

JANARDHAN GOUNDER

v

JANNA BAI VYAS

[HIGH COURT 1994 (Fatiaki J) 7 September]

Probate Jurisdiction

Estate-caveat-whether a person may lodge more than one-whether mere lodgment renders the proceedings contentious-Succession Probate and Administration Act (Cap 60) Section 46(1).

The Applicant sought the removal of caveats. Allowing the application the High Court HELD: (i) that only one caveat may be lodged by a party in respect of an estate and (ii) that the mere lodgment of a caveat does not render the proceedings contentious.

Case cited:

Moran v Place (1896) P. 214

Interlocutory application in the High Court.

D.S. Naidu for Applicant

J. Singh for Respondent

Fatiaki J:

On the 25th of August this Court after hearing argument on the matter removed 2 caveats lodged by the respondent in respect of the above-named estate. On that occasion the Court indicated that reasons for its decision would be furnished later and this I proceed now to do.

On the 4th of June 1987 Chinnaiya Gounder (the testator) executed a will in which he sought to dispose of his estate. In it he made various legacies and bequests to various named daughters (9 in number), to his son (the applicant), and his wife. He also left his entire residual estate to his son and appointed his wife and 2 daughters the executrixes and trustees of the will. The respondent however appears to have been wholly excluded from her father's beneficence.

On the 20th of April 1988 the testator's wife died and 4 years later on the 22nd of October 1992 the testator died.

Barely two weeks later a single caveat (No.35/92) was lodged in the testator's estate by his 10 named daughters including the present respondent and the 2 remaining executors and trustees of the estate. A month later on the 2nd of December 1992 the present applicant also lodged a caveat (No. 41/92)

prohibiting the sealing of any grant in his late father's estate.

Thereafter the estate remained in limbo for 6 months without any attempt to obtain probate or administration until the 7th of June 1993 when the applicant lodged an application in the High Court seeking the grant to him of Letters of Administration with will attached in the testator's estate.

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This he was perfectly entitled to do in terms of Section 31 of the Succession Probate and Administration Act (Cap. 60) which provides (inter alia) :

“Where an executor neglects to apply for or to renounce probate within 6 months from the death of the testator ... or where an executor is unknown or cannot be found, the court may, upon the application of any person interested in the estate, ... grant administration with the will annexed to the applicant, and such administration may be limited as the court thinks fit.”

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In this case other than lodging a caveat (No. 35/92) in the estate, the executrixes have taken no steps in seeking to obtain probate of the testator's will. The statutory time limit has long expired and undoubtedly, the present applicant as a named legatee and residual beneficiary is a person interested in the estate. Before the application could be granted however it was necessary that the existing caveat (No.35/92) should be first removed.

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In this latter regard pursuant to Rule 44(7) of the Non-Contentious Probate Rules 1954 (U.K.), the applicant filed a Warning to Caveator on the 1st of April 1993. In all there were 10 warnings sent by registered post, one to each of the named caveators in caveat No.35/92 warning each of them to either : “enter an appearance setting forth what interest you have in the estate of Chinnaiya Gounder ... deceased contrary to the (applicant)” or in the absence of any contrary interest, to issue a Summons for Directions.

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On the 20th of July 1993 the caveators through their solicitors lodged a bare entry of appearance. No contrary interest was clearly disclosed in the appearance as it should have been (See : rule 44(9) and Form 6 of the N.C.Probate Rules 1954) other than an assertion that the caveators had an unspecified interest (presumably outside the testator's will) “as beneficiaries in the estate of Chinnaiya Gounder under the Succession Probate and Administration Act Cap. 60”. No section of the Act was referred to nor was any challenge directed at the validity of the will of Chinnaiya Gounder or mounted against the application for a grant.

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9 months later on 22nd April 1994 the applicant filed an affidavit of service of the warnings together with a summons under Section 47 of the Succession, Probate and Administration Act seeking the removal of Caveat No. 35/92 supported by an affidavit setting out various grounds for its removal. On 29th

April 1994 Caveat No. 35/92 was removed by order of Kapa J.

A In the meantime however between the applicant's warning to caveator and the above-mentioned summons for removal of 3 further caveats Nos. 25/93 ; 19/93 and 34/93 were lodged by the Registrar of Titles and the respondent, respectively. Caveat No. 25/93 was removed however on the 5th of August 1994 on the order of Pain J. after the Registrar of Titles was warned in May 1994. There then remained the respondent's Caveat No. 19/93 lodged on 9th June 1993 and Caveat No. 34/92 lodged 4 months later on 27th October 1993.

