

**HIGH COURT OF JAMMU & KASHMIR**  
**AT JAMMU**

**CIMA No.42/1996**

**c/w**

**CIMA No.128/2002, MP No.365/2002**

Date of Order: 28.12.2015

Vaishno Devi and ors..

vs

Dharam Paul.

**Coram:**

**Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge**

**Appearing counsel:**

For the petitioner(s)	:	Mr. U K Jalali, Sr. Adv. with Ms. Shivani Jalali, Advocate. Mr. P S Dutta, Sr. Advocate.
For the Respondent(s):	:	Mr. Ajay Abrol, Advocate.

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| (i)  | Whether to be reported in Press/Media        | : | --- |
| (ii) | Whether to be reported in Law Journal/Digest | : | Yes |

**CIMA No.42/1996:**

1. Appeal under Section 86 of the J&K Probate & Administration Act, 1977 is directed against Order dated 25.4.1995 passed by Court of District Judge Jammu, in terms whereof, application under Section 50/51 of the J&K Probate and Administration Act, 1977 seeking revocation of the Letter of Administration issued in favour of Shri Dharam Pal has been rejected.

2. One late Swami Dharendra Brahmchari who held 87.5 per cent share in the M/s Shiva Gun Factory and the Gun Manufacturing License died in an Air crash on 08.06.1994, he had executed a Will Deed on 08.06.1994 in favour of Shri Dharam Pal, amongst others it is mentioned therein:

“ It is my wish and desire that after my death Sh. Dharam Pal s/o Balski Ram r/o Gandhi Nagar, Jammu who had rendered all sorts of services to me at the time of obtaining of license, establishment of factory and has all along helped me since I came in contact with him in 1968-69. Some dispute also arose with him due to some misunderstandings but still as and when I called him he has been helping me most faithfully. He has been coming to my help even monetarily and has always considered me as an elder member of his family. Sh. Dharam Pal is dearer to me.”

“I accordingly hereby bequeath my share in Gun manufacturing licence which is joint with one Dharam Chand and also my share and interest Shiva Gun Factory. Hence he shall step into my shoe with regard to my right, title and share in the Gun Manufacturing Licence, factory and partnership after my death and none of my relations or any body else shall have the right to succeed me in the said licence, factory or partnership, all my interests, rights and ownership shall go to him after my death.”

3. After the death of the testator, the testatee (Shri Dharam Pal) filed a petition for grant of Letter of Administration on the basis of the said Will before the Court of District Judge Jammu. On the proof of execution of the Will Deed vide order dated 02.11.1994, the application has been allowed. The

petitioner has been held entitled to the Letter of Administration as he had prayed for subject to payment of requisite Court fee.

4. The other partner of the Shiva Gun Factory Shri Dharam Chand filed an application under Section 50/51 of the J&K Probate and Administration Act, 1977 titled Dharam Chand vs. Dharam Pal seeking revocation of the Letter of Administration, in short i.e. the order dated 02.11.1994 on various grounds.

5. The learned District Judge framed two issues:

- (i) Whether applicant has locus to seek revocation of the probate and letter of administration? OPP.
- (ii) Whether the court had no jurisdiction to grant letters of administration in respect of Arms license in question? OPP

Learned District Judge while recording finding on Issue No.1 has opined that the bequest is only in respect of the estate of the testator. In case Will is not proved genuine then the normal rule of succession takes precedence. The petitioner could challenge the execution of Will and consequent grant of Letter of Administration only if under any provision of law including the Arms Act, he was to become the sole licensee of the Gun Manufacturing License after the death of his partner late Shri Swami Dharendra Brahmchari. Opining that is not so in view of Clause (9) of the partnership deed dated 23.01.1982 which clause

has been extracted as under:

“Death of a partner shall not operate as dissolution of the partnership. The legal representatives or heirs of the deceased partner shall be substituted in his place in that eventuality, on the same terms and condition of this deed”.

6. The appellant (partner) had not challenged the genuineness of the partnership deed. When it is so, its further course for continuation is to be governed by the contents of the partnership deed.

7. While referring to Clause (10) of the partnership deed, learned District Judge has rightly observed that business has to be carried on by the legal heirs of the deceased (partner) who have right to be substituted. Once the testator (partner) has bequeathed his interest in the partnership property in favour of the respondent. The appellant (partner) has no locus to challenge the same.

