



2026:AHC:49529

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 683 of 2025

Amit Gupta And Another

.....Appellant(s)

Versus

Dinesh Chandra Gupta And 6 Others

.....Respondent(s)

Counsel for Appellant(s) : Rishabh Agarwal

Counsel for Respondent(s) : Abhishek Agarwal, Arvind Agrawal

AFR

Court No. - 38

HON'BLE SANDEEP JAIN, J.

1. The instant appeal has been filed by the appellants under Section 299 of the Indian Succession Act, 1925 against the impugned judgment and order dated 21.07.2025 passed by the court of District Judge, Firozabad in Misc. Probate Petition No.2 of 2023 (Amit Gupta and another vs. Smt. Kalpana Gupta and others), whereby the petition seeking probate of registered Will dated 31.03.2022 executed by Indra Prakash Gupta has been rejected on the ground that regarding the same Will, Original Suit No.369 of 2025 (Dinesh Kumar Gupta and others vs. Amit Gupta and others) is pending in the court of Civil Judge (Senior Division), Firozabad, in which the issue will be decided.

2. Factual matrix is that the appellants filed Misc. Probate Case No.2 of 2023 (Amit Gupta and another vs. Smt. Kalpana Gupta and others) with the averments that Indra Prakash Gupta was the owner in possession of the disputed property regarding which, he executed a Will on 31.03.2022 in favour of the appellants, which was registered on 01.04.2022, who subsequently died on 12.10.2022 and as such, on the basis of Will, the appellants are the owner in possession of the disputed property. With these averments, it was prayed that the probate regarding the above Will be granted in favour of the appellants.

3. From the perusal of the record of the lower court, it is evident that initially, the contesting respondent no.1 Dinesh Chandra Gupta raised no objection regarding the grant of probate in favour of the appellants but

subsequently, the contesting respondents no.1 & 2 Dinesh Chandra Gupta and Dilip Kumar Gupta filed their objection to the probate petition on the ground that the testator Indra Prakash Gupta was suffering from cancer and was not in a fit mental condition to execute a Will. The execution of the Will was disputed by the contesting respondents.

4. It is apparent that the respondent nos.3, 4, 5, 6 and 7, who are the married sisters and brother of the contesting respondents did not challenge the grant of probate to the appellants.

5. It is also apparent that subsequently, the contesting respondent nos.1 and 2 moved an application before the lower court that they have also filed an Original Suit No.369 of 2025 (Dinesh Kumar Gupta and others vs. Amit Gupta and others), for the cancellation of the alleged Will on the basis of which probate was claimed by the appellants. In the above suit, the contesting respondents averred that the alleged Will of Indra Prakash Gupta, which was executed on 31.03.2022 and registered on 01.04.2022, was a forged and fabricated document, which was never executed by Indra Prakash Gupta, who was suffering from serious illness and was not in a fit mental condition to execute the Will. The contesting respondents claimed that the above registered Will be cancelled by decree of this Court and also the disputed property be partitioned and they each be granted their 1/7th share in the disputed property and accordingly, a preliminary decree of partition be prepared. It was also claimed that on the basis of preliminary decree subsequently, a final decree be also prepared by which the disputed property be divided by metes and bounds and during the pendency of the suit, the defendants be permanently restrained from interfering in the peaceful possession of the plaintiffs and from alienating it to third party.

6. The lower court by impugned order dated 21.07.2025 has concluded that the probate petition has been filed regarding the disputed Will of Indra Prakash Gupta and for getting the above Will cancelled, the contesting respondents have also filed Original Suit No.369 of 2025, which was pending before the court of Civil Judge (Senior Division), Firozabad in which the issue will be decided, as such, probate cannot be granted in favour of the appellants and due to this reason, the probate

petition was rejected, aggrieved against which, the petitioners seeking probate have filed the instant appeal.

