

Vs.

Mohit Kumar & Ors.

... Respondents

ORDER

Leave granted. We have heard learned counsel for the parties.

2. The following three litigations are pending before the Allahabad High Court, Lucknow Bench :

- (1) Testamentary Case No.3 of 2003 for grant of probate, filed by Dato Mohan Swami claiming to be the Executor under the alleged Will dated 9.4.1996 of Swami Rama.
- (2) Testamentary Case No.1 of 2004 for grant of letters of administration in regard to estate of Swami Rama who died on 13.11.1996, filed by his son Mohit Kumar.
- (3) Original Suit No.865 of 1997 filed by Mohit Kumar, Lilu Kumar and Lt. General M.L. Dar (Retd.) and Himalayan Institute Hospital Trust represented by a Presidential Body consisting of the said three persons for a permanent injunction restraining defendants therein from interfering with the functioning of Himalayan Institute Hospital Trust and its said Presidential Body, and seeking a declaration that nomination letter dated 5.11.1996 in favour of Dato Mohan Swami and three others is null and void.

3. Himalayan Institute Hospital Trust (for short 'HIH Trust') was impleaded as fourth respondent in Test. Case No.1/2004. A learned Single Judge of the Allahabad High Court by order dated 8.9.2006 allowed an application for deletion of fourth respondent (HIH Trust) from the array of parties in that case. He also rejected a subsequent application for recalling the said order, by order dated 22.9.2006. The said orders were challenged by the first respondent in two special appeals. A Division Bench of the High Court allowed the special appeals by common order dated 5.12.2006 with the following directions :

- (a) The Himalayan Institute Hospital Trust through "its presidential body members" shall be impleaded as a party in Testamentary Case No.1 of 2004.
- (b) In matters where the said society (HIH Trust) is a party, both the rival groups namely the group of Dato Mohan Swami and three others, and the group of Mohit Kumar and two others will be entitled to participate.

- (c) The three cases (Testamentary Case No.3/2003, Testamentary Case No.1/2004 and OS No.865/2007) shall be tried together by recording common evidence and the three cases shall be disposed of by common judgment and decree.

The said order of the Division Bench is challenged by the HIH Trust represented by Dato Mohan Swami, in this appeal by special leave.

4. After hearing the learned counsel, and considering the factual background, and the nature of directions issued by the Division Bench, we are of the view that the said order requires certain modifications to remove the technical infirmities. This will also abate the anxiety expressed by the parties regarding delay in disposal.

5. Accordingly, we issue the following directions in modification of the impugned order of the High Court, with the consent of parties :

(i) Testamentary Case No.3/2003 and Testamentary Case No.1/2004 shall be tried together by the High Court. Common evidence shall be recorded in the said two cases and they shall be disposed of by a common judgment.

(ii) OS No.865/1997 shall be tried by the same Judge trying the said two cases, simultaneously but separately without clubbing it with the other two cases.

To avoid any grievance of preference to a particular case, we request the High Court that Testamentary Case No.3/2003 and Testamentary Case No.1/2004 on the one hand and OS No.865/1997 on the other, to be disposed of on the same date but by separate judgments.

(iii) If any party wants the evidence led in the testamentary cases, to be read as evidence in the original suit or vice versa, appropriate application may be made before the High Court for that purpose.

(iv) The High Court will endeavour to dispose of the three cases

expeditiously, preferably within six months.

(v) Dato Mohan Swami (second appellant before us) shall enter appearance in O.S. No.865/1997 where he is a defendant, on the next date of hearing before the High Court, without further notice (as undertaken by his counsel Sri Sanjeev Aggarwal).

(vi) In place of 'Himalayan Institute Hospital Trust through its presidential body members' impleaded as a party, the following two groups shall be impleaded as respondent Nos. 4 and 5 in Testamentary Case No.1 of 2004 :

4. 4(a) Dato Mohan Swami
4(b) Vijendar Chauhan
4(c) Vijay Dhasmana
4(d) Vikram Singh
Claiming to constitute the presidential
body members of
Himalayan Institute Hospital Trust,
Jolly Grant, Dehradun.

5. 5(a) Mohit Kumar
5(b) Lilu Kumar
5(c) Gen. M.L. Dar (Retd.)
Claiming to constitute the presidential
body members of
Himalayan Institute Hospital Trust,
Jolly Grant, Dehradun.

(vii) Nothing stated by the High Court or by this Court shall be construed as expression of an opinion on merits, or on any of the issues in the three pending cases.

6. The appeal is accordingly disposed of. Parties to bear their respective costs.

.....J
(P. Sathasivam)

.....J
(R. V. Raveendran)

New Delhi;
March 27, 2008.