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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

ON THE 9th OF OCTOBER, 2023

MISC. PETITION No. 5626 of 2023

BETWEEN:-

1. **SHRIMATI GAYATRIRAJE PUAR W/O LATE SHRI TUKOJI RAO PUAR, AGED ABOUT 56 YEARS, R/O 197 ANAND BHAVAN PALACE A.B. ROAD DEWAS (MADHYA PRADESH)**
2. **SHRI VIKRAM SINGH PUAR S/O LATE SHRI TUKOJI RAO PUAR, AGED ABOUT 31 YEARS, R/O 197 ANAND BHAVAN PALACE A.B. ROAD DEWAS (MADHYA PRADESH)**
3. **KUMARI KANIKA RAJE PUAR D/O LATE SHRI TUKOJI RAO PUAR, AGED ABOUT 24 YEARS, R/O 197 ANAND BHAVAN PALACE A.B. ROAD DEWAS (MADHYA PRADESH)**

.....PETITIONER

(SHRI VIJAY KUMAR ASUDANI, COUNSEL FOR THE PETITIONERS .

AND

1. **SHRIMATI SHAILJARAJE PUAR W/O SHRI C. NARAYANAN D/O LATE SHRI KRISHNAJI RAO PUAR, AGED ABOUT 61 YEARS, R/O 496 AAVAS PHAATA ALIBAGH DISTT. RAJGARH MAHARASHTRA (MAHARASHTRA)**
2. **UTTARAJE PATANKAR W/O PRATAP SINGH PATANKAR, AGED ABOUT 65 YEARS, 5, AMOL HOSPITAL SGM COLLEGE VIDYANAGAR COOPERATIVE HOUSING SOCIETY SAIDAPUR SATARA MAHARASHTRA (MAHARASHTRA)**
3. **DEVIKA RAJE PHALKE W/O HEMANT PHALKE, AGED ABOUT 59 YEARS, 570, SATYA SAI NAGAR SCHEME NO. 114 PART 2 INDORE (MADHYA PRADESH)**
4. **SHRI MAHARAJA TUKOJIRAO PUAR RELIGIOUS**

AND CHARITABLE TRUST THROUGH ITS
TRUSTEE DEWAS (MADHYA PRADESH)

5. SHRI MAHARAJA KRISHNAJI RAO PUAR
RELIGIOUS AND CHARITABLE TRUST
THROUGH ITS TRUSTEE DEWAS (MADHYA
PRADESH)
6. STATE OF MADHYA PRADESH THROUGH
COLLECTOR DEWAS (MADHYA PRADESH)
7. STATE OF MADHYA PRADESH THROUGH
COLLECTOR RATLAM (MADHYA PRADESH)

.....RESPONDENTS

*(SHRI RAVINDRA SINGH CHHABRA - SENIOR COUNSEL WITH SHRI
MUDIT MAHESHWARI, COUNSEL FOR THE RESPONDENT NO.1. AND
(SHRI POURUSH RANKA - COUNSEL FOR RESPONDENT NO.2)*



*This petition coming on for admission this day, the court passed the
following:*

ORDER

The present petition is filed under Article 227 of the Constitution of India being aggrieved by the order dated 10.8.2023 passed by II ADJ, Dewas in RCS No. 101A/2021 whereby the application filed by the petitioners under section 10 of Code of Civil Procedure (hereinafter referred to as CPC), 1908 has been rejected.

2. Facts of the case are that the petitioner No.1 is widow of Late Shri Tukoji Rao Puar who is daughter in law of late Shri Krishnaji Rao Puar. Petitioner No.2 and 3 are son and daughter of late Shri Tukoji Rao Puar. The respondent Nos.1 to 3 are daughters of Shri Krishnaji Rao Puar and sisters of Late Shri Tukoji Rao Puar. It is stated that late Shri Krishnaji Rao Puar had executed a will dated 6.6.1988 thereby bequeathing all his properties in favour of his son late Shri Tukoji Rao Puar, husband of petitioner No.1. On the basis

