

NOTES ON CASE LAW ON WILLS & SUCCESSION LAWS

1. *Prakash Soni v/s Deepak Kumar & Anr. reported in (2017) 9 Supreme Court Cases 332 (Paras 10, 11 & 12)*

- Execution of Will – Proof – Nature of – Held, legitimate suspicions should be completely removed before document is accepted as last Will of Testator – Further held, presence of such suspicious circumstances naturally tends to make initial onus very heavy and unless it is satisfactorily discharged, court would be reluctant to treat document as last Will of Testator
- Thus, since suspicious circumstances relate to genuineness of signatures of testator as well as condition of testator's mind and dispositions in will being unfair, judgment of High Court restoring judgment of civil court in favour of Respondents liable to be set aside – Appellant husband as successor of deceased wife entitled to receive all her retiral benefits – Succession Act, 1925 – S. 372 – Service Law – Pension – Succession and Inheritance to Pension Rights.
- Since the suspicious circumstances relate to the genuineness of the signatures of the Testator, as well as the condition of the Testator's mind and the dispositions made in the Will being unfair, the judgment of the High Court restoring the judgment of the Civil Court is liable to be set aside.

2. Caveatable Interest:

Yash Vardhan Mall v/s Tejash Doshi reported in 2017 SCC Online SC 1356 (Paras 5 & 6)

- Even if the Executor is not a legatee under the Will, his obligation is to obtain a probate of the Will and to administer the estate in accordance with the terms of the Will.

3. Execution of the Will has to be proved in accordance with Section 68 of the Evidence Act & Succession Act:

Ramesh Verma (Dead) through Legal Representatives v/s Lajesh Saxena (Dead) by Legal Representatives & Anr. reported in (2017) 1 Supreme Court Cases 257 (Paras 13 to 17)

- Family and Personal Laws – Will – Due execution of – Proof of – Manner and mode – Principles reiterated
- Held, propounder had to show that Will was signed by Testator, and that Testator was in sound and disposing state of mind at the relevant time
- That Testator had understood nature and effect of disposition and put his signature to document on his own free Will – Such document shall not be used as evidence unless one of attesting witness is called to prove execution.
- A Will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925.

4. Construction of Will:

K.S. Palaniswami v/s Hindu community in general & Citizens of Gobichettipalayam reported in (2017) 13 Supreme Court Cases 15

- General principles for construction/ interpretation of Will – Construction – Intention of Testator – to be ascertained from Will itself and clear words used therein without adding something to it or diluting clear meaning – Succession Act, 1925 Ss. 74, 75, 82 and 87

5. *Vatsala Srinivasan v/s Shyamala Raghunathan reported in (2016) 13 Supreme Court Cases 253 (Paras 6 to 9)*

- Upon death of executor, Respondent, the sole legatee, applying for grant of letter of administration and seeking an amendment to Plea and Petition in the present Suit – Appellant raising objection to the said prayer on the ground that on the death of the Executor, the entire proceedings abated – Trial Court rejecting the said objection and converting the proceedings in question into proceedings for grant of letter of administration.
- Affirming the law laid down by various High Courts on the subject concerned, held, impugned judgment passed by the Division Bench was proper – Hence, not liable to be interfered with – Proceedings for grant of letter of administration must continue in accordance with law.
- The function of the Executor is to execute the Will. The main purpose can be very well achieved by obtaining a letter of administration so that the property can be administered by the Administrator as per Section 232 of the Succession Act, 1925.

- An executor, in the capacity of an executor, has no personal interest in the estate of the deceased. The object of the executor in these proceedings is to get an adjudication not of any dispute in which he is personally interested but the object is to propound the will of the deceased for the benefit of those who take an interest in the will.

6. *Pravina Vikrant Ghotge v/s Vinayak Ramchandra Dindorikar reported in 2015(1) Mh.L.J. (Paras 12, 15 & 23)*

- Executor of Will – Status of Executor – “Vesting” of property of deceased in Executor is solely for the purpose of representation and for the purpose of its administration under Will
- Section 211 puts Executor into the position of a legal representative of deceased – Powers conferred upon him by Section 307 enable him to form a trust for execution of contents of Will (Para 12)
- Proceedings for probate / letters of administration with Will attached – When Executor of Will is surviving and is available for taking care of Will and its contents, no other party can be concerned with Will and impleaded as party to the proceedings (Para 23)

7. *Krishna Kumar Birla v/s Rajendra Singh Lodha & Ors. reported in (2008) 4 Supreme Court Cases 300*

- Held, once a Caveat is filed, it is for the Court to determine the question as to whether the Caveator has any caveatable interest or not. Furthermore, the interest claimed as caveatable interest must not be one which would have the effect of destroying the Testator’s estate – Any person claiming any interest adverse to the Testator or his estate cannot maintain any application before the Probate Court and his remedy would be elsewhere.
- Reiterated, jurisdiction of Probate Court is confined only to consider genuineness of the Will – A judgment rendered in Probate proceedings, though a Judgment in rem, would not be determinative of question of title – questions of title, existence of the property, construction of Will relating to right, title and interest of any person etc. are beyond jurisdiction of Probate Court – Remedy of person in respect of latter type of questions is to file a separate Suit or file application under S. 263 for revocation of Probate – Specific Relief Act, 1963 – S. 34 – Succession and Inheritance – Probate

