



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

INTERIM APPLICATION (L) NO. 30893 OF 2022
IN
TESTAMENTARY PETITION NO.2500 OF 2018

VISHAL
SUBHASH
PAREKAR

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Uday Sharad Kulkarni ...Applicant

vs.

Claude Lila Narayan Parulekar ...Deceased

WITH
INTERIM APPLICATION NO. 2188 OF 2024
IN
TESTAMENTARY SUIT NO.65 OF 2023

Jeev Raksha Animal Welfare Trust ...Applicant

vs.

Uday Sharad Kulkarni ...Respondent

Mr. Vishwajit Sawant, Senior Advocate a/w. Mr. Prabhakar Jadhav,
for the Applicant in IA No. 2188 of 2024 and for Defendant in TS No.
65 of 2023.

Mr. Vishal Kanade a/w. Ms. Tanaya Patankar i/b. Mr. Sanjay Gawde,
for the Applicant in IAL No. 30893 of 2022 and for Respondent in IA
No. 2188 of 2024.

CORAM : N.J. JAMADAR, J.
RESERVED ON : 11th SEPTEMBER, 2024
PRONOUNCED ON : 12th NOVEMBER, 2024

JUDGMENT

1. These applications raise an issue of jurisdiction of this Court,
primarily, and were, therefore, heard together and are decided by
this common order.

Interim Application (L) No. 30893 of 2022 -

2. This is an application for amendment in the petition for grant

of Letters of Administration to the property and credits of Claude Lila Narayan Parulekar (the deceased) so as to include additional movable and immovable properties enumerated in the schedule annexed at Exhibit A to the application.

3. The applicant/petitioner filed the petition for grant of Letters of Administration asserting, inter alia, that the deceased died intestate leaving behind the petitioner and other surviving heirs and next of kin, the particulars of whom are furnished in the table at paragraph 4 of the petition. The petitioner claimed to be a son of the paternal cousin sister of the deceased. The petitioner asserted that the deceased has left behind the property described in the Schedule B i.e. 4-A, Queen's Garden, Pune.

4. 'Jeev Raksha Animal Welfare Trust' has entered a caveat. Thereupon, the petition came to be converted into Testamentary Suit No. 65 of 2023.

5. The applicant has preferred this application asserting that while filing the petition, the petitioner was aware that the deceased has properties within Greater Bombay and in the State of Maharashtra. However, the specific details were not available. The petitioner made inquiries and became aware that movable and immovable properties as described in the schedule 'Exhibit A' appended to this application belonged to the deceased. Hence, this

application to amend the Schedule of Properties by incorporating the said properties.

6. An affidavit in reply is filed on behalf of the caveator. The caveator has strongly opposed the prayer for amendment. At the outset, it is contended that the application for amendment has been filed *mala fide* and with ulterior motive. In fact, the Testamentary Petition for grant of Letters of Administration could not have been entertained at all as this Court has no jurisdiction to entertain, try and decide the petition for grant of Letters of Administration. The deceased passed away at Pune on 13th September, 2016. The deceased had a fixed place of abode at Pune. The property described in the Schedule appended to the petition is situated at Pune. No cause of action of whatsoever nature arose within the territorial limits of the jurisdiction of this Court.

7. The caveator thus contends that, to fill in the lacuna and tide over the incurable defect, the petitioner has made an endeavour to amend the petition. In fact, the amendment was sought to be surreptitiously made before the Testamentary Registrar, who declined to allow the petitioner to amend the petition on the basis of praecipe.

8. In the instant application also, the petitioner has made deliberate false statement. There was no reference in the original

petition that the deceased left behind any property within the territorial limits of ordinary original civil jurisdiction of this Court. Yet, in the instant application, it is blatantly asserted that the petitioner had pleaded in the petition that the deceased had left behind properties in Mumbai.

