

# Introduction to Probate, Letter of Administration & Succession

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# Topic Probate, L.A. & Succession

- This topic is Covered by Indian Succession Act, 1925 and it say that
- "An act to consolidate the law applicable to intestate & testamentary succession" It consolidates the followings laws
- The Succession(Property Protection) ActXIX of 1841
- The Indian Succession Act act X of 1863
- The Parsi Intestate Succession Act XXI of 1865
- The Hindu Will Act XXI of 1870
- The Married Women's Property Act VII of 1874
- The Probate & Administration Act V of 1863
- The District Delegates Act VI of 1881
- The Probate & Administration Act VI of 1889
- The Succession Certificate Act VII of 1899
- The Probate and Administration Act II of 1890
- The Indian Christian (Administration of Estate) Act VII of 1901
- The Probate and Administration Act VII of 1903

# ISA, 1925 has been further amended

- Amendment act 37 of 1926
- .....Act No. 40 of 1926
- Act no. 10 of 1927 & Act no. 18 of 1927
- Act no. 14 of 1928 & Act no. 18 of 1928
- Act no. 21 of 1929 & Act no. 17 of 1931
- Act no. 35 of 1934 & 17 of 1939
- Act no. 35 of 1949 & 3 of 1951
- Act no. 48 of 1952 & 42 of 1953
- Act no. 34 of 1957 & 16 of 1962
- Act no. 52 of 1964 & 20 of 1983
- Act 51 of 1991 & 30 of 2001
- Act no. 26 of 2002 again recommendation is pending for further amendment

# Topic Probate, L.A. & Succession guided by ISA

- Part-I relates to preliminary dealing with definitions and power of the State Government to exempt certain classes of persons from the operation of the Act.
- Part-II lays down the law relating to domicile. The concept is of importance, because the application of the Act to movable property of a person depends thereon. However, this part, does not apply if the deceased was a Hindu, Muhammadan, Budhist, Sikh or Jaina.
- Part-III states the effect of marriage on the rights of succession.

# Topic Probate, L.A. & Succession guided by ISA

- Part-IV treats of the concept of consanguinity – against a concept of importance for the purposes of intestate succession.
- Part-V enacts the provisions relating to the intestate succession. It deals with the order of intestate succession. As the present work largely involves issues of intestate succession,
- Part-V of the Act constitutes the main concern of the work that follows.
- Part-VI, which is the longest part of the Act and comprises twenty-three chapters and deals with testamentary succession though, may constitute the most important portion of the Act, though not very relevant from the perspective of present study. However, continuing about the general scheme of the Act,

# Topic Probate, L.A. & Succession guided by ISA

- Part-VII deals with the protection of the property of the deceased and
- Part-VIII with representative title to the property of the deceased.
- Part-IX relates to probate, letter of administration and administration of the assets of the deceased and
- Part-X regulates the grant of succession certificate
- Part XI – It deals with Misc. provisions

# Topic Probate, L.A. & Succession guided by ISA

- ISA à “An act for intestate & testamentary succession”
- Intestate Succession à Part V – Ch1 to Ch3 – S. 29 to 56 – (section 41 to 49 is in process of amendment two law commission of India recommendations)
- Testamentary Succession à Part VI – Ch. 1 to 23 – Sec. 57 to 191
- Protection of Property of deceased – Part VII – (S.192 to 210)
- Representative Title of property of deceased on succession – Part VIII – (S.211 to 216)
- Probate, L.A. & Administration of Assets of deceased – Part IX – Ch. 1 to 13 – (S217 to 369)
- **Succession Certificates – Part X – (S. 370 to 392)**
- Misc. – Saving Clause – S. 391

# Ruling on What Probate Can decide?

- Probate Court has not decide any question of Title or existence of property subject matter of Will ?
- 2005(3) CCC 137 Bombay

# Effect of Probate - 220

- AIR 2003 SC3669 "Delhi Development Authority v. Vijaya C. Gurshaney"= 2003 AIR SCW 4158
- Coram : 2 S. N. VARIAVA AND H. K. SEMA , JJ.
- (A) Succession Act (39 of 1925) , S.220 , S.227 -  
SUCCESSION –
- Probate or Letters of Administration - Grant of -  
Does confer title to property - But merely enables  
administration of estate of deceased - Testamentary  
Court is only concerned with finding out whether or  
not testator executed the testamentary instrument  
of his free will. (Para 8)

# Ruling on jurisdiction

- Whether hearing shall take place only before the D.J. or before any ADJ or designated court.
- 1993(3) PLJR 522
- Balbhadra Prasad Vs Monakia Devi
- Discussed sec. 2(bb), 265, 266, 286 & 288
- Also discussed Section 3,6,8 of Bihar , Agra & Assam Civil Court Act, 1887 read with s. 2(bb) & 265 of ISA – court means D.J. court as well as all other court designated

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# Ruling on unregistered will

- Whether a will for agricultural land should be registered necessarily or not? L.A. to unregistered will shall not be granted.
- 1976(1) PLJR 259 – (Para 9 of the judgment)
- Smt. Dilkuver @Akli Devi Vs Hari Charan Prasad
- Bihar Land Reforms Act, 1961 section 16(2)(iii) any land bequeathed without registration under registration act as registration is optional + Art. 254(2) of Constitution of India
- L.A. to unregistered will shall not be granted but this view was changed later on by division bench.

