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REPORTABLE

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. OF 2026
(@ Special Leave Petition (C) No. 20055 of 2022)

S. LEOREX SEBASTIAN & ANR. ... APPELLANTS

versus

SAROJINI & ORS. ... RESPONDENTS

J U D G M E N T

VIPUL M. PANCHOLI, J.

1. Leave granted.

2. The present appeal is preferred by the appellants, challenging the final impugned judgment and order dated 26.04.2022 passed by the High Court of Madras in C.R.P. (PD) No. 1823 of 2021, whereby the order of the learned Principal District Court, Coimbatore (hereinafter referred as "*the District Court*"), revoking grant of probate of Will dated 09.01.1976, was set aside, and restored the grant of probate

on the ground that the testamentary jurisdiction of the Court is limited to pronouncing upon the genuineness of the execution of a Will and does not extend to determining the title of the property dealt with thereunder.

FACTUAL MATRIX

3. The brief facts of the case pleaded by the parties are as under:

3.1. The appellants claim ownership and possession of certain immovable properties (hereinafter referred as "*the suit properties*") situated in Mayilampatti Village, Palladam Taluk, Coimbatore District. The suit properties originally belonged to Eswaramurthy Gounder, who alongside his sons, Somasundaram and Ramasamy, sold the properties to C.R. Palanisamy Gounder and R. Manickavasagam via sale deed dated 21.02.1976, bearing Document No. 154 of 1976. Subsequently, appellant no. 1 and the grandfather of appellant no. 2, purchased the properties from the legal heirs of both C.R. Palanisamy Gounder and Manickavasagam, via sale deeds dated 31.12.1997, bearing Document No. 1483 of 1998 & Document No. 1485 of 1998, and claim to have enjoyed peaceful possession since.

3.2. Eswaramurthy Gounder, passed away on 05.05.1983. He was succeeded by five children, namely, E. Somasundaram, E. Ramasamy, Sarojini (present respondent no. 1), Vasanthamani (present respondent no. 2), and Savithri (present respondent no. 3). On 21.04.2009, approximately 26 years after the death of Eswaramurthy Gounder, his daughter (present respondent no. 1) instituted Probate Original Petition No. 72 of 2009 before the District Court against her two sisters (present respondent no. 2 and present respondent no. 3), claiming that her father executed an unregistered Will in her favour on 09.01.1976.

3.3. Furthermore, on 29.04.2009, present respondent no. 1 instituted O.S. No. 110 of 2009 before the learned District Munsif of Palladam, seeking a declaration of title of the suit properties by virtue of the Will dated 09.01.1976, alongside a relief of injunction. In response, in March 2011, the appellants instituted O.S. No. 247 of 2011 and O.S. No. 248 of 2011 before the learned Principal Subordinate Judge, Tirupur, seeking permanent injunction restraining the present respondents from interfering with the peaceful possession and enjoyment of the suit properties. On

17.06.2011, the High Court of Madras, *vide* order in C.R.P. Nos. 1726 and 1727 of 2011, directed that O.S. No. 110 of 2009 be transferred and tried jointly with the aforesaid suits before the Principal Subordinate Judge, Tirupur. Subsequently, the Principal Subordinate Judge, Tirupur *vide* orders dated 17.11.2011 and 30.09.2011, allowed the appellant's I.A. No. 425 of 2011 in O.S. No. 247 of 2011 and I.A. No. 427 of 2011 in O.S. No. 248 of 2011 respectively, thereby granting temporary injunction in favour of the appellants.

3.4. In the meantime, the District Court, *vide* order dated 26.11.2009, granted probate of the Will dated 09.01.1976 in P.O.P. No. 72 of 2009 in favour of present respondent no. 1. When the appellants came to know about the grant of probate, the appellants filed I.A. No. 612 of 2015 under Section 263 of the Indian Succession Act, 1925 (hereinafter referred as "*the ISA*") before the District Court, seeking revocation of the probate granted in P.O.P. No. 72 of 2009.

3.5. The District Court, upon framing of issues and examination of witnesses, allowed I.A. No. 612 of 2015 preferred by the appellants *vide* order dated 30.09.2020,

thereby revoking the probate of the Will dated 09.01.1976 granted in P.O.P. No. 72 of 2009. The District Court held that the Will dated 09.01.1976 had not been proved in accordance with Section 63 of the ISA, Section 3 of Transfer of Property Act, 1882 and Section 68 of the Indian Evidence Act, 1872 (hereinafter referred as "*the IEA*"), since no attesting witness to the Will had been examined. The present respondents also failed to provide any satisfactory explanation as to the custody of the Will for a period of nearly 26 years, spanning from the death of the testator i.e., Eswaramurthy Gounder on 05.05.1983 till its alleged discovery in March 2009. The Court noted that the present respondent's removal of the original Will from the Court's custody on 23.02.2010, and the failure to return the same, despite Court's order dated 14.03.2019 directing the return of the original Will, was in contravention of Section 294 of the ISA.