9. The caveator further contends that the deceased had left behind a Will dated 1st May, 2010, whereunder she bequeathed all her properties to the caveator trust. A Probate application No. 977 of 2016 has been filed before the Court of Civil Judge Senior Division at Pune. In the said application, the applicant has filed a caveat. However, the said caveat has not been pursued. The applicant has also filed a Misc. Petition No. 108 of 2023 before this Court seeking the transfer of the said probate application No. 977 of 2016 from the Court of Civil Judge, Senior Division, Pune to this Court. In that proceedings as well, the respondent-trust has raised objections. Thus, the caveator contends the instant application is an disingenuous attempt to confer jurisdiction on this Court, which it otherwise does not possess. Therefore, the application deserves to be rejected.

Interim Application No. 2188 of 2024 -

10. The caveator has also filed interim application for rejection of

the instant petition as there is no cause of action. For the reasons which are articulated in the affidavit in reply to Interim Application No. 30893 of 2022 (summarized above), the applicant/caveator contends that the petition deserves to be rejected by invoking the powers under section VII Rule 11 of Code of Civil Procedure, 1908 as it is premised on a deliberate false statement to the knowledge of the petitioner besides being without any cause of action.

Submissions :-

11. I have heard Mr. Vishwajit Sawant, learned Senior advocate for the applicant in IA No. 2188 of 2024 and Mr. Vishal Kanade, learned counsel for the applicant in IAL No. 30893 of 2022. The learned counsel took the Court through the pleadings in the petition and the interim applications.

12. Mr. Kanade, learned counsel for the petitioner, submitted that the prayer of the applicant to amend the petition so as to add the properties left behind by the deceased is, in a sense, of formal nature. The Testamentary Court does not decide the title to the property. The applicant, post institution of this petition, learnt that there were certain properties in which the deceased has right, title and interest. Those properties are sought to be included by way of amendment in the Schedule I. Neither it changes the nature of the

petition nor causes any prejudice to the caveator.

13. Mr. Kanade submitted that the contention on behalf of the caveator that the petition ought not to have been entertained as no cause of action had accrued within the territorial limits of the jurisdiction of this Court, is wholly misconceived. First and foremost, in paragraph 2 of the petition the petitioner had categorically asserted that the deceased left behind the property within Greater Bombay and throughout the State of Maharashtra. By way of amendment, the petitioner proposes to incorporate those properties. At any rate, the objection based on territorial jurisdiction is misconceived in law.

14. Amplifying the aforesaid submission, Mr. Kanade strenuously urged that under section 300 of the Indian Succession Act, 1925 this High Court has concurrent jurisdiction. In exercise of the powers conferred under section 2 of the Probate and Administration Act No. VI of 1889, a notification was issued on 1st August, 1889 authorizing the High Court of Judicature at Bombay throughout the territories subject to the Governor in Council to receive applications for Probate and Letters of Administration.

15. Mr. Kanade further urged that, it is not a case of inherent lack of jurisdiction. Thus, an application for rejection of the plaint is wholly unsustainable. Moreover, in the affidavit in support of the

caveat, the caveator has not raised objection on the ground of territorial jurisdiction. Therefore, the caveator cannot be now permitted to assail the tenability of the petition on the said ground.

16. It was lastly submitted that the merits of the amendment cannot be examined at this stage. If the amendment is allowed, the caveator will get an efficacious opportunity to contest the claim by filing an additional affidavit. Therefore, no prejudice as such would be caused to the caveator.

17. Mr. Sawant, learned Senior Advocate for the caveator, would urge that the very initiation of the proceedings is tainted with suppression of facts. Despite having entered a caveat in the probate application filed by the caveator before the Civil Court at Pune, the petitioner had made a patently false statement that the deceased died intestate. Secondly, it was categorically asserted in the petition that the deceased died at Pune and had left behind a bungalow at Pune. She was a permanent resident of Pune and, yet, the petition was filed before this Court. Under no circumstances, can it be said that any part of cause of action arose within the limits of ordinary original civil jurisdiction of this Court. Mr. Sawant, made an earnest endeavour to draw home the point that realizing this difficulty, an effort is made to amend the petition by incorporating movable and immovable properties in the Schedule.