# Ruling on unregistered will

- Whether a will for agricultural land should be registered necessarily or not?
- 1979(1) PLJR 49 a division Bench decision – By Hon'ble B.P. Jha & Hon'ble S.K.Jha
- Koshila Devi Vs Parvati Devi
- Single Judge hold that after Bihar Land Reforms (Ceiling ....) Act, 1961- as per Section 16(2)(iii) transfer of land without registration is prohibited.
- ISA shall prevailed upon Bihar Land Reforms Act, 1961 -

# Ruling on objection filed in Succession Case

- Whether an objection filed in an proceeding for grant of succession certificate shall convert the proceeding into title suit or not?
- 1998 (2) PLJR 695
- Shyam Sundari Devi Vs Raj Kishor Singh
- Sec. 295 + 372,373 & 375 of ISA applicable – In an application filed for grant of succession certificate – an objection was filed claiming the sole heir of deceased subsequently application was converted into title suit – held only proceedings for grant of L.A. or probate shall be converted into title suit and procedure of 373(4) & 373(5) shall be adopted and such conversion is absolutely illegal.
- Division bench Dr. Justice J.N.Dubey + Justice A.N.Trivedi

# Ruling on compromise in Succession

- Whether provisions of compromise i.e. Order 23 of CPC applicable in ISA or not ?
- 1992(1) PLJR 495 Full Bench – Ranchi Bench
- Sushila Devi Vs Bishwanath Ram
- Order 23 Rule 1 & 3 read with section 268 & 295 do not provide for application of all provisions of cpc to probate and LA proceeding Section 141 creates a rider.
- Whether there is a contest or not a probate court has to decide its genuinness and validity of will – parties can not be allowed to settle that by a compromise and provision of O23 CPC 1 & 3 not applicable.

# Ruling on ground of delay

- Genuineness of the will can not be assailed on the ground of delay. – Division Bench of Hon'ble Court
- 1970(1) PLJR 342
- Bhola Singh Vs Kedarnath Singh
- Section 61 & 283 of ISA – Depay in propounding will is not fatal where due attestation and execution of will are proved onus lies on objector to prove that will is not genuine.

# Ruling grant of injunction under Probate & L.A.

- Whether injunction or receivership can be appointed under proceedings of Probate and L.A. by the court?
- Order 39 CPC, sec. 94 & 151 CPC read with section 247, 268 & 269 of ISA
- 2014(1)PLJR 31
- Kusheshwar Purbey VS Shri Shri 108 Ram Janki jee
- Hon'ble Justice M. Sahu
- Injunction may be granted in favour of deties
- Relied on AIR 2005 SC 104, AIR 1996 SC 1946, AIR 1962 SC 527

# Ruling when all attestating witness died

- When all the attestating witness died then how a will shall come into existence particularly in the light of the provisions laid down under section 63 of the ISA.
- 1990 (1) PLJR 639 – Ranchi Bench Decision
- Dukhu Mahata Vs Sridhar Mahatha
- When all the four attestating witnesses died then prove shall not be made as per section 63 & 268 of ISA rather it shall be proved as per S. 68 & 69 of the Indian Evidence Act.
- When no attestating witness found then it must be proved as per s. 69 of IEA (i) attestation of one attestating witness at least is in hand writing and that the signature of the person executing the document is in the handwriting of that person. Two things therefore in this case are which the propounders were required to prove for execution of will (i) attestation of either of attestating witness, the subscribe was in his hand writing (ii) Testator's signature was made by the scribe after she executed the will by touching pen.

# Ruling when properties situated in two states

- Direct provisions is laid down sec. 273 proviso (2) & 274 (3) of ISA
- 1983(3) PLJR 329
- Babita Chopra VS Ashok Kumar Chopra
- Properties situated at Bihar Sharif as well as Farida bad.
- Hon'ble court held that proceeding may run at Bihar Sharif for both the properties.
- Bar is casted (Price is less than equal to Rs10,000/-)

# Judgment on section 217

- AIR 2008 SC306 "Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon"
- Coram : 2 TARUN CHATTERJEE AND DALVEER BHANDARI , JJ.
- Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon and Ors.
- Specific Relief Act (47 of 1963) , S.34 - Succession Act (39 of 1925) , S.217 , S.227 - DECLARATION OF TITLE - INJUNCTION - SUCCESSION - PROBATE - Suit for declaration of title and permanent injunction - Mere fact that probate of Will was granted by competent Court in respect of property - Does not bar civil suit for declaration of title and permanent injunction in respect of self-same property - Probate Court is not competent to decide title or whether property was joint ancestral property.
- AIR 1984 SC 1866, Explained.

AIR 2006 SUPREME COURT 2263 "Binapani Kar Chowdhury v. Satyabrata Basu"= 2006 AIR SCW 3009

## When Suit & Probate both pending

- 8. Therefore, with a view to do complete justice between the parties, it is appropriate to direct the trial court (Civil Judge, Senior Division, Alipore), where T.S. No. 10/1995 is pending, to proceed to hear arguments and deliver judgment in the suit. Nothing further will be required, if the suit is to be dismissed. But if the suit is to be decreed, the trial court should make it clear that the judgment and decree will come into effect only on the first respondent obtaining and producing the probate of the will, and till then the decree should be considered only as provisional and not to be given effect. We dispose of this appeal accordingly making it clear that nothing stated above is an expression of any opinion on merits of the case.

# Succession Certificates Part X S. 370 to 392)

- [Section : 370] Restriction on grant of certificates under this Part
- . (1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to
  - any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:
  - Provided that nothing contained in this section, shall be deemed to prevent
    - the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or
    - to any part there of, with respect to any debt or security,
    - by reason that a right thereto can be established by letters of administration under this Act.

