(23) According to the Supreme Court in *Razack & Co.'s case,* as the value of the packing material as compared to the value of the contents of the packet was insignificant, an agreement to sell packing material independently of chewing tobacco could not, under the general law be implied. Thus, the order assessing the *bardana* in the said writ petition is quashed as no independent agreement has been shown to exist.

(24) Consequently, all the impugned orders are quashed and the writ petitions are allowed. No costs.

D. S. Tewatia, J.—I agree.

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*H.S.B.*

*Before : M. M. Punchhi, J.*

ADARSH RATTAN and others,—*Appellants.*

*versus*

STATE BANK OF INDIA,—*Respondents.*

*Regular Second Appeal No.* 2046 *of* 1985

*Cross Objection No.* 12-*CI of* 1985

*C.M. No.* 862-*C of* 1986

November 27, 1986

*Indian Succession Act* (*XXXIX of* 1925)—*Sections* 211 *and* 212—*Hindu dying intestate—Heirs claiming to operate a box lying in safe deposit with a Bank—Bank declining claim till such time as letters of administration obtained by the heirs—Obtaining of letters of administration by the heirs—Whether essential.*

*Held,* that it is plain from the language of Sections 211 and 212 of the Indian Succession Act, 1925, that it is not compulsive for heirs to apply for letters of administration in the case of a Hindu and *qua* persons of other religious denominations as mentioned in sub-section (2) of Section 212. When the estate passes on the death of an intestate, then Section 212 throws open an enabling avenue to have the letters of administration from the Court of competent jurisdiction and to have the estate administered under the evidence and protection of the Court. By no means can it be said that the estate of an intestate Hindu cannot be allowed to vest or be claimed

by his heirs unless letters of administration have been obtained. As such, the obtaining of letters of administration by the heirs before operating the box lying with the Bank is not essential.

(Para 11).

*Regular Second Appeal from the decree of the Court of the Additional District Judge, Jalandhar, dated the 8th day of April, 1985, modifying that of the Sub-Judge, 1st Class, Jalandhar, dated the 23rd day of May, 1983 (decreeing the suit of the plaintiffs for declaration and injunction but leaving the parties to bear their own costs) to the extent that before the plaintiffs start operating the box an inventory shall be prepared in the presence of the duly authorised agent of the Bank and shall be signed by the plaintiffs or their attorney and the agent of the Bank and ordering that the plaintiffs shall furnish security of the amount of four lacs to the satisfaction of the duly authorised agent of the Bank, before operation of the locker and preparation of the inventory, undertaking to indemnify any other claimant and further ordering that the plaintiffs shall also be liable to pay the Estate Duty/any other dues to the State on the value of the contents of the box and leaving the parties to bear their own costs.*

(Para 11)

*Cross-Objections on behalf of respondent, State Bank of India Under Order 41, Rule 22, C.P.C. praying that cross-objections of the Bank respondent be allowed with costs and findings of Issues Nos. 2, 3 and 4 be set aside and the suit of the plaintiff be dismissed with costs throughout.*

*Civil Miscellaneous No. 862-C of 1986:*

*Application under section 151 C.P.C. praying that the Hon'ble Court may be pleased to pass specific orders for the recovery of the dues (Rs. 540.15 P.) from the appellants either by passing a separate order in this application or making such order a part of the main judgment if and when that is pronounced.*

K. S. Thapar, Advocate, *for the Appellants.*

R. K. Chhibbar, Advocate, *for the Respondents.*

JUDGMENT

*M. M. Punchhi, J.* (oral)—

(1) This is a second appeal against the judgment and decree of the Additional District Judge, Julludur in which an important

question of law has cropped up for decision. There are cross-objections as well aiming the same. The litigation has arisen in the following circumstances :—

