IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 28th OF APRIL, 2023

FIRST APPEAL No. 799 of 2022

BETWEEN:-

MS. JYOTSANA SANGHI D/O LATE SHRI SHARAD KUMAR SANGHI, AGED ABOUT 38 YEARS, OCCUPATION: BUSINESS A-111, 11TH FLOOR, EMBASSY APARTMENT JAG MOHANDAS MARG. AUGUST KRANTI MARG. NEPEAN SEA ROAD, MALABAR HILL MUMBAI (MAHARASHTRA)

.....APPELLANT/PLAINTIFF

(SHRI R.S. JAISWAL SENIOR ADVOCATE ALONG WITH SHRI ABHINAV MALHOTRA , ADVOCATE)

AND

1. **MRS. GITA SANGHI W/O LATE SHRI SHARAD KUMAR SANGHI, AGED ABOUT 71 YEARS, OCCUPATION: BUSINESS 25, PALASIA MAIN ROAD, A.B. ROAD. OPPOSITE RAYMOND SHWROOM INDORE (MADHYA PRADESH)**
2. **MS. RAGINI SANGHI D/O LATE SHRI SHARAD KUMAR SANGHI, AGED ABOUT 46 YEARS, OCCUPATION: BUSINESS 25, PALASIA MAIN ROAD, INDORE (MADHYA PRADESH)**
3. **MS. PRIYA SANGHI D/O LATE SHRI**

SHARAD KUMAR SANGHI, AGED ABOUT 44 YEARS, OCCUPATION: BUSINESS FLAT NO. 401, PUSHPRATAN LANDMARK 384/1,SAKET NAGAR (MADHYA PRADESH)

4. **MR. PRADEEP BANSAL S/O MR. GOPALKRISHNA BANSAL, AGED ABOUT 46 YEARS, OCCUPATION: BUSINESS B-1/104, BALAJI SKYZ, NIPANIA ROAD INDORE (MADHYA PRADESH)**
5. **SANGHI BROTHERS (INDORE) PRIVATE LTD. THROUGH ITS DIRECTOR MRS. GITA SANGHI D/O . 6, MANORAMA GANJ INDORE (MADHYA PRADESH)**
6. **BHAVIKA BAIS THROUGH NATURAL GUARDIAN MS. PRIYA SANGHI D/O LATE SHRI SHARAD KUMAR SANGHI, AGED ABOUT 44 YEARS, OCCUPATION: BUSINESS FLAT NO. 401, PUSHPRATAN LANDMARK 384/1,SAKET NAGAR (MADHYA PRADESH)**
7. **TANMAY BAIS THROUGH NATURAL GUARDIAN MS. PRIYA SANGHI D/O LATE SHRI SHARAD KUMAR SANGHI, AGED ABOUT 44 YEARS, OCCUPATION: BUSINESS FLAT NO. 401, PUSHPRATAN LANDMARK 384/1,SAKET NAGAR (MADHYA PRADESH)**
8. **MANVIR SINGH BAIS S/O MR. VIRENDRA SINGH BAIS, AGED ABOUT 45 YEARS, OCCUPATION: BUSINESSMAN FLAT NO. 401, PUSHPRATAN LANDMARK 384/1,SAKET NAGAR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI A.K.SETHI, SENIOR ADVOCATE ALONG WITH SHRI MANU MAHESHWARI, ADVOCATE)

RESERVED ON :-28.04.2023
PRONOUNCED ON :-09.05.2023

This appeal coming on for judgement this day, the court passed the following:

JUDGMENT

This appeal has been preferred by the appellant/plaintiff under Section 96 of the Code of Civil Procedure 1908 (hereinafter to be referred to as "CPC") against the judgement and decree dated 14.05.2022, passed by the District Judge, Indore in Civil Suit RCS-A No.1228-A/2021; whereby, the plaint filed by the appellant has been rejected under Order 7 Rule 11 of the CPC.

2. In brief, facts of the case are that the appellant/plaintiff has filed the civil suit for declaration of title, permanent and mandatory injunction, possession and other consequential reliefs against the respondents/defendants.