8. While referring to the challenge to the jurisdiction, learned District Judge has observed that the question whether the Gun License can be issued to respondents on the basis of the Will is a matter between the Licensing Authority and the respondent. This Court had only probated the Will holding that the Will executed by the testator was genuine and Shri Dharam Pal is entitled to interest which the testator held in Shiva Gun Factory, Jammu.

9. The learned District Judge has further opined “ the testator has thus made a bequest about his share in the Gun Manufacturing License and share in Shiva Gun Factory in favour of Shri Dharam Pal. This court is not required to decide the question whether the bequest regarding Gun Manufacturing License is valid or not. This Court has only to decide the genuineness of the Will on the basis of the evidence furnished. Finally has concluded “ that on the basis of the Will probated by this Court, the applicant as successor of the License holder is entitled only to a consideration by the Licensing Authority. There is no direction to grant license to him. Court has only probated the Will, on the basis of the Will he can claim title to the property of the testator and no more. In this view of the matter, it is wrong to say that this Court had exceeded jurisdiction in probating the will by granting letter of administration”. Then has further qualified “Nothing said in heretofore will amount to an expression of opinion, in case the genuineness of the will is challenged by the legal heirs of Late Shri Dherindra Brahamchari who in the absence of will could claim succession of the Estate of testator”.

10. In the afore-stated circumstances and in the background of the lucid guarded findings and observations recorded by the learned District Judge, there could be no cause for the partner-Dharam Chand (now deceased) and even his successors to challenge the succession or the action such as

execution of will by Shri Dharam Chand because in terms of the various clauses of the partnership deed, testatee or other legal heirs had to continue with the partnership. Grant of manufacturing license on the basis of letter of administration or otherwise, is a matter which is entirely within the domain of the licensing authority under the Arms Act and rules therein which position has been made clear in the judgment itself.

11. The appellant has unnecessarily firstly filed the application for revocation of the letter of administration and thereafter has filed instant appeal which has remained pending for nearly two decades without any purpose. In the judgment passed by the learned District Judge care has been taken of the interests of all concerned. It needs to be noticed that Dharam Pal had filed a writ petition on 29.11.1994 seeking various directions in the name of respondents therein on the strength of the Will Deed and on the basis of Probate issued. The said petition was disposed of with certain directions as made mention of in the judgment passed by learned Division Bench in LPA(OWP) No.251-A/1995, attested copy of which is produced by the learned counsel as such taken on records. As against the judgment of learned Single Judge, the LPA above mentioned was filed. Same has been disposed of vide judgment dated 06.11.2001. Last concluding paras are advantageous to be quoted herinunder:

“At the bar, both the Counsel agreed that Licencing Authority being the Government of India, it should be left to the Licencing Authority to consider incorporating the name of respondent-1, Mr. Dharam Pal, in accordance with Arms Act, Rules and Notification. Counsel for the appellant raised apprehension that the direction and observations of the Learned Single Judge may prevail over the Union of India while considering the incorporation of the name of Dharam Pal in the Arms Licence. We are of the view that this apprehension can be well taken care of by directing the Government of India that while considering the incorporation of the name of respondent-1, Mr. Dharam Pal, in place of Dharindra Brahamchari, since deceased, in accordance with Arms Act, Rules and Notification, same shall be made uninfluenced by any direction or observation made by the learned Single Judge in the order impugned. This would mean that the Union of India shall decide the issue independently of any observations or directions made by the learned Single Judge in the order and judgment dated 26<sup>th</sup> May, 1995.

Parties are fighting litigation since 1994. Already six years have elapsed and the Unit has been put under lock and key. It is in these circumstances, the matter brooks no delay and we accordingly direct the Union of India to consider the incorporation of respondent-1, Mr. Dharam Pal, in place of Dharindra Brahamchari, since died, within a period of six months and give final decision within that period from the date of receipt of this order.

With the aforesaid directions, the appeal is finally disposed of.”

12. According to learned counsel for the appellant,

Mr. U K Jalali, Sr. Advocate appearing for the appellant, again writ petition has been filed which has been disposed of and against that judgment, remedies are available shall be taken recourse to. Even in that background also, nothing survives for any further consideration in this appeal.

13. No ground whatsoever is made out which would call for interference. Appeal being void of merit is **dismissed.**

**CIMA No.128/2002**

1. Instant appeal is also under Section 86 of the J and K Probate and Administration Act, 1977 read with Section Rule 38(1)(c) of the J&K High Court Rules of 1999 r/w Section 151 CPC has been filed assailing the judgment and order dated 14.06.2002 passed by the Court of Principal District Judge Jammu.