3.6. Furthermore, the Court noted that since the legal heirs of the deceased sons of Eswaramurthy Gounder, namely E. Somasundaram and E. Ramasamy, who were necessary and proper parties to the probate proceedings were not impleaded, the probate may be revoked as per Section 263 of

the ISA. The Court also found that the procedure under Section 283 of the ISA for inviting objections to the probate via public notice was not followed. Considering the same, the Court held that the present respondents colluded together with the intention of suppressing information regarding the Will from interested parties in the suit properties, and thereby cheated the Court to obtain the probate order dated 26.11.2009.

3.7. Aggrieved by the revocation of probate, the present respondents preferred a revision petition C.R.P. (PD) No. 1823 of 2021 before the High Court of Madras, under Article 227 of the Constitution of India.

3.8. Learned Single Judge *vide* impugned judgment and order dated 26.04.2022 allowed the revision petition filed by the respondents, while setting aside the District Court's revocation order and restoring the probate granted in favour of present respondent no. 1. The High Court held that testamentary jurisdiction is confined to adjudicating upon the genuineness of a Will and does not extend to pronouncing upon the title of the property. The High Court found that the District Court went beyond the scope of its jurisdiction in

presuming that the probate deals with suit properties, while clarifying that the mere grant of probate would not vest any title in the legatee and that in any dispute regarding title to the property, the same would have to be established separately.

3.9. Aggrieved by the impugned judgment, the appellants have preferred the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

4. Mr. Anand Padmanabhan, learned Senior Counsel and other learned counsels appearing on behalf of the appellants, challenged the impugned judgment, which restored the grant of probate by setting aside the order of revocation passed by the District Court, and made multifold submissions as under:

4.1. Learned Counsel contended that the District Court, upon a detailed consideration of the arguments advanced, the evidence on record and the law governing the proof of Will, rendered a well-reasoned judgment declaring that the Will dated 09.01.1976 had not been proved in accordance with law and consequently, revoked the probate granted in

favour of present respondent no. 1. It is asserted that the High Court erred in exercising its power under Article 227 of the Constitution of India, without addressing any of the specific findings or the grounds on which revocation was sought and granted.

4.2. Learned Counsel further submitted that the proof of a Will must ordinarily satisfy the test of the prudent mind, and that the propounder must establish due and valid execution of the Will. Reliance was placed on ***Shivakumar & Ors vs. Sharanabasappa and Ors, [2021 (11) SCC 277]***, wherein this Court held that where the Will is surrounded by suspicious circumstances, the propounder is bound to remove all legitimate suspicions before the document can be accepted as the last Will of the testator. It is asserted that under suspicious circumstances, the true question which arises for consideration before the Court is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator.

4.3. Learned Counsel further placed reliance on ***Jaswant Kaur v. Amrit Kaur, [(1977) 1 SCC 369]***, to contend that

the Will was not proved in accordance with Section 63 of the ISA and Section 68 of the IEA. It is contended that, as held rightly by the District Court, the validity of the Will was not established on the grounds of respondent no. 1's failure to examine any attesting witnesses to the Will or, in the alternative, to offer any adequate justification for their absence.

4.4. Learned Counsel submitted that the appellants are the absolute owners and in peaceful possession of the subject properties by virtue of sale deeds dated 31.12.1997. Learned Counsel highlighted the lack of any explanation as to in whose custody the Will remained until 21.04.2009, i.e., the date of filing of the suit. It is further submitted that the original Will was taken away from the Court's custody on 23.02.2010, thereby contravening Section 294 of the ISA, which mandates that after the Order of probate, the original will must be kept in the custody of the court along with other registered documents.

4.5. Learned Counsel invoked Section 263 of the ISA, contending that the grant of probate could be revoked if parties who should have been included were left out of the

proceedings. It was further claimed that the sons of the testator and the appellants, who own the property, were the necessary parties. It is asserted that the respondents colluded together with the intent of concealing the existence of the disputed Will from the above parties, thereby procuring the probate order dated 26.11.2009 by playing fraud upon the Court with the motive of creating a cloud over the title of the interested persons.

4.6. Learned Counsel, therefore, urged that the impugned judgment passed by the High Court is liable to be set aside, and the order of the District Court revoking the probate, be restored in the interest of justice.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

5. Mr. M. A. Chinnasamy, learned counsel appearing on behalf of the respondents, submitted that the impugned judgment passed by the High Court is legally valid and based on a correct appreciation of facts and law, warranting no interference under Article 136 of the Constitution of India. The following submissions were made on behalf of the respondents:

5.1. Learned Counsel submitted that the father of present respondent no. 1, Eswaramurthy Gounder, executed an unregistered Will dated 09.01.1976 in her favour and passed away on 05.05.1983. Thereafter, present respondent no. 1 filed P.O.P. No. 72 of 2009 before the District Court, for the grant of probate of the said Will, and the District Court, upon due consideration, granted probate in her favour *vide* order dated 26.11.2009. It is submitted that since the death of her father, present respondent no. 1 has been in possession and enjoyment of the suit properties.