B From the foregoing chronology it is immediately clear that the respondent on the 29th of April 1994 had no less than 3 caveats lodged in the High Court prohibiting any grant in the Estate of Chinnaiya Gounder without prior notice to her.

C Why this was permitted or thought necessary to be done is unclear. It may have arisen out of a sense of excessive caution on the part of the respondent, or over her concern with the 6 month life span envisaged for a caveat in terms of Rule 44(4) of the N.C. Probate Rules 1954, or through a lack of understanding on the part of registry staff, but whatever the reason, the undesirability of a multiplicity of caveats being lodged by a single caveator is obvious and ought not to have been allowed.

D The statutory right to lodge a caveat is to be found in Section 46(1) of the Succession Probate and Administration Act (Cap.60) which provides :

E "Any person may lodge with the Registrar a caveat against any application for probate or administration, or for the sealing of any probate or letters of administration under the provisions of this Act, at any time previous to such probate or administration being granted or sealed." (My underlining)

F It will be seen from the above that the section provides for "a (single) caveat". Furthermore there is no time limited in the section (as distinct from the N.C. Probate Rules) within which a caveat will automatically lapse and, having regard to the specific statutory provision for the removal of caveats (viz : Section 47(1), to which the N.C. Probate Rules 1954 (U.K.) are expressly made "Subject to ...", I am firmly of the view that any person desiring to lodge a caveat pursuant to Section 46(1) of the Succession Probate and Administration Act may lodge only one caveat in the matter which shall remain until such time as it ceases to have effect in terms of the N.C. Probate Rules 1954 (U.K.) or is removed by Court order pursuant to an application under Section 47(1) of the Succession Probate & Administration Act (Cap.60).

G Needless to say the situation was not without some concern even in England [See : Practice Direction (Probate : Caveat) as set out in (1976) 1 W.L.R. 957] which saw the insertion of a new sub-rule 44(3)(a) in the N.C. Probate

(Amendment) Rules 1976 which specifically provided for a written application for extension of a caveat beyond the 6 month life span provided in the earlier Rules. This sub-rule however has no application in this Court and such an application for extension is neither envisaged nor necessary having regard to the Court's reading of Sections 46 and 47 of the Succession Probate and Administration Act (Cap.60).

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In passing I note that Rule 44(13) of the N.C. Probate Rules 1954 (U.K.) provides that :

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“Except with the leave of the registrar ... no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (11) and (12) of this rule.”

For the future guidance of registry staff and until such time as the N.C. Probate Rules 1954 (U.K.) are amended or revised I am of the opinion that a caveat lodged pursuant to Section 46 of the Succession Probate and Administration Act (Cap.60) shall not cease to have effect except where it is withdrawn by the caveator under Rule 44(8) or is removed by order of the Court made pursuant to an application brought under Section 47 of the Act.

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I turn next to deal with the applicant's two summonses for the removal of the respondent's Caveat Nos. 19/93 and 34/93. In the summonses the applicant seeks the removal of the caveats :

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“... and/or that Letters of Administration be granted to the Applicant Janardhan Gounder ...

upon the grounds :

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- (i) That the Caveat is inoperative
- (ii) That no steps had been taken by the Caveator after service of warning to caveator.
- (iii) That the Caveator has taken no steps to prosecute her claim.”

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The principal affidavit filed on the 24th June 1994 by the applicant in support of his summons to remove Caveat No. 34/93 sets out the relevant history of the estate thus far, the caveats lodged and the warnings personally served on the respondent, and deposes as follows :

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- “14. THAT due to the non-grant of Letters of Administration the Estate which comprises 84 acre leasehold sugarcane farm has become stagnant and all monies are suspended with either the F.S.C.

A Limited or the deceased's bank and there are no funds to manage the Estate resulting in extreme loss and damages ;

B 15. THAT one of the surviving Executrix and Trustee Dhan Lakshmi also known as Dhan Lakshmi Zammit has renounced all her rights and interests in my favour (renunciation annexed) ; and

17. THAT I undertake to abide by the terms of the Last Will and Testament of the deceased dated 4th June, 1987.”

C Both summonses were served on the 29th of June 1994 by registered post at the postal address given by the respondent and on the 25th of August 1994 counsel appeared for the respondent at the hearing of the application for removal.