18. Even if the Schedule of Properties proposed to be added is taken into account, yet, it can not be said that the deceased left behind any property within the jurisdiction of this Court, merely for the reason that, the Head Office of the companies, in which scripts/securities are held, are located in Mumbai. Mr. Sawant urged with a degree of vehemence that, the fact that the Head Office of the Companies is situated in Mumbai cannot furnish a cause of action to entertain the petition for grant of Letters of Administration. Neither the application for amendment is bonafide nor the petitioner had initially approached this Court with clean hands. Therefore, this is a fit case where the petition itself deserves to be rejected instead of it being returned to the petitioner for filing the same before the appropriate Court. Mr. Sawant placed reliance on the judgment of the Supreme Court in the case of **Begum Sahiba Sultan vs. Nawab Mohd. Mansur Ali Khan and Ors.**¹ and the decision of the Nagpur High Court in the case of **Mangia Hagra Mahar vs. Sakia and Others**².

19. Joining the issue on the applicability of section 300 of the Indian Succession Act, 1925 Mr. Sawant would urge that the concurrent jurisdiction cannot be exercised with regard to a subject matter beyond the ordinary original civil jurisdiction of High Court.

1 (2007) 5 S.C.R. 36

2 1940 SCC OnLine MP 21.

20. The aforesaid submissions now fall for consideration.

21. Before advertng to the core question of the tenability of the petition for grant of Letters of Administration before the High Court, clarity on facts would be necessary. By and large, it is not in dispute that the deceased neither died nor the deceased had a fixed place of abode at the time of her death, within the territorial limits of the ordinary original jurisdiction of this Court. The immovable property described in the Schedule I appended to the petition is situated at Pune. Thus, the substance of the resistance on behalf of the Caveator to the jurisdiction of the High Court is premised on non-availability of the factors which would confer the jurisdiction to entertain a petition for grant of Letters of Administration. Whether the challenge is sustainable ?

22. The petitioner proposes to meet the challenge by canvassing a two-pronged submission. One, in the petition, for grant of Letters of Administration, the petitioner had averred that the deceased had left property within Greater Bombay and throughout the State of Maharashtra. However, exact particulars of items of the properties were then not known and hence this application to amend the Schedule of Properties in accordance with the Schedule (Exhibit A) which includes, inter alia, the properties within the local limits of the ordinary original civil jurisdiction of this Court. Two, the High

Court has a concurrent jurisdiction under section 300 of the Indian Succession Act, 1925 and, therefore, the challenge to the territorial jurisdiction is devoid of substance.

23. In order to appreciate the question in controversy in a correct perspective, it may be necessary to note the relevant provisions of Indian Succession Act as well as the Letter Patent (Bombay).

24. Clause 34 of the Letters Patent (Bombay) which confers Testamentary and Intestate jurisdiction, reads as under:-

34. Testamentary and intestate jurisdiction: - And We do further ordain that the said High Court of Judicature at Bombay shall have the like power and authority as that which may now be lawfully exercised by the said High Court in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever, of persons, dying intestate, whether within or without the Presidency of Bombay : Provided always that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probates and letters of administration.

25. Under section 2(bb) of Indian Succession Act, 1925 “District Judge” means the Judge of a Principal Civil Court of original jurisdiction.

26. Section 57 of Indian Succession Act, 1925 provides thus :-

57. Application of certain provisions of Part to a class of wills made by Hindus, etc.— The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—
(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at

Madras and Bombay; and
 (b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits, 4[and (c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):
 Provided that marriage shall not revoke any such will or codicil.

27. Section 270 of the Indian Succession Act which confers jurisdiction on the District Judge to grant Probate or Letters of Administration, reads as under:-

270. When probate or letters of administration may be granted by District Judge— Probate of the will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter provided, of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.