5.2. Learned Counsel further submitted that after the grant of probate, present respondent no. 1 filed O.S. No. 110 of 2009 against the parties who were illegally interfering with her possession. It is highlighted that out of the 12 defendants in the said suit, 11 remained *ex parte*, and only one defendant came forward for settlement. Learned Counsel pointed out that the appellants, having filed O.S. Nos. 247 and 248 of 2011 before the Sub Court, Tirupur, seeking bare injunction restraining present respondent no. 1 from trespassing, made no prayer whatsoever for a declaration establishing their ownership or title over the suit properties.

It is asserted that the appellants, even in I.A. No. 612/2015, made no claim to ownership, and the suits filed by them remain pending before the Sub Court, Coimbatore, till date.

5.3. Learned Counsel contended that the application for revocation filed under Section 263 of the ISA was, on the face of it, misconceived and legally untenable, inasmuch as the claim raised by the appellants, namely, that they had purchased certain property from certain vendors, is essentially a mixed question of law and fact.

5.4. Learned Counsel further submitted that the appellants filed O.S. No. 247 of 2011 and No. 248 of 2011 for bare injunction only. In fact, the said suits were filed after a period of 02 years from the grant of probate in favour of the respondent no. 1 herein. At this stage, it is also submitted that even I.A. No. 612 of 2015 filed by the present appellants in P.O.P. No. 72 of 2009 is also barred by limitation.

5.5. Learned Counsel further urged that the procedure adopted for revocation of probate was unlawful and not in accordance with law. It is a well-settled principle of law that if a party wishes to contest or agitate the issue of a probate

grant, it must be done through a separate Testamentary Original Suit as mandated by the provisions of the ISA, rather than through a mere Interlocutory Application. Therefore, it is contended that the appellant's application for revocation of probate was entirely improper and illegal.

5.6. Learned Counsel submitted that the High Court was wholly correct in holding that the jurisdiction of a court in testamentary proceedings is confined exclusively to pronouncing upon the genuineness of the execution of the Will and does not extend to adjudicating upon questions of title to the property bequeathed thereunder.

5.7. Learned Counsel therefore urged that the High Court has not committed any error while passing the impugned judgment and order. Therefore, it is submitted that the present appeal is liable to be dismissed.

ANALYSIS AND REASONING

6. Having heard the learned counsel appearing for the parties and having gone through the provisions of law as well as the relevant judicial decisions on the point in question, the following facts would emerge from the record:

6.1. It is the case of the present respondent no. 1 (Sarojini) in the probate petition, bearing P.O.P. No. 72 of 2009, filed by her before the District Court, under Section 276 of the ISA, that the father of the respondent no. 1, namely, Eswaramurthy Gounder, had executed an unregistered Will dated 09.01.1976 in favour of the present respondent no. 1 (the petitioner of P.O.P. No. 72 of 2009). The said Will is attested by two witnesses. Father of the present respondent no. 1 died on 05.05.1983, and the executants never disclosed about his Will to anybody, including the petitioner (present respondent no. 1) and the other two respondents in the said petition (present respondents no. 2 and 3). The description of the properties was mentioned in the said petition, and prayer was made to grant probate of the unregistered Will dated 09.01.1976. It is relevant to observe that in the said probate proceedings, the present respondent no. 1 only impleaded present respondents no. 2 and 3 as party respondents. However, the other legal heirs, namely, two brothers of the present respondent no. 1/their legal heirs, were not impleaded as party respondents. It is also required to be observed that the said probate petition under Section 276 of

the ISA came to be filed on 21.04.2009 i.e., after a period of 33 years from the execution of the unregistered Will dated 09.01.1976.

6.2. It would further emerge that immediately thereafter i.e. on 29.04.2009 the present respondent no. 1 filed O.S. No. 110 of 2009 against 12 defendants including one C.R. Palanisamy Gounder and Manickavasagam. In paragraph 2 of the plaint, the present respondent no. 1 specifically averred that deceased Eswaramurthy Gounder had 03 daughters and 02 sons as his legal heirs. During his lifetime, deceased Eswaramurthy Gounder was with plaintiff (present respondent no. 1), who is the first daughter and he was looked after for about 10 years prior to his death. It is also stated that the father of present respondent no. 1, namely, Eswaramurthy Gounder, died on 05.05.1983. The present respondent no. 1, further stated in paragraph 3 of the plaint that she was under the impression that the properties belonging to her father were available to be partitioned in between his legal heirs till recently. But when she approached the other legal heirs for the purpose of effecting a partition, her brothers, namely, E. Somasundaram and E.