# Succession Certificates Part X S. 370 to 392)

- [Section : 370] Restriction on grant of certificates under this Part
- (2) For the purposes of this Part, "security" means-
- (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
- (b) any bond, debenture, or annuity charged by Act of Parliament of the United Kingdom on the revenues of India;
- (c) any stock or debenture of, or share in, a company or other incorporated institution;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority;
- (e) any other security which the State Government may, by notification in the Official Gazette, declare to be a security for the purposes of this Part.
- AIR 1984 SC 346

# Succession Certificates Part X S. 370 to 392)

- [Section : 211] Character and property of executor or administrator as such
- . (1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.
- (2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.

## [Section : 212] Right to intestate's property

- . (1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.
- (2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, Indian Christian or Parsi.

# Succession Certificates Part X S. 370 to 392)

- [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.
- (2) This section shall not apply in the case of wills made by Muhammadans M2
- ["or Indian Christians"] and shall only apply- (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
- (ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 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 situate within those limits.

# Succession Certificates Part X S. 370 to 392)

- [Section : 371] Court having jurisdiction to grant certificate
- . The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.

# Succession Certificates Part X S. 370 to 392)

- [Section : 372] Application for certificate
- . (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:-
  - (a) the time of the death of the deceased ;
  - (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
  - (c) the family or other near relatives of the deceased and their respective residences;
  - (d) the right in which the petitioner claims;
  - (e) the absence of any impediment under section 370 or under any other provision of this Act or. any other enactment, to the grant of the certificate or to the validity thereof if it were granted ; and
  - (f) the debts and securities in respect of which the certificate is applied for.
- (2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code (45 of 1860).
- (3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

# Succession Certificates Part X S. 370 to 392)

- Section : 374] Contents of certificate
- . When the District Judge grants a certificate, he shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted- (a) to receive interest or dividends on, or
- (b) to negotiate or transfer, or
- (c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

# Succession Certificates Part X S. 370 to 392)

- [Section : 375] Requisition of security from grantee of certificate
- . (1) The District Judge shall in any case in which he proposes to proceed under sub-section (3) or sub-section (4) of section 373, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.
- (2) The Judge may, on application made by petition and on cause shown to his satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as he thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

# Succession Certificates Part X S. 370 to 392)

- [Section : 376] Extension of certificate
- . (1) A District Judge may, on the application of the holder of a certificate under this Part, extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.
- (2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in section 375 may be required, in the same manner as upon the original grant of a certificate.

# Succession Certificates Part X S. 370 to 392)

- [Section : 377] Forms of certificate and extended certificate
- . Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in. Schedule VIII.

# Succession Certificates Part X S. 370 to 392)

- [Section : 378] Amendment of certificate in respect of powers as to securities
- . Where a District Judge has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer, the security, the Judge may, on application made by petition and on cause shown to his satisfaction, amend the certificate by conferring any of the powers mentioned in section 374 or by substituting any one for any other of those powers.

# Succession Certificates Part X S. 370 to 392)

- [Section : 379] Mode of collecting Court-fees on certificates
- . (1) Every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court-tees Act, 1870 (7 of 1870), in respect of the certificate or extension applied for.
- (2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.
- (3) Any sum received under sub-section (1) and not expended under sub- section (2) shall be refunded to the person who deposited it.

# Succession Certificates Part X S. 370 to 392)

- [Section : 380] Local extent of certificate
- . A certificate under this Part shall have effect throughout India. This section shall apply in India after the separation of Burma and Aden from India to certificates granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date. It shall also apply in India after the separation of Pakistan from India to certificates granted before the date of the separation, or after that date in proceedings pending at that date in any of the territories which on that date constituted Pakistan.

# Succession Certificates Part X S. 370 to 392)

- [Section : 381] Effect of certificate
- . Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

# Succession Certificates Part X S. 370 to 392)

- [Section : 383] Revocation of certificate
- . A certificate granted under this Part may be revoked for any of the following causes, namely:- (a) that the proceedings to obtain the certificate were defective in substance ;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case,
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently ;
- (d) that the certificate has become useless and inoperative through circum- stances ;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities speci- fied in the certificate renders it proper that the certificate should be revoked.

# Succession Certificates Part X S. 370 to 392)

- [Section : 384] Appeal
- . (1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.
- (2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908).
- (3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

# Succession Certificates Part X S. 370 to 392)

- [Section : 385] Effect on certificate of previous certificate, probate or letters of administration
- . Save as provided by this Act, a certificate granted thereunder in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such a certificate or of probate or letters of administration in respect of the estate of the deceased person and if such previous grant is in force.

# Succession Certificates Part X S. 370 to 392)

- Registered Will presumption of genuineness
- 2025 INSC 879
- Metapalli Lasum Bai Vs Metapalli Muthah
- The burden of prove lie on the party challenging the will

# Succession Certificates Part X S. 370 to 392)

- Supreme court guideline on the genuineness of will
- Sawarnalate & ors Vs Lalavathy &Ors
- Kavita Kunwar Vs Pamela Mehta
- 15-05-2023 in SLP(CIVIL) No. 17303/ 2022
- A. Wilson Pronic Vs The Nazar & others
- A. Kanta Yadav 2019 SC

# Succession Certificates Part X S. 370 to 392)

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# Topic Probate, L.A. & Succession guided by ISA