7. Learned counsel for the appellants submitted that the probate petition was filed earlier in time by the appellants in which the respondents duly appeared and after their appearance the Original Suit No.369 of 2025 was filed subsequently for getting cancelled the alleged Will of Indra Prakash Gupta. Learned counsel submitted that since the respondents were contesting the alleged Will, as such, under Section 295 of the Indian Succession Act, 1925, the lower court had the jurisdiction to decide the controversy like a civil suit as has been mentioned in that Section and as such, the lower court has erred in rejecting the probate petition. Learned counsel further submitted that all the contentions raised by the contesting respondents insofar as the validity of the alleged Will was concerned could have been examined by the lower Court in accordance with law, as such, the contesting respondents could not have been prejudiced in any manner whatsoever. Learned counsel further submitted that merely because the contesting respondents had filed a separate Original Suit No.369 of 2025, the probate petition could not have been rejected by the lower court. In support of his contention, learned counsel has relied upon the case law of *Chiranjilal Shrilal Goenka (Deceased) through LRs vs. Jasjit Singh and others, (1993) 2 SCC 507*.

8. Per contra, learned counsel for the contesting respondent nos.1 and 2 submitted that the Original Suit No.369 of 2025 preferred by the contesting respondents was legally maintainable and the lower court could have decide the suit along with probate petition of the appellants. In support of his contention, learned counsel has relied upon the case law of this Court *In The Matter of Goods Of Late Rai Bharat vs. Vishnu Gupta, Testamentary Case No.32 of 2014* decided on 14.03.2018.

9. I have heard learned counsel for the parties and perused the impugned order and record of the lower court.

10. Section 295 of the Indian Succession Act, 1925 reads as under:

295. Procedure in contentious cases-In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of

1908), in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.

11. The Apex Court in the case of **Chiranjilal Shrilal Goenka** (supra) while examining the provisions of the Indian Succession Act insofar as the grant of probate was concerned, has held as under:-

"20. On a conspectus of the above legal scenario we conclude that the Probate Court has been conferred with exclusive jurisdiction to grant probate of the Will of the deceased annexed to the petition (suit); on grant or refusal thereof, it has to preserve the original Will produced before it. The grant of probate is final subject to appeal, if any, or revocation if made in terms of the provisions of the Succession Act. It is a judgment in rem and conclusive and binds not only the parties but also the entire world. The award deprives the parties of statutory right of appeal provided under section 299. Thus the necessary conclusion is that the Probate Court alone has exclusive jurisdiction and the Civil Court on original side or the Arbitrator does not get jurisdiction even if consented to by the parties, to adjudicate upon the proof or validity of the Will propounded by the executrix, the applicant. It is already seen that the executrix was nominated expressly in the will is a legal representative entitled to represent the Estate of the deceased but the heirs cannot get any probate before the Probate Court. They are entitled only to resist the claim of the executrix of the execution and genuineness of the Will. The grant of probate gives the executrix the right to represent the estate of the deceased, the subject-matter in other proceedings. We make it clear that our exposition of law is only for the purpose of finding the jurisdiction of the arbitrator and not an expression of opinion on merits in the probate suit."

12. Order IV-A C.P.C. as inserted by Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 (UP Act 57 of 1976), as applicable in Uttar Pradesh, reads as under :-

I. Consolidation of suits and proceedings- When two or more suits or proceedings are pending in the same Court, and the Court is of opinion that it is expedient in the interest of justice, it may by order direct their joint trial, where upon all such suits and proceedings may be decided upon the evidence in all or any of such suits or proceedings.

13. The Apex Court in the case of ***Balbir Singh Wasu vs. Lakhbir Singh and others, (2005) 12 SCC 503***, was considering a situation where a probate proceeding along with civil suit was pending and it was held as under :-

*"6. However, having regard to the fact that in this case a large number of issues would overlap, we are of the view that both the probate proceedings and the 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. We are supported in the view that we have taken by the order passed by a Bench of three Hon'ble Judges of this Court in *Nirmala Devi v. Arun Kumar Gupta [(2000) 2 All I HLR 436 : (2005) 12 SCC 505]*. Accordingly, the appeals are disposed of by transferring the appellant's civil suit to the District Judge, Chandigarh. Similarly Probate Proceedings No. 2 of 1999 filed by the respondents pending before the High Court is transferred to the District Judge, Chandigarh for the purpose of being disposed of together with the civil suit. The interim order, if any, already passed in either of the proceedings will continue unless vacated/modified or altered by the District Judge. No costs."*