Ramasamy, were evasive and reluctant to take any steps for the legal demand of the plaintiff in this regard. It is the specific case of respondent no. 1 in the said plaint that her sister, namely, Savithri informed her that her father had executed an unregistered Will on 09.01.1976 in favour of the present respondent no. 1, and the said will was delivered to her on 29.03.2009. It is a specific contention in the plaint that she was told that the estate, including the suit property of the deceased Eswaramurthy Gounder was already encumbered in favour of third parties without the knowledge of the plaintiff (present respondent no. 1), immediately after the execution of the unregistered Will dated 09.01.1976, at the instance of his sons, who wrongfully received the entire proceedings of the sale. In paragraph 4 of the plaint, present respondent no. 1 herein has further averred that the deceased father of the plaintiff was not well at the time of alleged disposal of the properties and in fact, he was forcibly taken out of the plaintiff's house by his sons, who obtained his signature against his will to dispose his properties including the suit property for which the will was executed in favour of the plaintiff. In the said suit, the plaintiff (present

respondent no. 1) has prayed that a decree be passed declaring her as the absolute owner of the suit property, by setting aside the encumbrances created after the unregistered Will dated 09.01.1976 was executed in her favour. It was further prayed that permanent injunction be granted, restraining defendants from alienating the suit property.

6.3. On 26.11.2009, the District Court granted probate of the unregistered Will dated 09.01.1976 in P.O.P. No. 72 of 2009 in favour of the present respondent no. 1.

6.4. Thereafter, present appellant no. 1 filed O.S. No. 247 of 2011 against present respondent no. 1 in which he has specifically averred that the scheduled property in the suit filed by him as well as other properties originally belong to one C.R. Palanisamy Gounder and Manickavasagam. They purchased the suit property *vide* registered sale deed dated 21.02.1976 bearing Document No. 154/1976 and, thereafter, appellant no. 1 purchased the suit property *vide* registered sale deed dated 31.12.1997 bearing Document No. 1483/1998.

6.5. Appellant no. 2 filed a similar suit being O.S. No. 248 of 2011, wherein also appellant no. 2 has made a similar type of averment that suit property was purchased by C.R. Palanisamy Gounder and Manickavasagam by registered sale deed dated 21.02.1976. It is further stated that C.R. Palanisamy Gounder died, leaving his wife Saraswathi, two sons, namely the said Manickavasagam and C.P. Mahalingam, and two daughters, namely Maheswari and Radhamani. After the death of C.R. Palanisamy Gounder, all legal heirs jointly sold the suit property in favour of one Stephen Mariadass (paternal grandfather of appellant no. 2). It is also said that his paternal grandfather executed a Will dated 22.02.2003 in favour of appellant no. 2 and thereafter died on 22.06.2003. Appellant no. 2 has claimed right, title and interest in the suit property and therefore filed the suit against the respondent no. 1 herein.

6.6. At this stage, it is also relevant to observe that the appellants filed I.A. No. 612 of 2015 in P.O.P. No. 72 of 2009, under Section 263 of the ISA for revocation of the probate.

6.7. The District Court after considering the record as well as submissions by learned advocates appearing for the

parties, passed a detailed order dated 30.09.2020, by which I.A. No. 612 of 2015 filed by the appellants came to be allowed and the order of probate granted in favour of present respondent no. 1 was revoked.

6.8. Respondent no. 1 herein, therefore, being aggrieved and dissatisfied with the aforesaid order, preferred C.R.P. (PD) No. 1823 of 2021 before the High Court. The High Court, by the impugned order dated 26.04.2022, set aside the revocation order passed by the District Court.

6.9. Thus, from the aforesaid factual aspects culled out from the documents placed on record in the present appeal, it is revealed that, as per the case of respondent no. 1 herein, her father executed an unregistered Will dated 09.01.1976 in her favour. Further, the father of present respondent no. 1 executed a sale deed in favour of one C.R. Palanisamy Gounder and Manickavasagam on 21.02.1976 i.e. after the alleged execution of the Will in favour of present respondent no. 1. Thus, it can be said that the executant of the Will i.e. the father of the present respondent no. 1, after execution of the Will in favour of present respondent no. 1, himself has sold the property *vide* registered sale deed dated 21.02.1976.

Thereafter, appellant no. 1 purchased the suit property by registered sale deed dated 31.12.1997 from C.R. Palanisamy Gounder and Manickavasagam. Similarly, paternal grandfather of appellant no. 2 also purchased part of the suit property by registered sale deed dated 31.12.1997 from the aforesaid two persons. It is the specific case of present respondent no. 1 that her father died on 05.05.1983, i.e., much after the execution of the registered sale deed in favour of the concerned parties.

6.10. It is not in dispute that while filing P.O.P. No. 72 of 2009, the present respondent no. 1 had impleaded only her two sisters, namely, Vasanthamani (present respondent no. 2), and Savithri (present respondent no. 3) as party respondents. It is also not in dispute that respondent no. 1 herein did not implead her two brothers/their legal heirs as party respondents while filing the probate petition under Section 276 of the ISA on 21.04.2009. There is no reference with regards to her two brothers or execution of sale deeds, with regard to the properties mentioned in the said petition executed by her father. Further, surprisingly, after a period of 08 days only, the suit bearing O.S. No. 110 of 2009 was

filed by present respondent no. 1, wherein she has made averments in paragraphs 2, 3 and 4 of the plaint, as discussed hereinabove. Thus, from the pleadings of present respondent no. 1 in the aforesaid two proceedings, it is clear that she did not disclose the correct aspects and suppressed the relevant facts while filing the petition for the grant of probate on 21.04.2009.