(2) One Wazir Ram Rattan deposited a sealed box in the State Bank of India at its Jullundur Branch,—*vide* safe-deposit receipt No. 25/113 entered in Account No. 22/563. Somewhere in December, 1957, Wazir Ram Rattan died. His widow Champa Wati came to be entered as the account-holder in circumstances which remain obscure. On September 23, 1963, Champa Wati also died. It appears that the children of Mr. and Mrs. Wazir Ram Rattan remained oblivious of the sealed box lying in the bank. It was almost 19 years after the death of Champa Wati, they instituted a suit of May 14, 1982 in the Court of Sub Judge 1st Class, Jullundur claiming a declaration that they were owners and entitled to the sealed box lying in the bank with consequential relief of allowing them to operate the said safe-deposit. Incidentally they are thirteen in number. The sole defendant was the State Bank of India through its Branch Manager. The bank disputed the claim of the plaintiffs. It denied the plaintiffs being the legal heirs of Champa Wati. It equally disputed the plaintiffs' rights to the declaration, as prayed for. It even went to question the maintainability of the suit in the present form as also with regard to its being properly valued for the purposes of Court-fee and jurisdiction.

(3) The trial Court framed the following four issues besides that of relief :—

1. Whether the plaintiffs are the legal heirs of Champa Wati ? OPP

2. Whether the plaintiffs are entitled for the declaration prayed for ? OPP

3. Whether the suit is not maintainable in the present form? OPP

4. Whether the suit has not been properly valued for the purposes of Court-fee and jurisdiction ? OPD"

(4) The finding of the trial Court on issue No. 1 was in favour of the plaintiffs because the evidence of the plaintiffs in support of

the issue had gone unrebutted and unchallenged. Issue No. 4 was decided in favour of the plaintiffs with regard to valuation for the purposes of Court-fee and jurisdiction. Issue Nos. 2 and 3, being inter-connected, were decided together. It was held that the plaintiffs were entitled to the declaration, as asked for, and that obtaining of a succession certificate (which the Court perhaps meant was letters of administration was not necessary. On these findings, the plaintiffs were granted relief of injunction as prayed for.

(5) The State Bank of India preferred and appeal in the District Court. All the findings, as recorded by the learned trial Court, were affirmed. However, the decree of the trial Court, while being maintained, was modified. It was ordered that before the plaintiffs start operating the box, an inventory shall be prepared in the presence of the duly authorised agent of the bank and shall be signed by the plaintiffs or their attorney and the agent of the bank. Further, it was ordered that the plaintiffs shall furnish security in the amount of Rs. four lakhs to the satisfaction of the duly authorised agent of the bank before operating the locker and preparation of the inventory undertaking to indemnify any other claimant. Lastly, it was ordered that the plaintiffs shall also be liable to pay the estate duty and any other dues on the value of the contents of the box.

(6) The plaintiffs now in turn have filed this second appeal primarily being aggrieved against the conditions imposed by the lower appellate Court. The bank, on the other hand, has filed cross-objections to reagitate its plea that the suit as such was not maintainable and unless letters of administration had been obtained by the plaintiffs, the sealed box could not be allowed to be operated upon. The fact that the plaintiffs are the heirs of the deceased is no longer in question as the finding on issue No. 1 stands conceded to by the learned counsel appearing for the bank-cross-objector.

(7) The main thrust in these matters has been of the learned counsel for the respondent. What he has urged in support of the cross-objections may now be noted.

(8) It remains undisputed that the deceased died intestate and as said earlier, under the natural law of succession, the heirs stood succeeded to the estate of the deceased requiring no probate. It also is undisputed that the box lying with the bank is not a debt

and as such the plaintiffs are not required to obtain a succession certificate. So, the provisions relating to probate and succession certificate, as occurring in the Indian Succession Act, play no part at all. The clear cut thrust of the bank is that it cannot be required to let the box to be operated upon by the plaintiffs unless they obtain letters of administration and get appointed an administrator in order to administer the estate of the deceased.

(9) Part VIII of the Indian Succession Act contains provisions for establishment of "representative title" to the property of the deceased on succession. Sections 211 and 212 of the said Act, one after the other, are reproduced hereafter :—

> "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, Mohammadan, 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.
>
> 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, Mohammadan, Buddhist, Sikh, Jaina, Indian Christian or Parsi."

