for short the 'Act'). Feeling aggrieved by the latter direction, these appeals have come to be filed.

Shri Harish Salve, learned senior counsel appearing for the appellants, contended that the application for revocation cannot be treated to a suit filed under Section 295 of the Act. That would apply only in a case where probate was sought for and there was contentious issues involved in that behalf. Therefore, it would be treated as a suit and the propounder who seeks probate or letter of administration will be treated as a plaintiff and the person

opposing the claim as defendant and the application would be set out as a suit for trial under the provisions of CPC. But application for revocation is required to be considered on the grounds set out under Section 263 of the Act. When the person who seeks revocation of the probate or letter of administration is required to be dealt with as an application but not as a suit. The District Judge, depending upon the given fact-situation would dispose it of either summarily or on full-dress enquiry, on recording the evidence of witness as a suit. But in no circumstances, it would be treated as a suit. Shri H.K. Puri, learned counsel for the respondents, contended that Part IX of the Act itself gives indication as to the manner in which the proceedings could be dealt with at different stages. Chapter IV of Part IX clearly indicates that when an application is filed for probate it should be dealt with as suit and for revocation of a probate similarly to be treated as a suit and would be considered in accordance with the procedure provided under the CPC. The applicant who seeks revocation of probate would be treated as a plaintiff and the person who opposes the revocation as defendant. Therefore, the High Court was right in directing to treat the application for revocation as a suit and to proceed with the trial on that basis.

Having considered the respective contentions, the question that arises for consideration is whether the application for revocation of the probate would be treated as a suit under Section 295 of the Act? The said section reads as under:

"In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as maybe, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant."

In other words, when probate or letter of administration was sought, on the basis of a will and there was a contentious issue in that behalf, the District Judge had to set it out in the form of a regular suit and the provisions of CPC would be applied in trying it as a suit. The propounder of the will for probate or letter of administration would be a plaintiff and the person who opposes it shall be the defendant.

But when the grant of probate or letter of administration is sought to be revoked, it is not clear to what nomenclature would be ascribed to it and what procedure would be adopted for its disposal. Take for instance a situation when the suit is decreed ex parte. Order IX Rule 13 provides for making of an application to set aside the decree on proof of certain grounds ex parte decree gets set aside. Similarly when the suit was dismissed for default, under Order IX Rule 9 an application would be filed and on proof of the circumstances for absence, the order would be set aside and suit would get restored. Similarly, when probate or letter of administration is granted and it is sought to be revoked, Section 263 provides for the grounds on the basis of which it would be revoked. When the grounds are sought to be proved, the question is: whether such an application would be treated to be a suit? We are of the

considered view that an application to revoke probate or letter of administration would be treated as miscellaneous application and may be disposed of on the fact situation in an appropriate case either summarily or after recording evidence. The application to revoke the probate or letter of administration thus may be disposed of by the District Judge either summarily or in a given situation where it requires proof of the facts by adduction of evidence by the parties by recording such evidence as is adduced by the parties. The burden will be on the applicant to prove the facts to revoke the probate or letter of administration and the respondent who obtained probate or letter of administration has to disprove the contentions of the applicant. In that situation, based upon the given facts situation, it will be for the Court to dispose it of either summarily or after giving opportunity to both the parties to adduce evidence and consideration thereof. Under these circumstances, it is not necessary that the application for revocation of the probate or letter of administration would be treated as a suit as contemplated under Section 295 of the Act. If the contention of Shri Puri merits acceptance, then any proceedings under the application to revoke the probate or letter of administration should be treated as a suit: the applicant cannot prove the will and at the same time cannot contend that the will was not validly executed. Therefore, it would be self contradictory to adopt such a procedure. Accordingly, we are of the view that the procedure required under Section 295 need not be adopted for disposal of the application filed under Section 263 for revocation of the probate or the letter of administration. It would be treated as miscellaneous application and disposed of as indicated earlier according to the given fact situation. In fact, the Bombay High Court came to consider the question, not directly on this issue but in an analogous situation in *Narberham Jivaram Purohit vs. Jevallabh Harijivan*, [Vol.XXXV(1933) BLR 998]. Therein, the learned single Judge had held that the proper procedure for revocation of probate granted by the High Court is by way of a petition filed in the testamentary and intestate jurisdiction of the Court, and not by way of suit in its Ordinary Original Civil Jurisdiction. In other words, the Court indicated that it need not be treated as a suit on the original side of the Court but it could be disposed of as an application independent of the suit. Thus we hold that the High Court was clearly in error in reaching the conclusion that it should be treated as a suit and disposed of under Section 295.

The appeals are accordingly allowed. The trial Court is directed to dispose of the matter as expeditiously as possible. No costs.