7. Keeping in view the aforesaid factual aspects, the relevant provisions of the ISA are required to be referred to as under:

(i) Section 263 of the ISA provides as under:

"*263. Revocation or annulment for just cause.—*

The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.— Just cause shall be deemed to exist where—

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this

Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a later will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind."

(ii) Section 283 of the Act provides as under:

"*283. Powers of District Judge.—(1) In all cases the District Judge or District Delegate may, if he thinks proper.—*

(a) examine the petitioner in person, upon oath;

(b) require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be;

(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the courthouse, and also in the office of the Collector of the district

and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation."

8. Thus, from the provision contained in Section 263 of the ISA, it transpires that powers are given to the District Court to revoke or annul probate or letters of administration for just cause. Further, the explanation of the said provision stipulates that just cause shall be deemed to exist under certain circumstances mentioned in the said explanation. Clause (b) of the explanation specifically provides that the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case. Certain illustrations are also given in Section 263 of the ISA. Illustration (ii) provides that the grant was made without citing parties who ought to have been cited.

9. Similarly, Section 283 of the ISA gives certain powers to the District Court, which includes the issuance of citations calling upon all persons claiming to have any interest in the

estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

10. At this stage, we would also like to refer to relevant decisions on the subject. In the case of ***Basanti Devi v. Ravi Prakash Ram Prasad Jaiswal, (2008) 1 SCC 26***, this Court has observed in paragraphs 23 and 24 as under:

> "*23. In Chiranjilal Shrilal Goenka v. Jasjit Singh whereupon again Mr Bhatt relied upon, this Court held: (SCC pp. 519-20, para 20)*
>
> > *"20. On a conspectus of the above legal scenario we conclude that the Probate Court has been conferred with exclusive jurisdiction to grant probate of the will of the deceased annexed to the petition (suit); on grant or refusal thereof, it has to preserve the original will produced before it. The grant of probate is final subject to appeal, if any, or revocation if made in terms of the provisions of the Succession Act. It is a judgment in rem and conclusive and binds not only the parties but also the entire world. The award deprives the parties of statutory right of appeal provided under Section 299. Thus the necessary conclusion is that the Probate Court alone has exclusive jurisdiction and the civil court on original side or the arbitrator does not get jurisdiction, even if consented to by the parties, to adjudicate upon the proof or validity of the will propounded by the executrix, the applicant. It is already seen that the executrix was nominated expressly in the will and is a legal representative entitled to represent the estate of the deceased but the heirs cannot get any probate before the Probate Court. They are entitled only to resist the claim of the executrix of the execution and genuineness of the will. The grant of probate gives the executrix the right to represent the estate of the deceased, the subject-matter in other proceedings. We make it clear that our exposition of law is only for the purpose of finding the jurisdiction of the*

arbitrator and not an expression of opinion on merits in the probate suit."

24. It is now well settled that an application for grant of probate is a proceeding in rem. A probate when granted not only binds all the parties before the court but also binds all other persons in all proceedings arising out of the will or claims under or connected therewith. Being a judgment in rem, a person, who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him. We are, therefore, of the opinion that the application for revocation of the grant of probate should have been entertained."

11. From the aforesaid decisions, it can be said that the grant of probate is a judgment *in rem* and conclusive and binds not only the parties but also the entire world and therefore, a person who is aggrieved thereby and had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him.

12. In the case of ***Krishna Kumar Birla v. Rajendra Singh Lodha, (2008) 4 SCC 300***, this Court has observed in paragraphs 84 and 86 as under:

"*84. Section 283 of the 1925 Act confers a discretion upon the court to invite some persons to watch the proceedings. Who are they? They must have an interest in the estate of the deceased. Those who pray for joining the proceeding cannot do so despite saying that they had no interest in the estate of the deceased.*

They must be persons who have an interest in the estate left by the deceased. An interest may be a wide one but such an interest must not be one which would not (sic) have the effect of destroying the estate of the testator itself. Filing of a suit is contemplated inter alia in a case where a question relating to the succession of an estate arises.

……

86. The propositions of law which in our considered view may be applied in a case of this nature are:

(i) To sustain a caveat, a caveatable interest must be shown.

(ii) The test required to be applied is: Does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right?

(iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein."

13. In the case of ***G. Gopal vs. C. Bhaskar and Ors, 2008 (10) SCC 489***, this Court has observed in paragraph 5 as under:

"*5. The only question that was agitated before us by Mr Thiagarajan, learned counsel appearing for the appellant challenging the judgment of the High Court revoking the probate granted in respect of the will executed by the testator, was that the respondents having no caveatable interest in the estate of the deceased, the application for revocation filed by them could not be allowed. We are unable to accept these submissions made by Mr. Thiagarajan, learned counsel appearing on behalf of the appellant only for the simple reason that admittedly the respondents were grandchildren of the testator and they have*

claimed the estate of the deceased on the basis of a settlement deed executed by the testator himself which admittedly was revoked by the testator. That being the position, we must hold that the respondents had caveatable interest in the estate of the testator and, therefore, they are entitled to be served before the final order is passed. It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator."