28. In exercise of the jurisdiction conferred under the Letters Patent (Bombay), this Court can exercise the authority to grant Letters of Administration in respect of property and credits of the person dying intestate, whether within or without the local limits of the ordinary original civil jurisdiction of this Court, provided there is no law made by the competent legislature whereby the said power is given to any other Court. The power of the District Judge under section 270 of the Indian Succession Act is conditioned by two imperatives. One, the deceased had a fix place of abode at the time of his death. Or the deceased left behind any property, movable or immovable, within the jurisdiction of the District Judge. Under the

Indian Succession Act, 1925 the District Judge, in turn, is defined to mean, the judge of a Principal Civil Court of original jurisdiction.

29. If the facts of the case at hand are appraised, through the aforesaid prism, as noted above, the deceased had a fixed place of abode at Pune and the immovable property left behind by the deceased, is situated at Pune (as claimed in the original petition), the petition for grant of Letters of Administration, unless it is covered by the other provisions of the Succession Act, 1925, would not lie before the High Court in exercise of its testamentary and intestate jurisdiction.

30. The petitioner banks upon section 300 of the Indian Succession Act as the special provision which confers concurrent jurisdiction on the High Court. In addition to section 300, reference is required to be made to section 273 of the Indian Succession Act, 1925 which bears upon tenability of the petition for Letters of Administration, before this Court.

31. Section 273 provides for conclusiveness of Probate or Letters of Administration in the following terms :-

273. Conclusiveness of probate or letters of administration—

Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable, of the deceased, throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:

Provided that probates and letters of administration granted
 (a) by a High Court, or
 (b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees,
 shall, unless otherwise directed by the grant, have like effect throughout the other States.

The proviso to this section shall apply in 2[India] 3after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.

The proviso shall also apply in India after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.

32. Section 300 of the Indian Succession Act confers concurrent jurisdiction on the High Court. It reads as under:-

300. Concurrent jurisdiction of High Court :-

(1) The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

(2) Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has by a notification in the Official Gazette, authorized it so to do.

33. I will first deal with the support sought to be drawn from the provisions contained in section 300 of the Indian Succession Act, 1925. On its plain reading sub section (1) of section 300 does not make it peremptory that any portion of the property left behind by the deceased ought to be situated within the limits of ordinary original civil jurisdiction of the High Court for exercise of concurrent jurisdiction by the High Court along with District Judge.

Sub section (2) of section 300 curtails the concurrent jurisdiction, by providing that except in cases to which section 57 applies, no High Court, shall exercise the concurrent jurisdiction, where the deceased is Hindu, Mohammedan, Buddhist, Sikh or Jaina or an exempted person, unless the State Government has, by a notification in the Official Gazette, authorized it so to do. It implies that if the case is covered by section 57 of the Indian Succession Act, the notification under sub section (2) is not necessary. If the case is not covered by section 57, the concurrent jurisdiction conferred by sub section (1) of section 300 cannot be exercised in the absence of notification by the State Government.

34. Mr. Kanade, learned counsel for the petitioner, banked upon a notification dated 1st August, 1889 published in Bombay Government Gazette under section 2 of the Probate and Administration Act V of 1881 authorizing the High Court of Judicature at Bombay to receive the applications for Probate and Letters of Administration. The said notification reads as under:-

Notification
Judicial Department
Bombay Castle, 31st July, 1889

No. 4021 - In exercise, of the power conferred by Section 2 of the Probate and Administration Act V of 1881, the Governor of Bombay in Council is pleased, with the previous sanction of the Governor General in Council, to authorize the High Court of Judicature at Bombay throughout the territories subject to the Governor in Council, and all District Judges as defined in the said Act within the said territories, and such Judicial Officers as the said High Court may from time to time appoint as District Delegates to receive applications for Probate and Letters of Administration.

35. It was submitted that the said notification continues to hold the field as the provisions contained in section 300 of the Indian Succession Act are pari materia section 2 Probate and Administration Act V of 1881. To this end, Mr. Kanade placed a strong reliance on a decision of Calcutta High Court in the case of **Maniklal Shah v. Hiralal Shaw**³ wherein a question about the jurisdiction of the Calcutta High Court to entertain and try a suit for grant of Probate of a Will was questioned on the premise that the property was situated outside the local limits of the Ordinary Original Civil Jurisdiction of the Calcutta High Court and, secondly, that the testator lived and died in Dum-Dum which was also outside the local limits of the jurisdiction of the said Court.