3. Undisputedly, the appellant/plaintiff is the daughter of Late Shri Sharad Kumar Sanghi whose Will dated 07.08.2019, is being sought to be executed by the plaintiff in this suit.

4. In the aforesaid civil suit, number of reliefs have been sought by the plaintiff surrounding the Will dated 07.08.2019, suffice it to say that they run into five foolscap pages.

5. After the defendants were served in the suit, instead of filing the written statements, two applications under Order 7 Rule 11 of the CPC were filed by them, one by the defendant no.2 Ragni Sanghi, whereas the other application was filed by defendants no.3,6,7 and 8. The application filed by defendants no.3,6,7 and 8 was dismissed by the learned judge of the trial Court, however, the application filed by the defendant no.2 Ragini Sanghi was allowed and the suit was rejected on the ground that the same is barred under Sections 213, 227 and 276 of the Indian Succession Act, 1925 (hereinafter to be referred to as "Act of 1925"). It was contended by the defendant no.2 that before filing of the suit, the probate of the will

dated 07.08.2019, has not been obtained.

6. Shri R.S.Jaiswal, learned senior counsel assisted by Abhinav Malhotra, learned counsel appearing for the appellant/plaintiff has submitted that the learned judge of the trial Court has erred in wrongly interpreting the provisions of the Act of 1925, more particularly Sections 57, 213 and 276 of the Act of 1925. Counsel has also submitted that the law is already settled that a Will which has been executed other than the local limits of the Ordinary Original Civil Jurisdiction of the High Courts of Madras, Calcutta and Bombay are not required to be probated and the various decisions rendered by the Supreme Court and by this Court are also available to substantiate the aforesaid proposition.

7. Shri Jaiswal, has also submitted that none of the decisions cited by the appellant/plaintiff in support of their contentions have been taken into consideration by the learned District Judge while passing the impugned order despite the fact that the reference of all the judgement was made in the order.

8. Thus, it is submitted that there was no occasion of the learned District Judge, Indore to reject the plaint despite there being no ambiguity in the law which has also been clarified by the Supreme Court and this Court time and again. It is submitted that the impugned order be set-aside and the matter may be remanded back. Reliance has also been placed by shri Jaiswal on the decisions rendered by the Supreme Court in the case of **Kanta Yadav Vs. Om Prakash Yadav and others (2020) 14 SCC 102, Rupinder Singh Anand Vs. Gajinder Pal Kaur Anand 2015(4) MPLJ 392, Shri Bishwanath Banik and another Vs. Smt. Sulanga Bose and others(Civil Appeal No.1848/2022) and Phool Singh Vs. Kosabai reported in ILR 1998 MP 689.**

9. On the other hand, Shri A.K.Sethi, learned senior counsel assisted by Shri Manu Maheshwari, learned counsel appearing for the respondents/defendants has vehemently opposed the prayer and it is submitted that no case for interference is made out as learned judge of the trial Court has rightly appreciated the facts of the case, and has come to a conclusion that the suit cannot be maintained in the absence of the will being probated. Counsel has also submitted that in the present case even the relief clause of the plaint clearly reveals that the appellant/plaintiff herself is not sure about the validity of the will and that is why such reliefs have been sought, hence the probate of the Will is a must under Section 217(1) of the Act of 1925.

10. Shri Sethi, has also drawn the attention of this Court to the relief sought in clause (a) and clause (b) of the Relief clauses which read as under:-

> "(a) A decree of declaration that the subject will dated 07.08.2019 is the last will and testament of the deceased testator and the subject will is binding upon all the heirs including the plaintiff, defendant nos.1 to 3 and all other defendants;
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> (b) A decree of declaration to the effect that the subject will dated 07.08.2019 has been duly signed and executed by the deceased testator and that the properties mentioned in the subject will dated 07.08.2019 have been duly bequeathed in terms of the said will".

11. Counsel has submitted that the present civil suit is a suit in *personam* whereas a probate always operates *in rem* and is binding on public at large. It is also submitted that in probate the notices are issued to public at large and if any person has any other claim or will pertaining to the suit property, the Court can decide the issue then and there only. Whereas, if the present suit is allowed and subsequently, if some other person comes with any another will or claim about the property, the entire

trial would be a futile exercise.