- ISA à “An act for intestate & testamentary succession”
- Testamentary Succession à Under this heading only Probate, L.A. & Administration of Assets of deceased
- i.e. Part IX – Ch. 1 to 13 – (S217 to 369) &
- **Succession Certificates – Part X – (S. 370 to 392)**
- Chapter XI of Patna High Court Rules – Rule 1 to 30 à Deals with Probate and Letters of Administration
- Rule 188 of Civil Court Rules of High Court of Judicature at Patna

# Topic Probate, L.A. & Succession guided by ISA

- Applicability of ISA, 1925 to Hindu Will
- ISA, 1952 have 11 parts
- Part VI à S. 57 to 191 à Testamentary Succession
- Schedule III à Provision of part VI applicable to will made by Hindu, Buddhists, Jain & Sikh
- Important Tips relating to Will
- Silent feature of Will à It has two meaning
- (a) What Testator wishes or Wills to happen after his death.
- (b) Instrument or document in which the intention is announced.
- Object of a Will :- Primary object of Will is to dispose of property but it can also (a) Appoint executor, (b) Revoke previous will, (c) Appoint guardian of minors

# Topic Probate, L.A. & Succession guided by ISA

- Will operate as declaration of Intention à It is only a declaration of his intention –  
Whether a will can prevent a testator from disposing of his property during his life time ?
- **Necessity of Writing** à A will must be in writing, signed by testator or by some one at his direction and in his presence of testator; It must be attested by two witnesses. Exception – Solider.
- Revocation of will à A will can be revoked by another will
- What is the Legal Status of Gift by will

# Topic Probate, L.A. & Succession guided by ISA

- **Interpretation of Will** à The meaning of will may not be clear.
- But when meaning is not clear, it is the duty of the court to construe the will in order to ascertain the real intention of the testator.
- Hence **Rule of Construction** is fundamentally applicable in Probate matters but Rule of construction is applicable only when it is not possible to gather the real intention.
- **Capacity to make will** à Capacity to make will required careful consideration. It may be tested
- (a) of Sound mind (b) not minor (c) not Insane at the time of making will (d) state of intoxication (e) state of illness (f) suffering from such cause that he does not know what he is doing.

# Topic Probate, L.A. & Succession guided by ISA

- **Will made under suspicious Circumstances** à A will made under suspicious circumstances may not be upheld by the court
- Question that whether testator was under any influence.
- It is of the beneficiary to prove that the testator knew and approved the contents of the will.
- But if a party alleged that will has been created under undue influence then
- It is for him to prove undue influence.

# L.A. When granted

- A person governed by ISA dies without leaving a will , intestate, a person is appointed to administer his estate.
- The person so appointed is called administrator and he is granted a L.A. to the estate of deceased.
- LA are also granted when a person died leaving a will but appointing a executor to manage the administration of his estate
- LA may also be granted when a person died leaving a will appointing an executor who is legally incapable or
- Executor refuses to act,
- Executor dies before the testator
- Executor died before he proved will
- If will proved but before he administered all the estate of deceased
- The will is annexed to the L.A. granted on the death of a person leaving a will but without appointing an executor.

AIR 2006 SUPREME COURT 2263 "Binapani Kar Chowdhury v. Satyabrata Basu"= 2006 AIR SCW 3009

## When Suit & Probate both pending

- 8. Therefore, with a view to do complete justice between the parties, it is appropriate to direct the trial court (Civil Judge, Senior Division, Alipore), where T.S. No. 10/1995 is pending, to proceed to hear arguments and deliver judgment in the suit. Nothing further will be required, if the suit is to be dismissed. But if the suit is to be decreed, the trial court should make it clear that the judgment and decree will come into effect only on the first respondent obtaining and producing the probate of the will, and till then the decree should be considered only as provisional and not to be given effect. We dispose of this appeal accordingly making it clear that nothing stated above is an expression of any opinion on merits of the case.

Arvind Kumar vs Smt. Umapati Devi And Ors. on 2 January,  
1997:: 1997 (2) BLJR 1313

When suit & probate both pending

- Both will run and none shall be kept pending in the light of applicability of the principle laid down U/S 10 of CPC.

# Limitation Vs Probate

- Supreme Court of India
- Kunvarjeet Singh Khandpur vs Kirandeep Kaur & Ors on 3 April, 2008
- Dr. Arijit Pasayat, P.Sathasivam
- CASE NO.: Appeal (civil) 2464 of 2008 PETITIONER: Kunvarjeet Singh Khandpur Vs Kirandeep Kaur & Ors
- DATE OF JUDGMENT: 03/04/2008 BENCH
- Reported in 2008 (8) SCC 463).

# Limitation Vs Probate

- 15. Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of Administration is not covered by [Article 137](#) of the [Limitation Act](#). Same is not correct in view of what has been stated in The Kerala State Electricity Board's case (supra).
- 16. Similarly reference was made to a decision of the Bombay High Court's case in *Vasudev Daulatram Sadarangani v Sajni Prem Lalwani* (AIR 1983 Bom.268). Para 16 reads as follows:
- "16. Rejecting Mr. Dalapatrai's contention, I summarise my conclusions thus:--
- (a) under the [Limitation Act](#) no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;
- (b) the assumption that under [Article 137](#) the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;

# Limitation Vs Probate

- (c) such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;
- (d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death.
- (e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;

# Limitation Vs Probate

- (f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and
- (g) once execution and attestation are proved, suspicion of delay no longer operates".
- 17. The conclusion 'b' is not correct while the conclusion 'c' is the correct position of law.
- 18. In view of the factual scenario, the right to apply actually arose on 9.8.1999 when the proceedings were withdrawn by Smt. Nirmal Jeet Kaur. Since the petition was filed within three years, the same was within time and therefore the appeal is without merit, deserves dismissal, which we direct but in the circumstances without any order as to costs