14. From the aforesaid decision rendered by this Court, it can be said that if a party has a caveatable interest in the estate of the deceased, it is entitled to be served before the final order is passed. Further, if a person who has even a slight interest in the estate of the testator, he is entitled to file a caveat and contest the grant of the probate of the will of the testator.

15. At this stage, we may refer to the decision rendered by the High Court of Madhya Pradesh in the case of ***Banwarilal vs. Kusum Bai and Others***, ***1972 SCC OnLine MP 55.*** The Madhya Pradesh High Court has observed as under:

"*.....It is well established that any interest, however slight, and even the bare posibility of an interest, is sufficient to entitle a party to oppose a testamentary document. So, a transferee from heirs at-law, acquiring an interest in the testator's estate, by reason of a mortgage or sale, can, when a will is set up in opposition of his interest apply for revocation of the probate of the will. [See : Komallochun Dutt v. Nilruttun Mundle; Muddun Mohun Sircar v. Kali Churn Dey; Lalit Mohan v. Navadip Chandra; Mokashadayini Dassi v. Karnadhar Mandal; and Promod Kumar Roy v. Sephalika Dutta]. The underlying*

principle was stated by Mookerjee, J. in Mokashadayini Dassi v. Karnadhar Mandal (supra) in these words:

> *"This is in accord with the principle adopted in the case of Lindsay v. Lindsay where it was ruled that the person entitled to intervene in a proceeding for revocation of Letters of Administration or probate need not show that he had an interest in the estate of the deceased at the time of his death; an interest acquired subsequently by purchase of a part of the estate is sufficient. Consequently, if it is established that the appellants have acquired by purchase an interest in the properties left by the deceased, they were entitled to be heard in the proceedings for grant of probate. There is thus 'just cause' for revocation of the probate within the meaning of Section 50, Probate and Administration Act."*

A purchaser who acquires an interest in the estate of the testator, by reason of a transfer by the heirs at-law after his death, is, therefore, entitled to citation, because he is a person "who ought to have been cited" as contemplated in Illustration (ii) to section 263 of the Act, which reads as follows:

> *"The grant was made without citing parties who ought to have been cited."*

The Illustration refers not merely to compulsory cases, i.e., where it is imperative on the Court to issue a special citation, as on the executors under section 229 of the Act, but refers also to cases where the grant is made without citing the person who ought, in the opinion of the Court, to have been cited. Section 283(1)(c) contemplates issue of citation calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. There are three decisions of the Privy Council on the point. In Rajah Nilmoni Singh Deo Bahadoor v. Umanath Mookerjee, their Lordships stated that if a person is complaining that he has, in fact, been defrauded he is one of the persons who is injured by the fraud alleged and he is entitled to have his redress by applying to revoke the probate and thereby cause the fraud to become inoperative. Following that decision, their Lordships in Sarala Sundari Dassya v. Dinabandhu Roy Brajaraf Saha (Firm) reiterated:

> *"If he had not such a right as that, it is very difficult to know what right a creditor in those circumstances, or a person*

injured by the fraud, could have, otherwise the probate would stand and he would be affected by the probate which had been obtained ex hypothest fraudulently……"

In Ramanandi Kuer v. Mt. Kalawati Kuer, the minor daughter of the testator applied for revocation and their Lordships found that the service of notice on her mother was defective. There, before the grant of probate some kind of formality was gone through on the occasion when service of notice was said to have been effected, but it was not such as would give to the person alleged to have been served, an opportunity either to oppose the grant of probate or to require the will to be proved in her presence. Their Lordships held that the service, if any, was of no greater effect in law than personal service on an infant of tender years, and the proceedings were, therefore, defective in substance. S.K. Das, J. (speaking on behalf of a Division Bench) in Mt. Sheopati Kuer v. Ramakant Dikshit has stated that absence of citation on a person who ought to have been cited would, no doubt, be a defect of substance which will be deemed to be "just cause" as contemplated by illustration (ii) to section 263 of the Act. We have also the weighty observations of P.N. Mukerjee, J., speaking for a Division Bench, in Pramode Kumar Roy v. Sephalika Dutta to the same effect. We are in respectful agreement with the views expressed in all these cases.