Having carefully perused the papers pertaining to the respondent's Caveat Nos. 19/93 and 34/93 I note the following significant matters :

D (1) The respondent was personally served on the 3rd of June and 28th May 1994 respectively, with the appropriate warnings ;

(2) Despite the warnings and the personal service on the caveator, no entry of appearance or Summons for Directions has been filed in respect of either caveat;

E (3) The respondent was personally served on 26th July 1994 with 2 notices requiring her personal attendance before the Court on 5th August 1994 when the summonses for removal of Caveat Nos 19/93 and 34/93 were set down for hearing; and

F (4) The respondent has not filed any affidavit opposing the summonses for the removal of her caveats or explained the reason (if any) for her apparent delay and failure in that regard.

G Indeed so casual has been the respondent's opposition to the applicant's summonses that as of the date of the removal of her caveats, her counsel remained unaware of the precise nature of any interest, let alone one contrary to the applicant's, that the respondent allegedly claimed she had in the estate of her late father Chinnaiya Gounder.

Then there is the submission of learned counsel for the respondent that the applicant's summonses did not comply with the mandatory requirements of Or. 76 r.2 of the High Court Rules which provides :

“A probate action must be begun by writ, ...”

In the present action counsel stressed that the applicant's summonses sought the grant of Letters of Administration of the estate of a deceased person and as such was a "probate action" for the purposes of Order 76.

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Furthermore in counsel's view the mere lodgment of a caveat against a grant renders any application thereafter a contentious proceeding for which a writ would have to be issued. No authority was cited for such a wide proposition but in any event I disagree.

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In the first place the grant of Letters of Administration is sought as a joint and alternative relief to the removal of the caveats; Secondly, none of the grounds enumerated in the applicant's summonses has any direct bearing on the merits of the application for a grant of Letters of Administration; Thirdly, the applicant has already filed a separate application for the grant which still remains pending; Fourthly, the application for a grant and for removal of a caveat are made pursuant to quite separate statutory provisions of the Succession Probate and Administration Act (Cap.60) being Sections 31 and 47 respectively, and most importantly in my opinion the submission ignores the true nature of a caveat and imposes an unfair burden on the applicant for a grant of administration.

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As was said by Lindley L.J. in Moran v. Place (1896) P.214 at p.216 :

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"A caveat is not a notice to any opponent in particular. It is a notice to the registrar or officer of the Court not to let anything be done by anybody in the matter of the will, or the goods of the deceased, without notice to the person who lodges the caveat. It is impossible to look at it as commencing any litigation - it merely requests the registrar to tell the caveator if anybody stirs in this matter ... When a caveat has been entered the person who wishes to prove the will has to warn the person who entered the caveat, and if such person i.e. the caveator, intends to make any real objection, he enters an appearance. Then, if the litigation goes on, the person who wants to prove the will issues a writ and serves it on the caveator."

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In this case in the absence of an entry of appearance or a Summons for Directions the respondent can hardly be described as a person who "... intends to make any real objection". In the circumstances the applicant's summons for removal of the respondent's caveats can not be considered a probate action. Quite simply it is not.

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Undoubtedly the respondent is a daughter of the testator but in the face of her clear exclusion in the unchallenged will of her late father, this Court is not entitled to assume some invalidity in the will or the testamentary dispositions made therein. Needless to say this is not a case of intestacy or even of

A testamentary promise and in both instances the respondent ought properly to institute an action setting forth her claim against the estate.

B I agree with the submission of learned counsel for the applicant that the present summons for the removal of a caveat is not a probate action under the High Court Rules but the invocation of a specific statutory provision. Further the applicant has no cause whatsoever to dispute the testator's will and indeed has no intention of instituting any probate action and ought not to be forced to do so by the mere lodgment of a caveat by a person who has neither entered an appearance to a warning or issued a Summons for Directions nor filed an affidavit disclosing the nature of any contrary interest she may have in the estate.

C What is more in seeking the grant the applicant is not instituting a probate action under the Court's general or inherent jurisdiction. Instead the applicant is relying upon the exercise of a specific statutory jurisdiction vested in the Court in terms of Section 31 of the Succession Probate and Administration Act (Cap.60).

D For the foregoing reasons the respondent's caveat Nos. 19/93 and 34/93 were ordered to be removed.

(Application granted.)

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