12. Shri Sethi, has also submitted that one of the properties under the will are situated at Bombay and thus, on this count also the plaintiff is required to seek probate of the will. Thus, it is submitted by learned counsel for the respondents that the learned judge has not erred in holding that the suit is liable to be rejected as the appellant/plaintiff has preferred the suit without seeking probate of the will dated 07.08.2019.

13. In rebuttal, Shri R.S.Jaiswal, learned counsel for the plaintiff has submitted that the property is at Village Payanje, District Raigad (Maharashtra) which does not fall within the local limits of Ordinary Original Civil Jurisdiction of the High Court of Bombay and has also referred to the Rules relating to the jurisdiction of the High Court of Bombay on its original side to demonstrate the same. Thus, it is submitted that this ground is also not available to the respondents/defendants.

14. Heard learned counsel for the parties and perused the record.

15. From the record, this Court finds that the suit is in respect of the Will dated 07.08.2019, executed by Shri Sharad Sanghi at Indore, in respect of the properties situated in the State of M.P. And a property at Raigarh, Maharashra . Now the question is whether a probate is required to be taken of the said Will as provided under Section 213 of the Act of 1925, before filing of the civil suit.

16. In this regard, reference may be had to the decisions rendered by the Supreme Court in the case of ***Kanta Yadav(supra)***, and by the Division Bench of this court in the case of ***Shri Bishwanath Banik (Supra)***.

17. In the case of **Kanta Yadav (supra)**, the relevant paragraphs 5,6,10,11 and 12 read as under:-

"5) It is undisputed that the present National Capital Region Delhi was part of erstwhile State of Punjab prior to November 1, 1966. The argument raised by the respondents is that Section 57 of the Act is applicable where the properties and parties are situated in the territories of Bengal, Madras or Bombay, therefore, it is not necessary to seek probate or letter of administration in respect of properties or the persons when they are not located in the States of Bengal, Madras or Bombay. To examine the said question, certain statutory provisions are relevant to quote hereunder:

> "Section 213 - Right as executor or legatee when established.- (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.
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> (2) This section shall not apply in the case of Wills made by Muhammadans, and shall only apply-
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> (i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and
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> (ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962.) where such Wills are made within the local limits of the [ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immovable property situated within those limits.]

Section 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
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> (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; and
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> (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."

6. The said provisions have been examined and come up for consideration time and again before the Punjab and Haryana High Court and Delhi High Court. In Ram Chand v. Sardara Singh & Ors.2, the Punjab High Court held as under:

> "5. …The clear effect of these provisions appears to be that the provisions of section 213(1) requiring probate do not apply to wills made outside Bengal and the local original jurisdictional limits of the High Courts at Madras and Bombay except where such wills relate to immovable property situated within those territories.
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> 6. There remains to be considered the decision of Shamsher Bahadur, J., in the case mentioned above, which is apparently based on the decision of a Full Bench in Ganshamdoss Narayandoss v. Gulab Bi Bai, [I.L.R. 50 Mad. 927.] . I find, however, on perusing this judgment that what has been held is that a defendant resisting a claim made by the plaintiff as heir-at-law cannot rely in defence on a will executed in his favour at Madras in respect of property situate in Madras, when the will is not probated and no letters of administration with the will annexed have been granted. This is clearly in accordance with the provisions of sections 213 and 57(a) of the Act, and the only point on which the matter was referred to the Full Bench was whether a will could be set up in defence in a suit without probate.
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> 7. As I have said the clear reading of the provisions of the Act leave no doubt whatever that no probate is necessary in order to set up a claim regarding property either movable or immovable on the basis of a will executed in the Punjab and not relating to property situated in the territories mentioned in section 57(a). I accordingly accept the revision petition and set aside the order of the lower Court requiring the petitioner to obtain probate. The

> matter may now be disposed of by the lower Court, where the parties have been directed to appear on the 4th of December, 1961. The parties will bear their own costs in this Court."