of said will, the petitioners filed an application for grant of probate/letter of administration under section 276 and 278 of the Indian Succession Act, 1925 on 5.7.2018 before ADJ, Alot. The respondent Nos.1 to 3 filed reply to the probate application challenging the probate on the ground that will dated 6.6.1988 is forged and fabricated document. The respondent No.1 filed a suit for declaration, permanent injunction, mesne profits, possession and partition of ancestral and self acquired properties of Late Shri Krishnaji Rao Puar on 11.8.2021 before the principal District Judge, Dewas. The petitioners have filed an application under section 10 of CPC for stay of the previously instituted suit on the ground that matter in issue is directly and substantially in issue in both the suits and suit is between the same parties. It is argued that respondents have already disputed the will in the probate proceedings and if the proceedings of both the suits continues, then prejudice would be caused to the petitioners. It is submitted that where the issue involved in both the cases are directly and substantially the same and the parties are same, the proceedings of the trial of previously instituted suit should be stayed in the light of provisions of section 10 of CPC. In support of his submission, he has placed reliance on the following judgments :-

- (i) P.V. Shethy Vs. B.S.Giridhar, (1982) 3 SCC 403**
- (ii) Padmabai Vs. Shaikh Shahadulla Shaikh Abdulla, (2010) 7 MHLJ 98**
- (iii) Balbir Singh Wasu Vs. Lakhbir Singh and others, (2005) 12 SCC 503**
- (iv) Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527**
- (v) Maharashtra State Co-operative Marketing Federation Ltd.Vs. Indian bank, Bombay, 1996 (2) MHLJ 925**
- (vi) In the Goods of Lilian Singh, 194 ILR 194**
- (vii) C.L.Tandon Vs. prem pal Singh Rawal and others, AIR 1978 DEL 221**
- (viii) in the matter of Arbitration between the firm of Jail**

3. Per contra, learned Senior counsel for respondents submits that respondent No.1 has filed a civil suit for declaration, permanent injunction, mesne profits and partition of ancestral and self acquired properties of Late Shri Krishnaji Rao Puar. He has further sought declaration that the Will dated 6.6.1988 is null and void. The reliefs claimed in the subsequent suit and in the probate are different and the nature of probate proceedings are entirely distinct from the suit filed by the respondents. It is also argued that probate application is only in respect of two properties which are involved in the subsequent suit. Apart from that all the parties are not same. In the suit filed by the respondents, trust is also the party which is not party in the probate application. He submitted that proceedings of probate does not decide the title between the parties and therefore considering the nature of probate the trial court has rightly rejected the application under section 10 of CPC. In support of his submission, he has placed reliance on the judgment passed by the Apex Court in the cases of **Kanwarjit Singh Dhillon Vs. Hardayal Singh Dhillon and others, (2007) 11 SCC 357** and also the judgment passed by Bombay High Court in the case of **Chandrashekhar Kashinath Patange Vs. Ramesh Kashinath Patange and others, 2013 (3) MHLJ 669.**

4. After hearing learned counsel for parties, the sole question is as to whether the proceedings of probate and the suit filed by the respondents are of similar nature or distinct proceedings, therefore the provision of section 10 CPC would not apply. Considering the aforesaid rival submissions, it is apposite to refer the provisions of section 10 of CPC which is reproduced

below :

sec.10 Stay of suit - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government having like jurisdiction or before the Supreme Court."

5. From plain reading of the aforesaid provision, the language of Section 10 suggests that it is referable to a suit instituted in the Civil Court and it cannot apply to proceedings of the other nature instituted under any other statute.

6. Upon perusal of the application for probate by the petitioners, it is evident that petitioners have sought issuance of probate and letter of administration on the basis of the will. The suit filed by the respondent No.1 is for grant of declaration, permanent injunction, mesne profits, possession and partition of ancestral and self acquired property of Late Shri Krishnaji Rao Puar and relief has also been sought for declaration of will as null and void. The judgment relied upon by the counsel for petitioners in the case of Jai Narayan Babulal (supra) it was held that bar under section 10 of CPC applies even to the Misc. proceedings provided in the court. The same view was expressed in the case of Goods of Lilian Singh. The judgement relied on by the petitioners in the case of P.V. Shetty does not deal with section 10 of the CPC. The judgment in the case of Balbir Singh Wasu(supra), it was held that in the facts of the case number of issues would overlap and therefore both the probate proceedings

and civil suit should be clubbed and heard together by the District Judge who would be competent to hear and dispose of both the civil suit as well as the probate proceedings. The said case also does not deal with stay of the suit on the ground of pendency of probate case. The language of section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to the proceedings of other nature instituted under any other statute. In this regard, a reference may be made to the judgment passed by the Apex Court in the case of National Institute of Mental Health and Neuro Sciences Vs. Parmeshwara, AIR 2005 SC 242. In the case of Kanwarjeet Singh Dhillon(supra), it would be apposite to refer relevant para No.12 of the said judgment, which is reproduced below :