(10) It is plain from the conjoint reading of these provisions that an executor derives title from the will and immediately upon the testator's death, his property vests in the executor, for the law knows no interval between the testator's death and the vesting of the property. The position of the administrator, however, is quite different from that of the executor. The administrator has no title to the property until he obtains letters of administration, and the

moment such letters are granted, all rights belonging to the intestate vest in the administrator as effectively as if administration had been granted at the moment after his death. This is clear from the language of section 220 of the Act. Till this happens, the law cannot tolerate, as said before, an interval between the testator's death and the vesting of the property. Rights in property cannot even for a fraction of a second remain in abeyance. Under the law of succession, the intestate's property vests in his heirs the moment his life breath is out.

(11) To apply the principles to the case in hand, the box in question vested in the heirs under the Hindu Succession Act the moment the deceased died intestate and they there and then derived title thereto. That title could be abrogated or substituted by a representative title if letters of administration were successfully sought for the purpose. It is otherwise plain from the language of sections 211 and 212 of the Act that it is not compulsive for heirs to apply for letters of administration in the case of a Hindu and *qua* other persons of other religious denominations, as mentioned in either of sub-section (2) under both the provisions, dying intestate. The argument built on sub-section (2) of section 211 that unless there was joint Hindu family and the heirs had succeeded by means of survivorship, section 211 had no applicability appears to me without any force. The principle of survivorship proceeds on the basis that on death, the existence of the deceased gets subsumed but the existence of the coparcenery continuous to exist. A coparcener cannot be said to have any well-defined share in a coparcenery at any moment. So, his death would not have the effect of passing of any estate to his other coparceners. It is in that sense that sub-section (2) of section 211 of the Act has been studded in the chapter, to remove any doubts in that regard. But when the estate passes on the death of an intestate, then section 212 throws open an enabling avenue to have the letters of administration from the Court of competent jurisdiction and to have the estate administered under the guidance and protection of the Court. By no means can it be said that the estate of an intestate Hindu cannot be allowed to vest or be claimed by his heirs unless letters of administration have been obtained. Thus I am of the considered view that it was not essential for the plaintiffs to have letters of administration before operating the box lying safe with the bank. This view of mine does not take into account section 8 of the Hindu Succession Act, for that is irrelevant here for the present purposes.

(12) The view above taken is even supported by the provisions contained in part IX of the Act and in particular section 218 thereof It provides as follows :—

> "218. *To whom administration may be granted where deceased is a Hindu, Mohammadan, Buddhist, Sikh, Jaina or exempted person.*—(1) If the deceased has died intestate and was a Hindu, Mohammadan, 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."

(13) It is the heir or heirs of the deceased Hindu dying instate and failing his creditor/s who may apply for the grant of letters of administration. It is not incumbent, for instance, on the creditor to always apply for letters of administration in order to recover his debt. Similarly, it is not incumbent on the heir or heirs to apply for letters of administration as a compulsive necessity. The provision is merely enabling. It cannot be said with any effectiveness that the law of succession is put to winds merely because letters of administration can be obtained under the provisions of the Act. The provisions of sections 264, 270, 273, 278 and 283 pressed into service by the learned counsel for the Bank to highlight the role of the District Judge (a higher Court than the Court of the Sub Judge) can mean no substitution as a desirable necessity to the choice of having letters of administration. The additional pleas of the learned counsel that the letters of a administration bring about more orderliness, are efficacious for the purpose of creditors, ensure realisation of estate duty and make the State earn some revenue are irrelevant considerations, when one is confronted with the choice available to the heirs. Equally fallacious is the argument that in face of the provisions of the Indian Succession Act whereunder letters of administration are obtainable, section 34 of the Specific Relief Act and section 9 of the Civil

Procedure Code would debar the maintenance of a suit. It appears to me that there is no such impediment on the rights of the plaintiffs to claim the estate of the deceased wherever it was lying.