# Limitation Vs ISA

- Krishna Kumar Sharma vs Rajesh Kumar Sharma on 27 March, 2009
- Bench: Arijit Pasayat, Asok Kumar Ganguly
- REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 1967 OF 2009 (Arising out of SLP (C) No.16110 of 2007) [2009(3) PLJR SC 30; Art. 137 ILA applicable]
- 9. Similarly, reference was made to a decision of the Bombay High Court's case in Vasudev Daulatram Sadarangani v Sajni Prem Lalwani (AIR 1983 Bom.268).
- Para 16 reads as follows:
- "16. Rejecting Mr. Dalapatrai's contention, I summarise my conclusions thus:--
- a) under the [Limitation Act](#) no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;
- (b) the assumption that under [Article 137](#) the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;

# Limitation Vs ISA

- (c) such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;
- (d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death.
- (e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;
- (f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and

# Limitation Vs ISA

- (g) once execution and attestation are proved, suspicion of delay no longer operates".
- 10. These aspects were highlighted in Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors. (2008 (8) SCC 463).
- 11. Since other questions were involved we remit the matter to consider the matter afresh in view of what has been stated in Kunvarjeet's case (supra).
- 8
- 12. The appeal is allowed to the aforesaid extent.
- .....J. (Dr. ARIJIT PASAYAT)
- .....J. (ASOK KUMAR GANGULY)

New Delhi, March 27, 2009 9

# Instead of simplifying by way of consolidating the different laws

- It became difficult to work and understand as many laws have been clubbed to gather and further due to following reasons
- It does not contain any Rule of Succession in respect of to great communities of India
- The word succession as popularly understand is applicable to intestate rather than testamentary succession

# Important definitions

- Section 2:Definitions. In this Act, unless there is anything repugnant in the subject or context,-
- (a) "administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor;
- (b) "codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will;
- (c) "executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided;
- (f) "probate" means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator;
- (h) "will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

# Curator

- Protection of property of deceased
- à Part VII of ISA à Any agent, Near relative or Friend or Court of Wards may file application before DJ s.192
- à within 6 month of the death s. 205
- à inquiry by DJ S.194 & 194
- à appointment of Curator S. 195
- à Courts of Ward may be appointed as Curator S. 207
- à Appointment of Public Curator S.210

# Important Judgment on Revocation of Probate

- Supreme Court of India
- Krishna Kumar Birla vs Rajendra Singh Lodha & Ors on 31 March, 2008 Author: A B Field Bench: S.B. Sinha, Harjit Singh Bedi
- REPORTABLE IN THE SUPRME COURT OF INDIA CIVIL APPELALTE JURISIDCTION CIVIL APPEAL NO. 2277 OF 2008 (Arising out of SLP (C) NO. 2089 OF 2007) Krishna Kumar Birla .... Appellant Versus Rajendra Singh Lodha and others ... Respondents WITH CIVIL APPEAL NOS. 2275,2279,2276,2274,2278 OF 2007 (Arising out of SLP (C) NOS. 10176, 10571, 19040, 2090 AND 2091 OF 2007) S.B. SINHA, J. 1. Leave granted.
- INTRODUCTION 2

# Probate & L.A.

- Part IX – Probate & Letter of Administration
- Section 217 to 369 of the ISA, 1925
- 217 states about the applicability of part IX à
- Application of Part. Save as otherwise provided by this Act or by any other law for the time being in force.
- all grants of probate and letters of administration with the will annexed and the administration of the assets of the deceased in cases of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part.

# Judgment on section 217

- AIR 2008 SC306 "Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon"
- Coram : 2 TARUN CHATTERJEE AND DALVEER BHANDARI , JJ.
- Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon and Ors.
- Specific Relief Act (47 of 1963) , S.34 - Succession Act (39 of 1925) , S.217 , S.227 - DECLARATION OF TITLE - INJUNCTION - SUCCESSION - PROBATE - Suit for declaration of title and permanent injunction - Mere fact that probate of Will was granted by competent Court in respect of property - Does not bar civil suit for declaration of title and permanent injunction in respect of self-same property - Probate Court is not competent to decide title or whether property was joint ancestral property.
- AIR 1984 SC 1866, Explained.

# Probate & L.A.

- 218: *To whom administration may be granted*, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.
- (1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.
- (2) When several such persons apply for such administration, *it shall be in the discretion of the Court to grant it to any one or more of them.*
- *(3) When no such person applies, it may be granted to a creditor of the deceased.*

# Probate & L.A.

- 219: Where deceased is not a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.
- If the deceased has died intestate and was not a person belonging to any of the classes referred to in section 218, those who are connected with him, **either by marriage or by consanguinity**, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated, namely:-
- (a) If the deceased has left a widow, administration shall be granted to the widow, unless the Court sees cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.
- (b) If the Judge thinks proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow.

# Probate & L.A.

- 219: Where deceased is not a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person. If the deceased comes in the category of section 218,
- (d) Those who stand in equal degree of kindred to the deceased are equally entitled to administration.
- (e) **The husband surviving his wife** has the same right of administration of her estate as the widow has in respect of the estate of her husband.
- (f) **When there is no person connected with the deceased** by marriage or consanguinity who is entitled to letters of administration and willing to act, **they may be granted to a creditor.**
- (g) Where **the deceased has left property in India**, letters of administration shall be granted according to the foregoing rules, notwithstanding that he had his domicile in a country in which the law relating to testate and intestate succession differs from the law of India.