36. Repelling the aforesaid challenge, the learned single Judge of the Calcutta High Court, banking upon the notification issued under section 2 of Probate and Administration Act V of 1881 and construing the same to be the one issued under section 2 of Section 300 of Indian Succession Act, 1925, enunciated the law as under:-

9] The provisions of Section 2, Probate and Administration Act having been re-enacted as indicated above, the said notification, to my mind, is sufficient compliance with the provisions of Sub-section (2) of Section 300, of the present Act.

10] There is a further answer to Mr. Ghosh's contention. The definition of "District Judge" given in Section 2 (bb) of the amending Act XVIII [18] of 1929 includes a Judge of the High Court on the Original Side (see Manubhai v. General Accident, Fire and Life Assurance Corporation Ltd., 38 Bom. L. R. 632

³ AIR (37) 1950 Calcutta 377.

at p. 655 : (A. I. r. (23) 1936 Bom. 363). The result is that a High Court Judge on the original side has concurrent jurisdiction with the District Judge in all testamentary matters. In the case of *In the Goods of Mohendra Narain Roy*, 5 C. W. N. 377. Sale, J., held that the "High Court" in Section 87, Probate and Administration Act (v [5] of 1881) was not merely confined to the Appellate Jurisdiction of that Court, but included its Original Jurisdiction and that under section the High Court, exercising its Original Jurisdiction, had concurrent jurisdiction with the District Judge.

11] In *Nagendra Bala v. Kasipati*, 37 Cal. 224 : (5 I. C. 1003), Fletcher, J. held that the High Court had jurisdiction to grant probate and letters of administration, on its original side, in any case which could have been brought before any District Judge in either of the two Provinces of Bengal. This decision involved the consideration of SECTIONS 2, 51 and 87, Probate and Administration Act V [5] of 1881, and Fletcher, J., summarized his conclusions thus : "I think, from Sections 2, 51 and 87, it is clear that the High Court has jurisdiction in all districts." These three sections of the Probate and Administration Act correspond to Sections 300(2), 264(1) and 300(1) of the present Act respectively. Like Section 87, Probate and Administration Act, the corresponding Section 300(1), does not require that any portion of the property should be within the limits of the Ordinary Original Civil Jurisdiction of the High Court.

12] Under Clause 34, Letters Patent (1865), the High Court's jurisdiction in testamentary matters is co-extensive with the limits of the Province. This jurisdiction cannot be said to interfere with those provisions of the Indian Succession Act which confer jurisdiction on District Judges to grant probates. The exercise by the High Court of its testamentary jurisdiction beyond the local limits of its ordinary original civil jurisdiction is not exclusive of, but concurrent with, the jurisdiction of the District Judge. I hold therefore that this Court has jurisdiction to entertain and try this suit.

(emphasis supplied)

37. Prima facie, the aforesaid pronouncement appears to govern the facts of the case at hand. However, I do not propose to decide the controversy in the case at hand, with reference to the continued applicability of the aforesaid Notification issued under section 2 of the Probate and Administration Act, 1881. In my view, the answer

to the controversy can be based on a more surer foundation under section 273 of the Indian Succession Act, 1925.

38. The proviso to section 273 makes a distinction between the efficacy of the Probate and Letters of Administration granted by High Court and the District Judge. The Probate and Letters of Administration granted by High Court shall have effect throughout the State in which the same are granted and throughout the other States as well. However, the Probate and Letters of Administration granted by a District Judge shall have effect throughout the other States only when the District Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed 10,000/- rupees. Thus, an element of pecuniary limits of the jurisdiction creeps in when the District Judge grants Probate and Letters of Administration in respect of the property situated beyond the limits of the State. On the other hand, the Probate and Letters of Administration granted by the High Court have affect throughout that State and the other States. Does that affect the tenability of the petition for Letters of Administration before the District Judge in cases where the value of the property and estate affected by the Probate and Letters of Administration, exceeds Rs. 10,000/- ?

