HIGH COURT OF GUJARAT

HIMANSHU SANATKUMAR MAJMUDAR & 1

Versus

Date of Decision: 12 November 2013

Citation: 2013 LawSuit(Guj) 1692

Hon'ble Judges: G R Udhwani

Case Type: First Appeal

Case No: 1621 of 2013

Subject: Civil, Family

Acts Referred:
Indian Succession Act, 1925 Sec 299, Sec 222, Sec 234, Sec 75, Sec 213

Final Decision: Appeal allowed

Advocates: R C Jani & Associate

G. R. Udhwani, J.

[1] This appeal arises under Section 299 of the Indian Succession Act, 1925 (for short "Act") impugning an order dated 26.02.2013 passed by the 5th Additional Senior Civil Judge, Ahmedabad (Rural), Mirzapur in Probate Application No.89 of 2011 at Exh:9 rejecting the said application on various grounds.

[2] The appellants being the heirs of one Kalavati and Sanatkumar Majmudar are beneficiaries of two separate Wills dated 20.11.1996 executed by Kalavati and Sanatkumar for movable and immovable properties. By testament made by Kalavati, Sanatkumar was the sole beneficiary and by testament made by Sanatkumar, Kalavati was the sole beneficiary. However, in both the Wills, a provision to declare the appellants herein as heir on non-existence of the beneficiary aforesaid on the date of the testators, as heir has been in each of the Will. Following executors were also appointed.

By Kalavati;

(1) Rajnikant Rasiklal Nagri

(2) Sanatkumar Surendralal Majmudar

(3) Narendrakumar Chhaganbhai Karecha

By Sanatkumar;

(1) Rajnikant Rasiklal Nagri

(2) Kalavati Sanatkumar Majmudar

(3) Narendrakumar Chhaganbhai Karecha

[3] Applications under Section 213 of the Act being Probate Application Nos.89 of 2011 and 90 of 2011 praying for issuance of probate/letters of administration in respect of both the separate Wills were made.

[4] The Trial Court rejected the applications for want of supporting evidence as to title of the movable and immovable properties of the deceased; for want of evidence of the attesting witnesses also for want of joinder of the executors of the Will as also for want of valuation of immovable property and other evidences in relation to movable properties. The Trial Court also found variation in the signature in the affidavit that was made by one R.V. Shah. It was also observed that the factum of the appointment of the administrator was suppressed in the affidavit.

[5] The learned counsel for the appellants while conceding to the fact that the Trial Court can inquire into the title of the testators in view of Section 75 of the Act, contended that no appropriate opportunity was given to the appellants to produce necessary documents or other evidences. He also contended that alternative prayer for letter of administration was not considered by the Trial Court.

[6] Having considered the arguments advanced by the learned counsel for the appellants and the scheme of the Act particularly Part-6 thereof, it is evident that before issuance of probate or letter of administration under the said part, various questions in relation to the legatee as well as legacy arising in the proceedings instituted under Section 213 of the Act are required to be answered. It cannot be disputed that before issuance of probate/letters of administration, prima facie evidence establishing execution of the Will as also ownership of the properties bequeathed must be brought on record of the Court. However, at the same time, unless such facts are challenged by the person interested to do so, the Court is not required to enter into the detailed evidence as if determining issues in a Civil Suit. In that sense, the inquiry under Part-6 is a summary enquiry.

[7] It is true that none of the appellants were appointed as Executor of the Will and therefore, in view of Section 222 of the Act barring an application under Section 213 of the Act except by executors, it was not legally permissible for the Trial Court to have issued probate. However, the Trial Court appears to have lost sight of the fact that in view of Section 234 of the Act, a letter of administration can always be granted to the beneficiaries on satisfaction of the ingredients of Section 234 of the Act. Even in such a case, it is permissible for the Court to prima facie ascertain the execution of the Will and title of the testators to various legacies sought to be bequeathed, by way of summary enquiry.

[8] It is also true that the appellants failed to produce necessary evidence to establish the facts as aforesaid but in light of Section 75 of the Act, it was obligatory on the part of the Trial Court to have given an opportunity to the appellants to bring on record title of the testators to various legacies.

[9] Under the circumstances, a case for remand is made out by the appellants.

[10] For the reasons aforesaid, the impugned order is quashed and set aside and the matter is remanded to the Trial Court to enable the appellants to cure various infirmities noted by the Trial Court in the impugned order as also to enable the appellants to produce on record of the Trial Court the prima facie evidence as regards testator's ownership of various legacies sought to be bequeathed. Accordingly ordered.

The appeal thus succeeds to the above extent. There shall be no order as to costs.