# Effect of Probate & L.A.

- 220:Effect of letters of administration.
- Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.
- 227:Effect of probate.
- Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.
- Effect of probate is only conclusiveness as to the appointment of executor and the valid execution of the will, It does not decide any question of title – AIR 1933 Cal 234 Gopal Lal Vs Amulya :: 1947 Pat 257 Ramkali Vs Kali Prasad

# Effect of Probate - 220

- AIR 2003 SC3669 "Delhi Development Authority v. Vijaya C. Gurshaney"= 2003 AIR SCW 4158
- Coram : 2 S. N. VARIAVA AND H. K. SEMA , JJ.
- (A) Succession Act (39 of 1925) , S.220 , S.227 -  
SUCCESSION –
- Probate or Letters of Administration - Grant of -  
Does confer title to property - But merely enables  
administration of estate of deceased - Testamentary  
Court is only concerned with finding out whether or  
not testator executed the testamentary instrument  
of his free will. (Para 8)

# Judgment on section 217

- AIR 2008 SC306 "Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon"
- Coram : 2 TARUN CHATTERJEE AND DALVEER BHANDARI , JJ.
- Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon and Ors.
- Specific Relief Act (47 of 1963) , S.34 - Succession Act (39 of 1925) , S.217 , S.227 - DECLARATION OF TITLE - INJUNCTION - SUCCESSION - PROBATE - Suit for declaration of title and permanent injunction - Mere fact that probate of Will was granted by competent Court in respect of property - Does not bar civil suit for declaration of title and permanent injunction in respect of self-same property - Probate Court is not competent to decide title or whether property was joint ancestral property.
- AIR 1984 SC 1866, Explained.

# Whether probate to appointed executor ?

- 221:Acts not validated by administration.
- Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.
- 222:Probate only to appointed executor.
- (1) Probate shall be granted only to an executor appointed by the will.
- (2) The appointment may be expressed or by necessary implication.
- **Important Judgment à Baijnath Prasad Vs Bishwanath Prasad reported in 2008 (3) PLJR 697**
- **Ram Sagar Tiwary Vs State of Bihar AIR 2012 Pat 133**

# Judgment on S.222 à Probate only to executor

- AIR 2009 SC (Supp) 2597 "FGP Ltd. v. Saleh Hooseini Doctor"
- (C) Succession Act (39 of 1925) , S.222 and S.234 -  
SUCCESION - EXECUTION - WILL - Executor of Will - Inability to act - Letter of administration can be issued to legatee.
- From a conjoint reading of these two Sections, it is clear that the Act recognises the contingency that where the executor appointed by a Will is unable to act, any other legatee having a beneficial interest may be admitted to prove the Will and letter of administration can be granted to him. (Para 38)
- (D) Succession Act (39 of 1925) , S.105 - SUCCESION - WILL - Will - Specific recital bequeathing suit premises by testatrix in favour of her son - Death of son prior to death of testatrix - S.105 is attracted - Suit premises become residuary estate of testatrix - Liable to be distributed in accordance with terms of Will. (Paras 39 , 41)

# Judgment on S.222 à Probate only to executor

- AIR 2008 SUPREME COURT 2195 "Anil Kak v. Sharada Raje"
- (A) Succession Act (39 of 1925) , S.222 , S.63 , S.87 , S.103 - SUCCESSION - PROBATE - WILL - EXECUTION - Probate/Letters of Administration - Grant of –
- Will in question is in two parts - Distribution of assets not specifically stated in Will - Were to be made as per appendices annexed to Will - Appendices not in existence at time of execution of Will –
- Will therefore not complete - Will surrounded by suspicions circumstances - Provisions of S.87, S.103, not applicable - Refusal to grant probate/letters of administration - No interference.

# Judgment on S.222 à Probate only to executor

- AIR 2008 SUPREME COURT 2195 "Anil Kak v. Sharada Raje"
- The Will, in the instant case is in two parts.
- Whereas the first part deals with the property belonging to the husband of the testatrix,
- the second part deals with the properties which purportedly belongs to her. Distribution of assets, however, was not specifically stated in the Will.
- They were to be made as per the appendices annexed thereto. The appendices which were required to be read as a part of the main Will so as to effectuate the intention of the testatrix have not been proved. The Will by its own cannot be given effect to. The Will must be read along with the appendices.
- No doubt in construing a Will armchair rule is to be adopted.
- The Will was, therefore, not complete. The appendices were not in existence at the time when the Will was executed. Existence of a document must mean the actual existence.
- Furthermore, the Will is surrounded by suspicious circumstances. Therefore refusal to grant probate/letters of administration was proper. Provisions of Ss. 87, 103 would not be applicable.

# Judgment on S.222 à Probate only to executor

- AIR 2008 SUPREME COURT 2195 "Anil Kak v. Sharada Raje"
- (B) Succession Act (39 of 1925) , S.222 - SUCCESSION - PROBATE - WILL - Probate of Will - Grant of Deprivation of due share to natural heir by itself may not be held to be suspicious circumstances - But it is one of factors to be taken into consideration by Courts before granting probate of Will.  
(Para 41)
- (C) Succession Act (39 of 1925) , S.87 - SUCCESSION - APPLICABILITY OF AN ACT - WILL - Applicability - Will is in two parts - Direction for distribution of assets given in appendices - Appendices found to be not in existence on date of execution of Will - Thus intention of testatrix cannot be effectuated - Therefore, S.87 would not be applicable.  
(Paras 33 , 34 , 35)

# Judgment on S.222 à Probate only to executor

## Jurisdiction of Probate Court

- AIR 1954 SUPREME COURT 280 "Ishwardeo Narain Singh v. Kamta Devi"
- (A) Succession Act (39 of 1925) , S.222 -
- The Court of Probate is only concerned with the question as to
- whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind.
- The question whether a particular bequest is good or bad is not within the purview of the Probate Court.