We are satisfied that the grant was procured by fraud. The record of probate case No. 5 of 1958 is before us. The propounder in her application had only impleaded Deoraj and Mst Vidyawati, i.e., the heirs at-law. At the time when the application was made, she was aware that the heirs at-law of the testatrix had sold the property dealt with in the will to the appellant on the footing that the testatrix had died intestate, and she fraudulently suppressed this fact. There was thus substantial defect in the procedure when the grant was made, and the grant is therefore, liable to be set aside. The fact of the will by the heirs at-law was something "material" to the case within the meaning of section 263 of the Act, for that fact, if disclosed, would have been material for the probate Court in consideration of the question as to whether a special citation was to be issued upon the appellant in view of section 283(1)(c) of the Act. [See: Mohammad Ibrahim Midda v. Bhola Nath Lahari and Promode Kumar Roy v. Sephalika Dutta (supra)]……"

16. Thereafter, in the case of ***Seth Beni Chand v. Kamla Kunwar & Ors., (1976) 4 SCC 554***, this Court had an occasion to consider the aforesaid decision rendered by the High Court of Madhya Pradesh in the case of ***Banwarilal (Supra)***. This Court has observed in paragraph 13 as under:

> "*13. The only argument advanced by Mr Jain to which reference need be made is that even alienees are entitled to citations in probate proceedings and in the absence of such citations the grant of probate is vitiated. In support of this submission reliance is placed on a judgment of the Madhya Pradesh High Court in Banwarilal Shriniwas v. Kumari Kusum Bai [AIR 1973 MP 69 : 1972 Jab LJ 862]. It was held in that case that any interest, however slight, and even the bare possibility of an interest is sufficient to entitle a party to oppose the grant of probate. A purchaser, therefore, who acquires an interest in the estate of the testator by reason of a transfer by his heirs must be cited in testamentary proceedings. We will assume without affirming that this is the true position in law but the important distinction is that the alienee in the instant case is a transferee pendente lite who purchased some of the properties included in Jaggo Bai's will while the letters patent appeal was pending in the Allahabad High Court. In the very nature of things no citation could be issued to him prior to the commencement of the probate proceedings. In fact, we felt that the alienee has no right to be heard in this appeal. Nevertheless, we heard his counsel on the point whether the executrix has established the will. One reason why we heard the alienee is that he should not be able to raise any objection later that the decision in these proceedings is for some reason or the other not binding upon him.*"

17. Again, in the case of ***Sunil Gupta v. Kiran Girhotra, (2007) 8 SCC 506***, this Court has referred to the decisions rendered

in case of ***Seth Beni Chand* (*Supra*)** as well as ***Banwarilal (Supra)*** and thereafter observed in paragraph 18 as under:

> "*18. In Seth Beni Chand [(1976) 4 SCC 554] whereupon reliance has been placed by Mr Ramachandran, this Court was considering an argument as to whether alienees of properties are entitled to citation in probate proceedings. This Court proceeded on the assumption that Banwarilal Shriniwas [AIR 1973 MP 69] lays down the correct law. But even therein a distinction was made stating that the alienee was a transferee pendente lite. The said decision, therefore, is an authority for the proposition that no citation need be issued to any person who had no right to the property prior to the commencement of the probate proceedings. This Court in no uncertain term opined that the alienees had no right to be heard in the appeal. The said decision, therefore, runs counter to the submission of Mr Ramachandran.*"

18. In the case of ***Swaminathan and Others vs. Alankamony (Dead) Through Lrs, 2022 SCC OnLine SC 539***, this Court has observed as under:

> *"6. As per Section 263, the grant of Letters of Administration may be revoked for "just cause". Explanation (a) under Section 263 states that just cause shall be deemed to exist where the proceedings were defective in substance. Illustration (ii) under Section 263 deals with a case where "the grant was made without citing parties who ought to have been cited".*
>
> *7. It may be of interest to note that some of the colonial statutes contain Illustrations which form part of the statutes themselves. The Indian Succession Act, 1925 is one such enactment.*"

19. From the aforesaid decisions rendered by this Court, it can be said that grant of probate is a judgment in *rem* and it binds not only the parties, but also the entire world. Further, the

citations are required to be issued to the parties who have an interest in the estate of the deceased. Further, the High Court of Madhya Pradesh in the case of ***Banwarilal (Supra)*** has specifically observed on the basis of decisions rendered by this Court and the Privy Council that any interest, however slight, and even the bare possibility of an interest, is sufficient to entitle a party to oppose a testamentary document. Thus, a transferee from heirs at-law, acquiring an interest in the testator's estate, by reason of a mortgage or sale, can, when a will is set up in opposition of his interest, apply for revocation of the probate of the will. It has been held that a purchaser who acquires an interest in the estate of the testator, by reason of a transfer by the heirs at-law after his death, is, therefore, entitled to citation, because he is a person "who ought to have been cited" as contemplated in Illustration (ii) to Section 263 of the ISA.

It is relevant to observe at this stage that in the case of ***Seth Beni Chand* (*Supra*)**, this Court has referred to the aforesaid decision of the High Court of Madhya Pradesh and observed that even assuming without affirming that the same is the true proposition of law; on facts, this Court has

distinguished the case of ***Banwarilal (Supra)*** by observing that in the said case alienee is the transferee *pendente lite* who purchased some of the properties while letters patent appeal was pending before the concerned High Court. Even, thereafter, in the case of ***Sunil Gupta (Supra)*** this Court has once again referred to the decision in the cases of ***Seth Beni Chand (Supra)*** as well as ***Banwarilal (Supra)***. This Court has observed that it is an authority for the proposition that no citation needs to be issued to any person who had no interest in the property, prior to the commencement of the probate proceeding.