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10. The learned counsel for the respondents also referred to the Supreme Court judgment in *Clarence Pais* v. *Union of India* [*Clarence Pais* v. *Union of India*, (2001) 4 SCC 325] wherein, validity of Section 213 of the Act was challenged as unconstitutional and discriminatory against the Christians. This Court held as under : (SCC p. 332, para 6)

> "*6.*… A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(*a*) and (*b*), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories. The result is that the contention put forth on behalf of the petitioners that Section 213(1) of the Act is applicable only to Christians and not to any other religion is not correct."

11. The statutory provisions are clear that the Act is applicable to wills and codicils made by any Hindu, Buddhist, Sikh or Jain, who were subject to the jurisdiction of the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay — [clause (*a*) of Section 57 of the Ac]. Secondly, it is applicable to all wills and codicils made outside those territories and limits so far as relates to immovable property within the territories aforementioned, clause (*b*) of Section 57. Clause (*c*) of Section 57 of the Act relates to the wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which provisions are not applied by clauses (*a*) and (*b*). However, sub-section (2) of Section 213 of the Act applies only to wills made by Hindu, Buddhist, Sikh or Jain where such wills are of the classes specified in clauses (*a*) or (*b*) of Section 57. Thus, clause (*c*) is not applicable in view of Section 213(2) of the Act.

12. In view thereof, the wills and codicils in respect of the persons who are subject to the Lieutenant Governor of Bengal or who are within the local limits of ordinary original civil jurisdiction of the High Court of Madras or Bombay and in respect of the immovable properties situated

in the above three areas. Such is the view taken in the number of judgments referred to above in the States of Punjab and Haryana as well as in Delhi as also by this Court in *Clarence Pais* [*Clarence Pais* v. *Union of India*, (2001) 4 SCC 325] ."

(emphasis supplied)

18. Division Bench of this Court in the case of ***Phool Singh Vs. Kosabai (supra)*** has held as under:-

"Thus, as per sections 213 & 57 of 'the Act', obtaining of Probate is not necessary in respect of Wills which are executed by Hindus, outside the specified territories, which were subject to the Lt. Governor of Bengal or within the local limits of ordinary original jurisdiction of the High Courts of Madras & Bombay and in respect of properties situate outside those territories.

This proposition has consistently been laid down in several decisions of this Court. In *Lachhman Singh's case* (supra), it has been observed that the combined effect of section 213 (2) & sec. 57 of 'the Act' is that obtaining of a probats of the Will is not a condition precedent to the establishment of a light where the Will has been made by a person who is resident of Madhya Pradesh in respect of the property situated in Madhya Pradesh Similar view was taken in *Shobha Kshirsacur's case* (supra). In *Ahemed's case*(supra), which was relied upon in *Ruprao Ranaji's case* (supra), it was laid down that;

> "Section-213 applies only in cases of *Wills specified* in clauses. (a) &(b) of section-57 of 'the Act'. Section-213 (1) of 'the Act' cannot be made applicable to Willi falling within the classes specified in section-57 (c) of 'the Act' Therefore where in no. vible property in the Central Provinces is claimed under a Will made by a Hindu, it is not a condition procedent to the enforcement of the claim that probate of the Will should be taken. The executors can enforce their rights as executors without obtaining probate of the Will".
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> **(page 694)**

In view of the consistent view taken as above by this Court as well as by other High Courts as noticed above and also in view of the combined effect of the plain language of section 57 and section 213 of 'the Act', the contrary view in *Ram Dutta' case* (supra) in

so far as it lays dawn that the defendant cannot establish his right as an executor or legatee in any Court, unless the Court of competent jurisdiction has granted probate of the Will, under which the right is claimed or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed, with due respect, does not appear to be correct.We, therefore, answer the first question referred to as and hold that It is not compulsory to obtain the probate of Will made by a Hindu, Buddhist, Sikh or Jain residing outside the territory mentioned in section 57(a) of 'the Act' and who has executed a Will in respect of immovable property which is not situated within those territories.