(14) It was stressed on the basis of *Ashu Tosh Ghosh* v. *Pratap Chandra Banerji,* (1) that the estate of the Hindu deceased could not be given to his heirs without obtaining letters of administration. That was a case in which a Hindu had purchased a policy of insurance. There was a specific term therein that the person or persons to whom the sums assured are payable are his executors, administrators or assigns. The heirs were neither the administrators nor the executors nor the assigns. It is in this context that the Calcutta High Court ruled that there was no justification for reading the word "administrators" in the policies as including those who are relieved of the necessity of taking out letters of administration by reason of the provisions of section 212(2). It was also urged on the strength of *Bebendra Nath Dutt* v. *Administrator-General of Bengal,* (2) a judgment of the Privy Council, that the obtaining of letters of administration by the next of kin of the deceased was a compulsive necessity as high value was attached thereto. In that case, one Gowie described by the Lordships of the Privy Council as a 'rogue' and an 'imposter' was granted letters of administration which were later revoked. The question arose whether the deals done by him while he was the administrator could be protected in law. Their Lordships took the view that they were protected and the receipts issued by him were valid discharges of all debtors for all moneys received by him as an administrator. Nobody can dispute that letters of administration, if granted to an administrator, are advantageous from many points of view but that by itself is not enough to match the choice exercisable by a Hindu on conjoint reading of sections 212 and 218. Lastly, *Menahim Yousef* v. *Islam Aman Salah,* (3) were pressed into service but there the facts were quite different because there was a will and the necessity of probate arose.

(15) It has then been urged on the strength of the *State Bank of India, Main Branch, Ghaziabad* v. *Neelam Sharma and others,* (4), that unless legal representation is obtained by the plaintiffs,

(1) (1937) I.L.R.. 1 Cal. 433.
(2) (1908) I.L.R. 35, Cal. 955.
(3) A.I.R. 1931 Bombay 547.
(4) 1980 P.L.R. 118.

the bank was not required to permit operation of the box. At this point, it deserves highligting that while this appeal was pending, I had,—*vide* my interim order dated 17th October, 1985 permitted the box to be opened to discover the contents thereof subject to the conditions laid therein. The inventory prepared in accordance therewith transpires that the box contained silver utensils and gold jewellery, approximately valued at Rs. 1,52,124,—*Vide* C.M. No. 862-C of 1986 in the instant appeal, the bank has applied for claiming Rs. 540.15 p. as charges incurred on opening the box and calling a valuer and preparation of the inventory. The bank besides was asked to produce before me any document of hire executed by the deceased persons in their favour or *vice versa*. None was produced before me. Rather, only a register was shown to me in which the number of the account was mentioned. Thus, what emerges is that the bank kept the box in the ordinary understanding of law and not by any contractual instrument, the terms of which could be spelled out to decide the matter. In *Neelam Sharma's case* (supra), there was a bank account and a locker in one of the branches of the bank at Ghaziabad in the name of one Sudesh Kumari, on whose death, her two minor daughters claimed the said property by filing a suit at Amritsar, territorial jurisdiction of which was questioned by the bank. The bank was successful in that regard in revision before this Court. As suggested in the report, it was held that the Amritsar Court had no jurisdiction. The other defendant in the suit was the husband of Sudesh Kumari deceased, who on the strength of a will in his favour with regard to the locker, maintained that he had a right to operate it. In order to allay the fears of the then plaintiffs, the bank pressed into service various treatises on Banking Law and Practice wherein the efficacy of obtaining from the claimants Court orders of legal representation was highlighted. The effort was to show that there was such a practice prevalent in banking business relating to safe deposit vaults and that deliveries were made to claimants only on their obtaining legal representation subject, of course, to some exceptions noted therein. It is in these circumstances that the counsel for the bank appearing there gave out that in no event would the bank permit the father of the plaintiffs to operate the disputed items until the bank made sure that probate or letters of administration or a succession certificate had been obtained by him from a Court of law after impleading necessary parties. The question, as has been posed herein, was not directly and substantially in issue in *Neelam Sharma's case* (supra). The matter was adjusted more on first impressions. On