20. Thus, from the aforesaid decisions rendered in the case of ***Banwarilal (Supra)*** by the High Court of Madhya Pradesh and this Court in the cases of ***Seth Beni Chand (Supra)*** and ***Sunil Gupta (Supra)***, it can be said that an alienee who has acquired an interest in the estate of the deceased, prior to the filing of the probate proceedings, is an interested party.

21. In the present case, it is revealed from the record that on 09.01.1976, the unregistered Will was executed in favour of present respondent no. 1 by her father and immediately thereafter, the executant of the said Will i.e. father of present

respondent no. 1, himself sold the property during his lifetime on 21.02.1976 to one C.R. Palanisamy Gounder and Manickavasagam and thereafter the aforesaid two persons sold the property in favour of the appellant no. 1 and paternal grandfather of appellant no. 2 on 31.12.1997**.** Thereafter, the probate proceedings were filed only on 21.04.2009. Further, in the said probate proceedings filed under Section 276 of the ISA by present respondent no. 1, she had not joined her two brothers/their legal heirs, as well as the present appellants as party respondents. No citations were issued to them. Once again, at the cost of repetition, it is relevant to observe that in O.S. No. 110 of 2009 filed by the present respondent no. 1 on 29.04.2009 (within a period of 08 days only from filing of the probate proceedings), she herself has averred in the plaint that her two brothers were not inclined to partition this property and she came to know that her two brothers had forcibly taken out her father and obtained his signature against his will to dispose of his properties, including the suit properties, for which the Will was executed in favour of her.

Thus, from the aforesaid averment itself it is clear that present respondent no. 1 was aware about the execution of

the sale deed by her father in favour of third parties with regard to the suit property for which the Will was executed in her favour. However, her defence in the said plaint was that the signature of her father was obtained by her two brothers forcibly.

22. Thus, looking to the aforesaid facts and circumstances of the case, we are of the view that the respondent no. 1 ought to have impleaded the present appellants, as well as her two brothers/their legal heirs as party respondents in the probate proceedings filed under Section 276 of the ISA and that the District Court was required to issue citations in favour of the aforesaid persons.

23. At this stage, it is required to be observed that the learned District Court, while revoking the order of grant of probate, has discussed in detail the contention raised by the present respondent no. 1 with regard to limitation. After considering the factual aspects and after perusing the proceedings, the District Court has rightly observed that the appellants herein have filed I.A. No. 612 of 2015 within the period of limitation. The District Court has dealt with said aspects in paragraphs 36 to 40 of the order dated 30.09.2020, while revoking the

grant of probate. We are of the view that the District Court has rightly held that I.A. No. 612 of 2015 was filed by the appellants herein within the period of limitation.

CONCLUSION

24. We have gone through the impugned order passed by the High Court. From the impugned order passed by the High Court, it transpires that the High Court has not at all dealt with the provisions contained in Sections 263 and 283 of the ISA. From the aforesaid discussion made by us in this judgment, it is clear that the respondent no. 1 herein, without joining her two brothers/their legal heirs and the present appellants, filed the petition for grant of probate. It is further revealed that the said petition was filed on 21.04.2009. Further, the respondent no. 1 filed O.S. No. 110 of 2009 on 29.04.2009 i.e. after a period of 08 days only. The averments made in paras 2, 3 and 4 of the plaint disclosed that the respondent no. 1 was aware about the transfer of the suit property, by the executant of the Will (father of the respondent no. 1), soon after the Will was executed in favour of respondent no. 1. Despite which, she did not implead her two brothers/their legal heirs and the present appellant as

party respondents in the said proceedings. Thus, it can be said that the respondent no. 1 herein obtained the order of grant of probate in her favour by suppressing material facts, and no citations were issued to the brothers of the respondent no. 1/their legal heirs and the present appellants, before the grant of probate. Hence, the District Court was justified in revoking the order of grant of probate in favour of respondent no. 1.

25. Accordingly, we are of the view that the High Court has committed grave error while setting aside the order passed by the District Court. Hence, the impugned order is required to be quashed and set aside.

26. As a result, the impugned order dated 26.04.2022 passed by the High Court in C.R.P. (PD) No. 1823 of 2021 is hereby set aside.

27. At this stage, it is clarified that in the present judgment we have considered the issue of grant of probate and the revocation thereof and, therefore, the concerned Civil Court shall decide the civil proceedings pending before it in

accordance with law, without being influenced by any of the observations made in the present judgment.

28. Accordingly, this appeal is allowed.

29. However, there shall be no order as to cost.

30. All pending applications/interlocutory applications, if any, are also disposed of.

.....J.
[UJJAL BHUYAN]

.....J.
[VIPUL M. PANCHOLI]

NEW DELHI
21st APRIL, 2026