39. In the case of **Naval vs. Jagdish Prasad**⁴ a Full Bench of the Madhya Pradesh High Court had an occasion to consider the

⁴ 1998 Madhya Pradesh Series 267.

following two questions, on a reference:-

(i) Whether the District Judge loses its jurisdiction to grant probate if the value of the property and estate situate beyond the limits of state exceeds Rs. 10,000/- ?

(ii) Whether probate granted by the District Judge would be valid for the property situated within its jurisdiction despite the presence of property and estate worth more than Rs. 10,000/- beyond the state ?

40. The Full Bench answered the question, inter alia, as under:-

Section 273 of the Act, envisaging conclusiveness of probate or letters of administration, clarified the jurisdictional periphery. Proviso makes it luculent that grant by a High Court shall have like effect throughout the other State, as substituted by A.L.O 1948 whereas the grant by a District Judge to be effective in other State depends on certification of such Judge that the value of the property and estate effected beyond the limits of the State does not exceed ten thousand rupees. In other words, writ of the District Judge does not run throughout the other State if value beyond the limits exceeded the extent of ten thousand rupees. This section does not say that claim can be segregated and grant can be made to the extent of property and estate located within the limits of the State. In other words, such a jurisdiction cannot be read into the proviso. That would tantamount to altering of the "material" rather than simply ironing out of "creases".

... ..

In the ultimate analysis, we conclude that the District Judge has no jurisdiction to entertain the petition where the value of the property beyond the limits of his State is in excess of Rs. 10,000/- and has no right under the law to grant probate or letters of administration for the "portion" of the property situated in his State. Section 273 of the Act speaks of "all" the property and estate AND effect throughout "the other State". If his grant cannot produce this effect, then he has no jurisdiction in the matters and he should leave it to unqualified and unlimited forum particularized under clause (a). In law, there is no separatism, unless specifically provided, and as such there is no short cut which often proves to be a wrong cut. The same is in sight here.

Law ensures that everything is in its place, more so when the issue is one of jurisdiction. Samuel Smile observed that - "A place for everything and in its place", Clause (b) indicates the place in undoubtful terms.

We thus approve of the law laid down in Misc. Appeal No. 67 of 1959 (supra) and disapprove of and thus rule passing observations concerning jurisdiction as contained in para 33 of Smt. Yuvrant's case (supra). Legal position, as detailed above, therefore, has compelled us to billon bistoury and to bust the

ambulation to clear the conundrum. Clause (b) clarifies and does not confuse. Legislative intent is evident. The question is simple, so is the answer.

Jurisdiction thus depends on existence of specified conditions. There is no way to scissor any one of those conditions or orchestrate a different tune. Forum cannot deal with "portion" for a "place". Writ has to run for "all" and "throughout". Provision does not permit any other course or recourse. Availability of (a) - i.e. High Court is sure clue to restrictive operation of (b) of Section 273 of the Act. Relief on same cause of action cannot be spun in piecemeal before two or three District Judges of different States property wise. Firstly, it is impermissible and violative of Order II, Rule I of the Code and Secondly this exercise may produce conflicting consequences which, in law, must be avoided. It has to be one time lis at proper forum.

The stage is now reached to pen omega.

Accordingly our answers to the questions are as under:-

(a) Question No. (i) YES

(b) Question No. (ii) NO

(emphasis supplied)

41. In the case of **Col. Anand Prakash Gupta and Others v. State and Others**⁵ a learned single Judge of Delhi High Court having found that the value of the property and estate affected beyond the limits of the jurisdiction of the District Judge exceeded Rs. 10,000/- directed the transfer of the petition for Letters of Administration to the Delhi High Court observing, inter alia, as under:-

8] Proviso to Section 273 of the Indian Succession Act makes it clear that the District Judge can grant a probate and letter of administration if the deceased at the time of his death had a fixed place of abode situated within the jurisdiction of such Judge, and such Judge certifies that the value of property and estate effected beyond the limits of the State does not exceed ten thousand rupees.