# Judgment on S.222 à Probate only to executor

## Effect of non Registration of Will

- AIR 1954 SC 280 "Ishwardeo Narain Singh v. Kamta Devi"
- (B) Succession Act (39 of 1925) , S.63 , S.222 - SUCCESSION - WILL - Due execution of will - Proof of - Effect of non registration.
- A testator had no male issue but had only one minor daughter. His wife had predeceased him and he had not married a second wife. By his will he made provision for the marriage of his daughter out of certain specified part of his estate. The rest of his properties he gave to Thakurji. The will was not registered. It was also objected that it was an unnatural will:
- Held (1) that there was nothing unnatural or unofficious about the will. (2) That as there was nothing in law which requires the registration of a will and as wills are in a majority of cases not registered at all, to draw any inference against the genuineness of the will on the ground of its non-registration as wholly unwarranted.  
(3) That the will in question was duly executed and probate should be issued.

# Probate can not be granted to whom ?

- 223: Persons to whom probate cannot be granted.
- Probate cannot be granted to any person
- who is a minor or
- Who is of unsound mind
- Probate can not be granted to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made 1.1. Inserted by the Delegated Legislation Provisions (Amendment) Act, 1983. [, by notification in the Official Gazette,] by the State Government in this behalf.
- *Question à Will executed by father in favour of his one son who became mad/ mentally ill after death of his father and prior to filing application for grant of Probate, then which person is competent to file probate on his behalf ?*

## Whether L.A. Can be granted in favour of Society ?

- AIR 2003 SUPREME COURT 3397 "Illachi Devi v. Jain Society, Protection of Orphans India"= 2003 AIR SCW 4824
- (A) Succession Act (39 of 1925) , S.223 , S.236 -  
SUCCESION - Letters of Administration - Grant of, in  
favour of Society registered under Societies  
Registration Act, 1860 –
- Not permissible, it being not a juristic person - It may  
be granted in favour of person authorised by Society in  
terms of statute or resolution adopted by it - Law of  
England not applicable in such case.
- AIR 2001 Delhi 484, Reversed. K. C. Thomas v. R. L.  
Gadeock, AIR 1970 Patna 163, Overruled

# Can Probate be granted to more than one person ?

- 224:Grant of probate to several executors simultaneously or at different times.
- When several executors are appointed,
- probate may be granted to them all simultaneously or
- at different times.
- Question à when none has been appointed as executor and father has executed 5 different will to his five daughter then filing one case is sufficient or each daughter shall file separate probate case for separate Probate certificate ?

# What shall happen when a will has been probated but after grant of probate separate codicil discovered ?

- S. 225 à Separate probate of codicil discovered after grant of probate.
- (1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.
- (2) If different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.
- Question à If the person in whose favour probate has been granted has taken any steps towards disposal of the property during the period i.e. grant of probate and discovery of Codicil. Whether such action shall be protected under law or not ?

How renunciation be permissible in law?

What shall be the effect on proceedings of grant of probate of renunciation?

- 230Form and effect of renunciation of executorship.
- The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and
- when made shall preclude him from **ever thereafter** applying for probate of the will appointing him executor.
- Case law à Renunciation (Repudiation) can not be accepted with a view to revocation of a Probate.
- AIR 2010 SC 1962 Samir Chandra Das Vs Bibhas Chandra

## Chapter II

- **X1:Grants limited in duration**
  - SECTION:237Probate of copy or draft of lost will
  - SECTION:238Probate of contents of lost or destroyed will
  - SECTION:239Probate of copy where original exists
  - SECTION:240Administration until will produced
- **X2:Grants for the use and benefit of others having right**
  - SECTION:241Administration, with will annexed, to attorney of absent executor
  - SECTION:242Administration, with will annexed, to attorney of absent person who. If present, would be entitled to administer
  - SECTION:243Administration to attorney of absent person entitled to administer in case of intestacy
  - SECTION:244Administration during minority of sole executor or residuary legatee
  - SECTION:245Administration during minority of several executors or residuary legatees
  - SECTION:246Administration for use and benefit of lunatic or minor
  - SECTION:247Administration pendente lite

# Probate Vs Receivership (S-247)

- AIR 2005 SC3011 "Subhadra Rani Pal Choudhary v. Sheirly Weigal Nain" = 2005 AIR SCW 2278
- (A) Civil P.C. (5 of 1908) , O.40 , R.1 , S.96 - Succession Act (39 of 1925) , S.247 - APPOINTMENT - RECEIVER - APPEAL - PROBATE - SUCCESSION - HIGH COURT - Appointment of receivers - When comes to end - Grant of probate in favour of sisters - Appeal against by brothers - Administrators-cum-joint receivers appointed pendente lite - Dismissal of appeal - Property no more remain custodia legis and joint receivers stand discharged - Property stood vested with sisters - Thus High Court had no jurisdiction to pass any order on subsequent application filed by parties in the matter. (Paras 9 , 17 , 19)