14. Similarly, the Apex Court in the case of ***Nirmala Devi vs. Arun Kumar Gupta and others, (2005) 12 SCC 505***, while considering the pendency of probate case and civil suit has held as under :-

"4. It has been brought to our notice that settlement is not possible at this stage. Therefore, now remains the question whether the probate proceedings could be clubbed with the suit. Learned counsel for Respondent 1 submitted that the civil suit is of the year 1987 and that despite various orders of the High Court, it has remained pending and the probate proceedings are initiated by the appellant in 1997 regarding the Will of 1984. Be that as it may, the decision in the probate proceedings on the question of proof of the Will will have a direct impact on the suit. Only on this short ground and without expressing any opinion on the merits of the controversy between the parties, we request the learned District Judge, Gopalganj to make it convenient to dispose of the probate proceedings being Probate Case No. 11 of 1997 along with civil suit being TS No. 27 of 1987 filed by Respondent 1 at his earliest convenience and preferably within a period of six months from the date of receipt of a copy of this order at its end. The aforesaid TS No. 27 of 1987 pending in the court of the eight Sub-Judge, Gopalganj shall therefore, stand transferred to the Court of District

Judge, Gopalganj and be clubbed with Probate Case No. 11 of 1997 which is pending in the Court of District Judge, Gopalganj for being tried together. The appeal is accordingly disposed of. No costs."

15. It is apparent that on the one hand the appellants are seeking probate of Will of Indra Prakash Gupta whereas the contesting respondents are challenging that Will and they have filed Original Suit No.369 of 2025 for cancelling the above registered Will, which is pending before the court of Civil Judge (Senior Division), Firozabad.

16. It is further apparent that since the probate petition was filed by the appellants prior in time to the civil suit No.369 of 2025, as such, the probate petition filed by the appellants could not have been dismissed on the ground that the above civil suit was pending for disposal before the Civil Judge (Senior Division), Firozabad. It is further apparent that all the contentions raised by the contesting respondents regarding the authenticity of the Will could have been decided in the probate petition itself, as such, there was no need for the contesting respondents to file a separate suit for getting the alleged Will of Indra Prakash Gupta cancelled. However, since the suit filed by the contesting respondents is still pending before the Court of Civil Judge (Senior Division), Firozabad, as such, it will be appropriate that in the light of the law laid down by the Apex Court in the case of *Balbir Singh Wasu* (supra) and *Nirmala Devi* (supra), the suit is consolidated with the probate petition and then both the probate petition and civil suit be decided together in accordance with law after hearing the parties.

17. It is apparent that the lower court has certainly erred in rejecting the probate petition merely on the ground of pendency of Original Suit No.369 of 2025. The instant appeal has merit and is liable to be allowed.

18. **Accordingly, the instant appeal is allowed.** Consequently, the impugned judgment and order dated 21.07.2025 is set aside and the Misc. Probate Petition No.2 of 2023 stands restored to its original number.

19. In exercise of power vested under Section 24 C.P.C., the Original Suit No.369 of 2025 (Dinesh Kumar Gupta and others vs. Amit Gupta and others) is transferred from the court of Civil Judge (Senior Division),

Firozabad to the court of District Judge, Firozabad and it is consolidated with Misc. Probate Case No.2 of 2023 (Amit Gupta and another vs. Smt. Kalpana Gupta and others). The District Judge concerned is directed to decide the probate petition and civil suit together in accordance with law, after hearing both the parties, within a period of six months, without affording unnecessary adjournments to either of the parties, from the date of production of certified copy of this order.

20. Office is directed to send back the record of the lower court, forthwith.

(Sandeep Jain,J.)

March 11, 2026

Jitendra