facts even the case is distinguishable. There was a will and the necessity of obtaining a probate arose. There was a bank account and the necessity of obtaining a succession certificate arose, for it was undoubtedly a debt. With regard to the locker, the matter went in the same sweep without the matter being canvassed fully. And if one reads paragraphs 9 to 11 of the reported judgment, it is plain that it is either concessional on the basis of statements of counsel for parties or obiter, for the question never arose as such. Thus, I am of the considered view that *Neelam Sharmas case* (supra), is no authority for the proposition that unless the plaintiffs were to obtain legal representation from a Court of law, the bank will not permit operating of the box lying in their safe vault.

(16) Lastly, it deserves repetition that the contents of the box turn out to be of a value of a little over Rs. 1½ lakhs. The deceased died way back in 1965; a little over 23 years ago. It cannot be expected that there would be any subsisting creditor whose interests required to be safeguarded. One does not have to coin unnecessarily reasons for denying the heirs the estate of their parents. Yet the lower appellate Court has been extremely cautious in asking for an indemnity bond in the sum of Rs. 4 lakhs while ignorant of the contents of the box. The box could have contained articles of a value even more than Rs. 4 lakhs. Now since that matter has become clear, it would be proper to modify the judgment and decree of the lower appellate Court by ordering the plaintiffs-appellants to give an indemnity bond in the sum of Rs. 2 lakhs on the same terms and conditions. I order it accordingly. The indemnity bond shall remain operative for three years, the ordinary period of limitation for the recovery of moneys. This is enough security for the bank as I can see it. The other parts of the judgment and decree regarding payment of estate duty etc., if any, is sustained.

(17) Thus, this appeal is partially allowed by making these slight variations in the judgment and decree. The cross-objections are dismissed. It is ordered that the plaintiffs-appellants shall jointly or through their jointly appointed attorney execute the indemnity bond to the satisfaction of the bank and it is only in that event that the box be allowed to be operated upon by the plaintiffs-appellants. Secondly, the bank should be reimbursed a sum of Rs. 540.15 P., spent on valuation charges etc. as also the

rental due before the box is allowed to be operation upon. These matters are decided accordingly with no order as to costs.

S.C.K.

*Before : D. V. Sehgal, J.*

DINA NATH GULATI,—*Petitioner.*

*versus*

SANTOSH KAUR and another,—*Respondents.*

*Civil Revision No.* 1806 *of* 1986

December 8, 1986

*East Punjab Urban Rent Restriction Act (III of 1949) as amended by Punjab Act (II of 1985)—Sections 2(hh), 13(3)(1)(i), 13-A and 18-A & B—Provincial Small Cause Courts Act (IX of 1887)—Section 17—Code of Civil Procedure (V of 1908)—Order 50, clause (b), Rule 1—Scope and object of aforesaid sections—Stated.*

*Held,* that :

(i) the words "He does not own and possess any other suitable accommodation in the local area" and "intends to reside" in Section 13-A of the East Punjab Urban Rent Restriction Act, 1949, as amended by Punjab Act No. 2 of 1985, have a different connotation and are not to be equated with the words" he is not occupying any other residential building in the urban area concerned' and "he requires it for his own occupation" respectively used in Section 13(3)(a)(i) of the Act;

(ii) When a "specified landlord" defined in Section 2(hh) of the Act and on his death the heir mentioned in the first proviso to section 13-A applies to the Rent Controller to recover immediate possession of the premises specified in Section 13-A complying with its requirements, a right accrues to him to recover immediate possession of the same.

(iii) By taking assistance of the first proviso to Section 13-A no constraint can be used on the words "for his own occupation" in the principal provision so as to mean that during his lifetime the specified landlord cannot accommodate with him his wife, children and grandchildren.