(page 696)

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To reiterate, it is settled position of law that in the case of a Will, not covered by section 57 (a) and (b) of 'the Act', a probate is not necessary. In other words, in case of a Will executed by a Hindu, Buddhist, Sikh or Jain, outside the territories mentioned In section 57 (a) of 'the Act' regarding property which is net situate within those territories, obtaining of a probate of the Will is not necessary. If that be so, there is hardly any conceivable reason as to why the position would change in case another Will is set-up by a contesting party. **(page 697)**

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It is clear from above that the above provision of 'the Act' will be attracted only when probate or letters ef administration are obtained or preposed to be obtained, in accordance with the provisions of 'the Act'. But, there appears to be nothing in the said-provisions of 'the Act" which would negative the effect of section 57 & sec. 213 of 'the Act' and it does not appear that in view of above provisions, even if a Wilt is executed by a Hindu, etc., which is not covered by clauses (a) £ (b) of section 57, section 213 (2) would not apply.

Therefore, it follows that even if two contesting Wills are set-up, executed by a Hindu outside the territories mentioned In section 37 (a), regarding the property situated outside those territories, obtaining of a probate of a Will from the Probate Court would not be necessary. As noticed by the learned referring Judge also, if that was to be so, it would??? be very easy for the other party to plead and set up another Will and thus to defeat the tight of the party to pursue his claim under a Will unless he obtains probate thereof. Therefore, with due respect, we do not agree with the view taken in *Ramshankar's cese* (supra), that in the case of two contesting Wills exclusive jurisdiction is vested in the probate Court and in

> such a case la a suit Instituted by any party, no issue can be struck by the Civil Court to decide that the Will mi the last and valid Will and the other Will set-up by the other party, stands revoked by the Will relied on by the plaintiff.
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> Accordingly, we answer the second question and hold that even in case of two contesting or rival Wills, which are not covered by section 57 (a) & (b) of 'the Act', obtaining of probate is not compulsory and the jurisdiction of the Civil Court would not be barred."
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> **(page 699)**
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> **(emphasis supplied)**

19. Perusal of the aforesaid dictum of the Supreme Court as also the decisions rendered by this Court in respect of the provisions of the Act of 1925, this Court has no hesitation to come to a conclusion that the will in question dated 07.08.2019 is not required to be probated and the learned District Judge, Indore has clearly erred in law in holding that the suit is not maintainable for want of the Will being probated. It is also found that the learned District Judge has referred to various decisions cited by the plaintiff, including the aforesaid decisions cited in this appeal also, however, has not dealt with any of the decisions which were *germane* for just and proper disposal of the application filed under Order 7 Rule 11 of CPC.

20. So far as the property situated at District Raigad (Maharashtra) is concerned, it does not fall within the local limits of Ordinary Original Civil Jurisdiction of the High Court of Bombay as per the Rules relating to the jurisdiction of the High Court of Bombay on its original side.

21. **In view of the aforesaid discussions, the impugned order cannot be sustained in the eyes of law and is hereby set aside. The matter is remanded back to the learned District Judge for its expeditious disposal.**

22. The interim order dated 14.06.2022 passed by this Court shall continue to operate until the applications filed by the plaintiff under Order 39 Rules 1 and 2 of the CPC are decided by the learned judge of the trial Court.

23. Having said so, this court cannot help but wonder as to what must have prompted the counsel for the defendants to file such an application despite the fact that the not only the law itself is quite clear regarding necessity of obtaining a probate of a Will, but it has also been clarified time and again by the Supreme Court and also by this court, and the only explanation that that this court can come up with is, simply to delay the matter and **i**n which the defendants have also partially succeeded as the **impugned order was passed on 14.05.2022 and being disposed of on 09.05.2023 i.e.,** just falling short of one year. Apart from that, there is also considrable waste of the valuable time of this court at the expense of the other more needy and poor litigants' time which cannot be lost sight of. In the considered opinion of this court, such practice deserves to be deprecated as the parties or their counsel cannot be allowed to misuse the process of the court in this fashion, and they must realise that every application filed by them has the consequences. **Thus, an exemplary cost of Rs.1 Lakh is imposed on the defendants which shall be paid into the employees welfare account of the High Court within two weeks time**.

24. The appeal stands **allowed and disposed of.**

(SUBODH ABHYANKAR)
JUDGE

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