9] In this present case, it is an admitted case that the value of the property and the estate effected beyond the limits of the jurisdiction of learned trial court exceeds Rs.10,000/-. Respondents no.1 to 4 have no objection to the transfer of PC No. 12/2020 titled "*Col. Anand Prakash Gupta and others v. The State*" from the court of Ld. ADJ - 02, South District, Saket Courts to this Court.

5 2022 SCC OnLine Del 3257.

42. In **M/s. Subrata Saha w/o. Debabrata Saha v. Debabrata Saha**⁶ a learned single Judge of this Court has overruled an objection to the tenability of the petition for grant of Letters of Administration on an identical line.

43. Reverting to the facts of the case, in the proposed Schedule of Properties, in addition to the properties which are situated within the limits of the ordinary original civil jurisdiction of this Court, the petitioner has made a reference to the properties of the deceased situated in the States of Delhi, West Bengal, Gujrat, Madhya Pradesh and even properties situated in Switzerland and United States. The value of the properties which are likely to be affected by grant of Letters of Administration beyond the limits of the State of Maharashtra runs into lakhs of rupees. The District Judge will thus have no jurisdiction to entertain and decide the petition for grant of Letters of Administration.

44. I am, therefore, inclined to hold that the petition for Letters of Administration in respect of the properties which are sought to be included by way of proposed amendment will be required to be filed before the High Court.

45. So far as the opposition to the amendment, I do not find any impediment in granting the amendment so as to include the properties proposed to be added by way of amendment. The primary

⁶ TPL No. 25239 of 2022 Dt. 02/01/2023

objective would be to ensure that no property left behind by the deceased remains un-administered. The question as to whether the petitioner is entitled to Letters of Administration merits adjudication at the appropriate stage. It is trite the merits of the amendment are not required to be delved into while considering the question of grant of permission for amendment. The proposed amendment neither changes the nature nor the character of the proceedings. It also appears necessary for the determination of the controversy, once and for all.

46. So far as the application for rejection of the petition, suffice to note that once the Court finds that the petition for grant of Letters of Administration is maintainable before this Court, the very substratum of the application for rejection of the petition stands dismantled. The submission on behalf of the Caveator that in the petition, the petitioner had made a statement which is false to the knowledge of the petitioner, i.e. the deceased died intestate, as the petitioner has filed a Caveat in the petition for grant of Probate of the Will, filed on behalf of the Caveator before the Civil Court at Pune, is a matter which touches upon the merits of the petition. At this stage, the same can not be urged as a ground for rejection of the petition for grant of Letters of Administration.

47. Even otherwise, the statement that the deceased died

intestate cannot be said to be irretrievably irreconcilable with the action of the petitioner in opposing the grant of Probate of the Will, propounded by the Caveator herein. Undoubtedly, it could be urged that the petitioner ought to have disclosed the fact that a petition for grant of Probate has already been filed on behalf of the Caveator and the same is subjudice before the Civil Court at Pune. Yet, the effect of omission, or for that matter suppression, would be a matter for adjudication. Thus, the application for rejection of the petition does not deserve countenance.

48. For the foregoing reasons, I am inclined to allow the application for amendment and reject the application for rejection of the petition.

Hence, the following order.

ORDER

- 1] The interim application (L) No. 30893 of 2022 stands allowed in terms of prayer clause (a).
- 2] Necessary amendment in accordance with the Schedule of Amendment be carried out within a period of two weeks from the date of uploading of this order.
- 3] Amended copy of the petition be served on the Caveator within two weeks thereafter.
- 4] The Caveator shall be at liberty to file additional

affidavit in support of Caveat within a period of four weeks thereafter.

5] The Interim Application No. 2188 of 2024 stands rejected.

6] Cost in cause.

(N.J.JAMADAR, J.)