



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 650 OF 1988

IN THE MATTER OF THE ESTATE OF KARAM SINGH BHOGAL S/O BHUR SINGH

DEVINDER KAUR BHOGAL (*being the Administrators of the Estate of*

HARMINDER SINGH BHOGAL).....1ST APPLICANT

MOHINDER KAUR BHOGAL and HARPREET

SINGH BHOGAL (*being the Administrators of the Estate of*

RAJINDER SINGH BHOGAL).....2ND APPLICANT

VERUS

RANJIT KAUR BHOGAL.....RESPONDENT

RULING

1. Before court is an application dated 26th June 2018 by **Devinder Kaur Bhogal** as (Administrator of the Estate of **Harminder Singh Bhogal and Mohinder Kaur Bhogal and Harpreet Singh Bhogal**) as the administrator of the estate of **Rajinder Singh Bhogal**.
2. The two are widows of the deceased sons and they bring this application against the widow of the deceased **Ranjit Kaur Bhogal**.
3. The application seeks for the following:
 - i. Spent
 - ii. Stay of execution of the grant of probate dated 29th September, 1989 and confirmed on 3rd October 1989.
 - iii. A temporary injunction restraining the Respondent **Ranjit Kaur Bhogal** or any holder of her power of Attorney including but not limited to **Surinder Singh Phull**, her agents, servants and whomsoever other person from disposing of the properties of the estate.
 - iv. spent
 - v. That the grant of probate dated 29th September 1989 and confirmed on 3rd October 1989 be revoked and all acts done pursuant thereto and orders issued pursuant thereto be revoked.
 - vi. Costs be provided for.

4. The application is predicated on the grounds that though the applicants are beneficiaries of the estate of the deceased herein they had no knowledge of the application for the confirmation of the grants; nor consent was obtained of the matter and by her own admission the Respondent was not aware either; the grant of probate was obtained fraudulently with an aim of disinheriting the applicants; and it appears that other person other than the executrix is administering the estate as the executrix is of advanced age and lives in the U.K.

5. The application is supported by the affidavit of **Mohinder Kaur Bhogal** dated 29th June 2018 in the same she deposes that her father in law had 4 children, her husband Rajinder (deceased) being one of them and that the impugned will purports to disinherit the deceased children and further the beneficiaries were not involved when probate was obtained. Further that the Respondent misrepresented to the court that she is the only beneficiary. The estate consists of immovable properties and monies in the bank which now rests in the Respondent to the detriment of other beneficiaries.

6. The Respondent objected to the application through a replying affidavit dated 16th August, 2018 and filed in court on 17th September, 2018 when she states that the deceased left a valid will in which he appointed her as the executrix and the sole heir of his estate and the grant of probate herein was issued in accordance with the will. Further that so far there is no application seeking to challenge the will. The application is misplaced and full of falsehoods as the sole reason given for the application is an allegation that the applicants were beneficiaries. That the will is explicit in naming the beneficiaries. The estate was left to the Respondent and her two sons **Harminder Singh Bhogal** and **Rajinder Singh Bhogal** would have been beneficiaries if she predeceased them. Further that the Applicants have intermeddled with the estate in the past and the current application is meant to allow them to meddle in the estate.

7. The issues before court are;

(i) Whether the executrix obtained the grant fraudulently and by concealment of material facts.

(ii) Whether the court should revoke the grant as the Applicant did not file a consent of other beneficiaries in the proceedings leading to issuance of the grant.

(iii) Whether or not to issue an injunction stopping the executor from disposing and on dealing with the assets.

8. As things stand today the will of the late Karam Singh Bhogal remains unchallenged no application challenging the same has been filed and the application is considered in that context.

9. Paragraph 1 of the Will appoints Ranjit Kaur Singh Bhogal (the Respondent) as the Executrix.

10. In paragraph 2 of the said Will the deceased devised and bequeathed all his real, personal, moveable and immovable property to his wife (executrix) absolutely.

11. In paragraph 3 the said Will provides:

“If my said wife Ranjitkaur Karam Singh Bhogal shall predecease me and shall not survive me for a period of 3 months after my death then I appoint my sons Rajinder Sigh Bhogal, Harminder Singh Bhogal and Jasbinder Sigh Bhogal, to be the executors of this will and they and the survivors of the and I direct and declare that the subsequent clause of this my will shall take effect in lieu of the foregoing.”

12. The import of paragraph 3 of the said will is that if the Executrix had predeceased the maker or only survived him by 3 months the sons would take over as executors and subsequent provisions that is 4-5 would take effect.

13. Paragraph 5 of the Will devised and bequeathed real and personal, moveable and immovable properties to the 3 sons and their survivors only and only if the widow was no more. And Paragraph 5 would only have come into play if the Executrix died before the deceased or survived him by at least 3 months.

14. The deceased died on the 20th of November, 1981. The executrix is said to be 94 years and has survived the deceased by 38 years. The Will in paragraph 2 made the widow the sole heir and she inherited the entire assets of the estate absolutely.

15. All it means is that there are no other beneficiaries of the estate of the deceased as per the Will and therefore the claim by the applicants that they are beneficiaries must fail.

16. Certainly the consent of the applicants was never obtained. In my view there is no requirement in an application for probate to obtain any consent as the maker of the Will predetermined and/or appoints his/her executor. As for notice the gazetement of the application in the Kenya Gazette is intended to notify all of the intended appointment application and this suffices.

17. The requirement by courts of consent even in probate matters is a custom that is practiced but not anchored in law. Secondly the applicants are not beneficiaries named in the Will therefore in any event any revocation merely based on lack of consent will serve no purpose whatsoever.

18. Based on the above cited reasons the application is dismissed with costs to the Respondent/Executor.

DATED, SIGNED and DELIVERED at NAIROBI this 19th DAY OF September, 2019.

.....

ALI-ARONI

JUDGE