8. Revocation of Probate granted earlier:

Manibhai Amaidas Patel & Anr. v/s Dayabhai Amaidas reported in (2005) 12 Supreme Court Cases 154 (Paras 8 to 10)

- Held, in application for Probate it is necessary to cite parties who otherwise have an interest in succession to estate of deceased – This naturally includes all heirs of deceased.
- Will concerned had been successfully disputed in other proceedings – hence Probate granted liable to be revoked – Will Notice – Public Notice in local newspaper – In sufficiency of, where matter could be dealt with directly.

9. On revocation of grant of Probate will not operate retrospectively & protect the intermediate acts of the Executor (S. 332):

Crystal Developers v/s Asha Lata Ghosh (Smt.) (Dead) through LRS. & Ors. WITH Archit Vanijya & Viniyog (P) Ltd. & Ors. v/s Asha Lata Ghosh (Smt.) (Dead) through LRS. & Ors. AND Archit Vanijya & Viniyog (P) Ltd. & Ors. v/s Arindam Ghosh & Ors. reported in (2005) 9 Supreme Court Cases 375 (Paras 32, 29, 30 & 28)

- Revocation of grant of Probate – operates prospectively – revocation on ground of fraud – Held, would not render all intermediate dealings of Executor void ab initio and as such, would not obliterate bona fide transactions entered into during the continuance of the Probate – but if the intermediate dealings are incompatible with the administration of the estate the same would not be protected – Evidence Act, 1872, S. 41
- Revocation will not operate retrospectively so as to obliterate all intermediate acts of the Executor performed during the existence of the Probate. However, if the intermediate acts are incompatible with the administration of the estate, they will not be protected.
- Section 332 makes it clear that revocation of the grant of the Probate shall operate prospectively and not retrospectively.
- However, acts which are in consonance with the Testator's intention and which are compatible with the administration of the estate are protected.

10. *Vasudev Daulatram Sadarangani v/s Sajni Prem Lalwani reported in 1983 SCC Online Bom 54 : AIR 1983 Bom 268 : (1984) 1 Bom CR 211: (1983) 85 Bom LR 113 (Para 14)*

- Being a continuous right, it can be exercised at any time after the death of the deceased, as long as the right to do so exists. The right to apply may therefore accrue not necessarily within 3 years from the date of the deceased's death but when it becomes necessary to apply, which may be any time after the death of the deceased, be it after several years. Of course, it need hardly be emphasised that delay in making the application must rightly give cause for suspicion and greater the delay the stronger would be the suspicion.
- Once execution and attestation of the Will are proved, the suspicion of delay in making the application no longer operates. (*Mahindra v. Mahaluxmi Bank, AIR 1945 PC 105*).

11. *Danamma vs. Amar : decree date : 01-02-2018 : Section 6 of Hindu Succession Act, 1956 (as amended by Act, 2005)*

- Coparcenary property – Effect of amendment.
- Upon birth of a daughter, she is a coparcener in her own right in the same manner as son. Same rights and liabilities in coparcener properties given to daughter as she would have if it had been a son. (Paras 20 to 23).
- Factum of birth creates coparcenary. Sons and daughters of coparcener become coparcener by virtue of birth. Devolution of property however is later stage. Right to seek severance of status (Para 24).

12. *Mathew Omen vs. Suseela Mathew – (2006) 1SCC 519*

- Genuineness of a Will can't be disbelieved merely because it was not immediately sent for Probate.
- Further, omission on the part of the beneficiary to apply for probate or for mutation of the property in his name soon after the testator's death, held is not a reason to dislodge the Will.

13. *Anil Kak vs. Sharada Raje – AIR 2008 SC 2195*

- The testator's intention is to be collected from consideration of whole Will and not from a part of it. The Will has to be read as a whole and endeavour should be made to give effect to each part of it. Only when one part cannot be given effect to having regard to another part, the principle of purposive construction or general principles of construction of deeds may be applied. If a part is invalid, the entire document need not be invalidated. Section 87 of the Indian Succession Act. In construing a Will, no doubt all possible contingencies are required to be taken into consideration. Even if a part is invalid, the entire document need not be invalidated, only if it forms a severable part.

14. *Bharpur Singh vs. Shamsheer Singh – (2009) 3 SCC 687*

- Whether the presumption of 30 years old is applicable to a Will?
- A presumption regarding documents 30 years old does not apply to a Will. A Will has to be proved in terms of Section 63(c) of Indian Succession Act.

15. *Balaji Nath Chaudhary vs. Dilip Kumar – (2001) 9 SCC 316.*

- Registered Will – Challenge on the ground of its execution by mentally unsound testator. No evidence to establish the testator a lunatic. Hence, validity of Will could not be assailed – Section 61 of Succession Act.