"What this Court held in that decision is that once a probate is granted by a competent court, it would become conclusive of the validity of the will itself, but, that cannot be decisive whether the Probate Court would also decide the title of the testator in the suit properties which, in our view, can only be decided by the civil court on evidence. It is true that the probate of the will granted by the competent Probate Court would be admitted into evidence that may be taken into consideration by the civil court while deciding the suit for title but grant of probate cannot be decisive for declaration of title and injunction whether at all the testator had any title to the suit properties or not."

The relevant para No.13 of the judgment in the case of Chandrashekhar Kashinath Patange(supra) is reproduced as under :

13. Now coming to the proceedings for probate, the petitioner i.e. the defendant No.1 in the suit claims that by the Will executed by his father, the suit property has been bequeathed to him and his sister. Therefore, insofar as the said probate proceedings are concerned, the issue would be as regards the legality and validity of the Will in question. The extent of the bequeath that could have been made by the father of the petitioner also cannot be gone into the probate proceedings. The plaintiff in the suit claims the relief on the basis of his right which he claims in the 50% share of his mother in the suit property. The plaintiff therefore virtually claims title of the property to the extent of 50% of the share of his mother. Obviously in the

probate proceedings the said aspect cannot be gone into. The question therefore would be whether the scope of the two proceedings are running parallel or are different. The answer is obviously in the negative as in the suit the issue is about the plaintiff's right to claim a share in the 50% share of his mother. In the suit therefore that right would have to be adjudicated. The scope of the suit is therefore distinct from the scope of the probate proceedings. The probate proceedings would be the entitlement of the petitioner to the probate of the Will of his father where the issue would be as regards the legality and validity of the Will. In view thereof the conditions which are mentioned in section 10 of the Code of Civil Procedure cannot be said to have been satisfied."

7. In the case of National Institute of Mental Health and Neuro Sciences, the Apex court held that section 10 CPC applies to suit instituted in civil court and it cannot apply to proceedings of other nature instituted under any other statute. Apart from that, it has been held in the cases of Kanwarjit Singh Dhillon and Chandrashekar Kashinath Patange (supra) that scope of the suit is therefore distinct from the scope of the probate proceedings. The probate proceedings would be the entitlement of the petitioner to the probate of the Will of his father whereas the issue would be as regards the legality and validity of the Will and further, when the scope of the two proceedings are different and distinct, the suit sought to be stayed need not be stayed. Once a probate is granted by a competent court, it would become conclusive of the validity of will itself, but that cannot be decisive whether the probate Court would also decide the title of the testator in the suit properties which can only be decided by the civil court on evidence. The probate of the Will granted by the competent probate court would be admitted into evidence that may be taken into consideration by the civil court while deciding the civil suit for title but grant of probate cannot be decisive for declaration and title and injunction whether at all the testator had any title to the suit properties or not.

8. Apart from that the reliefs in the suit and the proceedings and the parties are different, therefore, the court below has rightly rejected the application under section 10 CPC. I do not find any illegality or perversity in the impugned order warranting any interference under Article 227 of the Constitution of India.

9. Even otherwise, it is settled law that jurisdiction under Article 227 of the Constitution of India cannot be exercised to correct all errors of subordinate Courts within its limitation. It can be exercised where the order is passed in grave dereliction of duty and flagrant abuse of the fundamental principle of law and justice. [See. **Jai Singh and another vs. MCD, (2010) 9 SCC 385 and Shalini Shetty vs. Rajendra S. Patil, (2010) 8 SCC 329**].

10. Further, a Co-ordinate Bench of this Court in the case of **Ashutosh Dubey and another vs. Tilak Grih Nirman Sahakari Samiti Maryadit, Bhopal and another, 2004 (2) MPHT 14** held that supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied - (i) the error is manifest and apparent on the fact of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law; and (ii) a grave injustice or gross failure of justice has occasioned thereby.

11. In view of the aforesaid enunciation of law, the instant petition is devoid of merit and is hereby **dismissed**. The order impugned in the present writ petition passed by the Court below is upheld.

(VIJAY KUMAR SHUKLA)
JUDGE

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