2. For disposal of this appeal, precise factual matrix shall be advantageous to be noticed. Late Swami Dhirendra Brahamchari had various movable and immovable properties which include business of manufacture and sale of arms running under the name and style of M/s Shiva Gun Factory in partnership with Shri Dharam Chand. Late Swami Dhrindra Brahamchari had bequeathed his share of 87.5 per cent which he held



in the said business of manufacturing and sale of arms in favour of Dharam Pal. Shri Dharam Pal filed an application for grant of letter of administration on the basis of the Will dated 08.06.1994 executed by Late Swami Dhrindra Brahamchari. Same was granted vide order dated 02.11.1994 by the Court of District Judge Jammu. The partner Dharam Chand had sought revocation of the said letter of administration without success as his application seeking revocation filed under Section 50/51 of the J&K Probate and Administration Act, 1977 was dismissed by the Learned District Judge Jammu on 25.04.1995. Said judgment was challenged by medium of CIMA No.42/1996 which now stands dismissed.

2. In this appeal also, the appellants have prayed for revoking the probate and letter of administration dated 08.06.1994 executed by Late Swami Dhrindra Brahamchari. Learned District Judge vide his judgment dated 16.08.1999 has dismissed the applications, one seeking review of the order dated 01.05.1999 in terms whereof right to produce evidence in support of application seeking revocation of the letter of administration was closed, another application under Section 5 of the Limitation Act for condoning the delay in

filing the petition seeking review. Now the instant appeal has been filed seeking set aside of the order dated 16.08.1999 in terms whereof application seeking revocation of the letter of administration has been dismissed and also order dated 14-06-2002 whereby review application was dismissed.

3. Appellants claim to be the legal heirs of the deceased-Dhrindra Brahamchari, as such claimed to be the sole successors of the entire property left behind by the deceased in connection thereof they have filed civil suit which was decreed in their favour by the Court of 1<sup>st</sup> Additional Munsiff Jammu on 11.04.2015. Against the said judgment and decree, appeal was preferred by Dhram Pal (Testatee) which has been decided by the Court of Additional District Judge Jammu, setting aside decree and judgment only in respect of Shiva Gun Factory. The decree has been drawn which provides that the judgment and decree passed by the Court of Munsiff affecting the rights of the Dharam Pal in respect of his share in suit property i.e. Shiva Gun Factory has been set aside to the extent it pertains to the appellant Dharam Pal. It was open for the appellant to challenge the validity of the Will which according to learned counsel has not been challenged.

4. Now claims that there could be no Will in respect of share in Gun Manufacturing License as that is not an estate. The contention raised pales into insignificance in view of the detailed order passed by the Court of learned District Judge on 25.04.1995 while disposing of the application as had been filed by one Dharam Chand under Section 50/51 of the Probate and Administration Act, 1977. In the said judgment while affirming the grant of letter of administration dated 02.11.1994, learned District Judge has specifically observed in its concluding para which is extracted hereinbelow:

“Nothing said in heretofore will amount to an expression of opinion in case the genuineness of the Will is challenged by the legal heirs of Late Shri Dhrindra Brahamchari who in the absence of the will could claim succession of the Estate of the testator”.

5. Learned District Judge has left it open for the other legal heirs of the Dhrindra Brahmachari to challenge the will which they have not but instead they have filed a suit which had been decreed in their favour by the Court of 1<sup>st</sup> Additional Munsiff on 11.04.2005. That judgment and decree was challenged by Shri Dharam Pal by medium of appeal which has been decided by the Court of 1<sup>st</sup> Additional District Judge

Jammu on 14.07.2009 whereby and whereunder judgment and decree of the Trial Court (1<sup>st</sup> Additional Munsiff, Jammu) has been set-aside to the extent it affected the rights of Shri Dharam Pal in respect of his share in the property i.e. Shiva Gun Factory. Whether the appellants have challenged that judgment is not brought to the notice of the Court. If they have separately challenged the judgment of the 1<sup>st</sup> Appellate Court dated 14.07.2009, that will meet its own fate but such an issue cannot be decided in this appeal when the same could not be nor is under challenge in this appeal.

6. In the afore-stated circumstances, no interference is warranted. Appeal as such without merit is dismissed.

**(Mohammad Yaqoob Mir)**  
**Judge**

**Jammu**  
28.12.2015  
**Raj Kumar**