# Chapter II

- **X3:Grants for special purposes**
- SECTION:248 Probate limited to purpose specified in will
- SECTION:249 Administration, with will annexed, limited to particular purpose
- SECTION:250 Administration limited to property in which person has beneficial interest
- SECTION:251 Administration limited to suit
- SECTION:252 Administration limited to purpose of becoming party to suit to be brought against administrator
- SECTION:253 Administration limited to collection and preservation of deceased's property
- SECTION:254 Appointment, as administrator, of person other than one who, in ordinary circumstances, would be entitled to administration
- **X4:Grants with exception**
- SECTION:255 Probate or administration, with will annexed, subject to exception
- SECTION:256 Administration with exception

## Chapter II

- X5:Grants of the rest
- SECTION:257Probate or administration of rest
- X6:Grant of effects unadministered
- SECTION:258Grant of effects unadministered
- SECTION:259Rules as to grants of effects unadministered
- SECTION:260Administration when limited grant expired and still some part of estate unadministered

# Chapter III

- **3:ALTERATION AND REVOCATION OF GRANTS**
- SECTION:261What errors may be rectified by Court
- SECTION:262Procedure where codicil discovered after grant of administration with will annexed
- SECTION:263Revocation or annulment for just cause

# Probate is Judgment in rem

- AIR 2004 SUPREME COURT 4980 "Crystal Developers v. Asha Lata Ghosh" = 2004 AIR SCW 5704
- (B) Succession Act (39 of 1925) , S.273 - Evidence Act (1 of 1872) , S.41 –
- PROBATE JUDGMENT - Probate - Conclusiveness of, as to representative title - Grant of probate operates as judgment in rem - Cannot be set aside of on ground of fraud or collusion unless fraud and collusion so pleaded by is proved by party so alleging - Therefore conclusiveness under S. 273 is of validity and contents of Will.
- S. 273 refers to conclusiveness of the probate as to the representative title. It establishes the factum of the Will and the legal character of the executor and all the property of the deceased testator from the date of the death of the testator, as along as the grant stands. Under S. 41 of the Evidence Act, the grant operates as judgment in rem and can be set aside on the ground of fraud or collusion provided it is pleaded and proved by the party so alleging.
- It is, therefore, not a pure question of law. Revocation will not operate retrospectively so as to obliterate all intermediate acts of the executor performed during the existence of the probate, however, if the intermediate acts are incompatible with the administration of the estate, they will not be protected. That the conclusiveness under S. 273 is of validity and contents of the Will. (Para 32)

# Matter referred to larger Bench

- AIR 2010 SC (Supp) 774 "Jagjit Singh v. Mrs. Pamela Manmohan Singh"
- Succession Act (39 of 1925) , S.283 - SUCCESSION - PROBATE - CAVEAT - LARGER BENCH - Grant of probate or letters of administration - Person having slight interest in estate of testator - Entitlement to file caveat and contest grant of probate -
- Difference of opinion between two Benches viz. in
- 2008 AIR SCW 2557 and
- AIR 2009 SC 1232 on the question - Issue referred to larger Bench. (Para 13)

# Nature of Revocation petition

- AIR 1997 SUPREME COURT 1055 "Nalini Navin Bhagwati v. Chandravandan M. Mehta"= 1997 AIR SCW 1053
- Succession Act (39 of 1925) , S.295 , S.263 -  
- SUCCESSION - Application for revocation of probate  
- Cannot be treated as suit under S. 295 –
- It has to be treated as miscellaneous application and disposed of according to given fact situation.

# What is where under ISA

- Part X [Sec.370 to 390] contain rules of intestate succession.
- Part X is related to grant of Succession Certificate

# Whether any amendment or alteration permissible in Probate or letter of administration ?

- 261:What errors may be rectified by Court.
- Errors in names and descriptions, or
- in setting forth the time and place of the deceased's death or
- the purpose in a limited grant,
- may be rectified by the Court and
- the grant of probate or letters of administration may be altered and amended accordingly.

# Whether any amendment or alteration permissible in Probate or letter of administration ?

- 262:Procedure where codicil discovered after grant of administration with will annexed.
- If, after the grant of letters of administration with the will annexed,
- a codicil is discovered,
- it may be added to the grant on due proof and identification, and
- the grant may be altered and amended accordingly.

# Whether any amendment or alteration permissible in Probate or letter of administration ?

- 263:Revocation or annulment for just cause.
- The grant of probate or letters of administration may be revoked or annulled for
- just cause.
- Just Cause explained à
- (a) Proceeding granted defective in substance
- (b) grant obtained by fraudulent suggestion or canceling from court material relating to case
- (c) granted on Untrue allegations
- (d) Grant became inoperative & useless
- (e) inventory of account which is untrue.

# Whether any amendment or alteration permissible in Probate or letter of administration ?

- Judgments
- Name of heir not mentioned in probate is good ground for revocation – 2007) 8 SCJ 1 Basanti devi Vs Ravi Prakash
- Grand Children of Testator claimed estate by virtue of settlement deed made by deceased in their favour which admittedly evoked by the testator. As such they have coveatable interest in estate in the property and they are entitled for filing application for revocation of probate – AIR 2009 SC 1232 G. Gopal Vs C . Basuki

# Jurisdiction of District Judge in granting & revocation of Probate & Letter of Administration

- Section 264 , 265, 266 & 267

# Proceeding before D.J.in Probate matter

- 268:Proceedings of District Judge's Court in relation to probate and administration.
- The proceedings of the Court of the District Judge in relation
- to the granting of probate and letters of administration shall,
- save as hereinafter otherwise provided,
- be regulated,
- so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908 (5 of 1908).

# CPC applicable for revoking of Probate

- Principles of O9 Rule 13 shall apply in probate  
Case AIR 1971 Pat 391
- ::