

Matter of Dindiyal

2009 NY Slip Op 32215(U)

September 24, 2009

Surrogate's Court, Nassau County

Docket Number: 353722/2009

Judge: John B. Riordan

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SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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Probate Proceeding, Will of

DASRAT DINDIYAL,
a/k/a DASRAT D. DINDIYAL,

File No. 353722

Dec. No. 489

Deceased.

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Proceeding by Deo Dindiyal and Lolita Dindiyal
in the Estate of

DASRAT DINDIYAL,
a/k/a DASRAT D. DINDIYAL,

File No. 353722

Dec. No. 490

Deceased,

to Revoke the Letters of Administration Issued
to Asha Dindiyal.

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Pending in the estate of Dasrat Dindiyal, a/k/a Dasrat D. Dindiyal are (1) a proceeding by Lolita Dindiyal to probate an instrument dated February 10, 2006, which is propounded as the decedent’s last will and testament and (2) a proceeding by Lolita Dindiyal and Deo Dindiyal seeking an order pursuant to SCPA 711 (4) revoking letters of administration issued to Asha Dindiyal, the decedent’s surviving spouse, and compelling her to account.¹ Lolita and Deo are two of the decedent’s siblings. The wherefore clause of the petition for probate was amended by affidavit of Lolita’s attorney to request that Asha be disqualified because of a stipulation of settlement she and the decedent signed in the course of their then-pending divorce. Currently

¹Additionally, two matters were transferred to the court: (1) a landlord-tenant action, Asha Dindiyal v Lolita Dindiyal, Index No. SP 006565/08, which was transferred from District Court of Nassau County, First District, and (2) a proceeding transferred from Supreme Court, Nassau Count, bearing the caption Lolita Dindiyal v Asha Dindiyal, Index No. 19600/08, brought by order to show cause seeking an order staying the landlord-tenant action pending a final judgment in the Supreme Court action.

before the court in the probate proceeding is the issue of Asha's standing to object to the probate of the propounded instrument and, in the miscellaneous proceeding, whether Asha's letters of administration should be revoked and whether she should be compelled to account. Asha opposes the relief sought in both proceedings.

The decedent died a resident and domiciliary of Nassau County on September 24, 2008. In November 2008, Asha filed a petition seeking a decree awarding letters of administration to her. In the proceeding, Asha identified herself as the decedent's wife. Annexed to the petition was an affidavit of heirship by Drupattie Persaud, who swore therein that the decedent was married to Asha at the time of his death and that the decedent died without children and without a will. A decree of administration issued on November 25, 2008, and letters of administration issued to Asha on the same day (SCPA 1001 [1] [a]).

Thereafter, Lolita filed a petition for probate of an instrument propounded as the decedent's last will and testament and for the issuance of letters testamentary. Lolita is the nominated executor under the instrument. The petition identifies Asha as the decedent's spouse and states that the decedent was separated from Asha at the time of the decedent's death. The petition also alleges that the decedent died leaving 10 siblings. In May 2009, Asha filed verified objections to the probate of the propounded instrument in which she alleges that it is a forgery and was not duly executed.

In June 2009, Lolita's attorney filed an affirmation in opposition to Asha's objections in which the attorney argues that Asha does not have standing to object to the probate of the propounded instrument because she gave up all such rights in Article IV (Mutual Release and Discharge of Claims in Estates) of the stipulation of settlement that Asha and the decedent

entered into on August 12, 2008 while the divorce proceeding the decedent had initiated against Asha was pending (Supreme Court, Nassau County Index No. 06/202625). It is undisputed that the decedent died prior to the submission of a judgment of divorce to Supreme Court.

Article IV, which is contained in the stipulation of settlement,² is as follows:

“Each of the parties hereto shall have the right to dispose of his or her property by Last Will and Testament, or otherwise; and each party covenants that the estate of the other, whether real or personal, shall, subject to his or her debts and engagements, go and belong to the person or persons who would have been entitled thereto if the one party had died during the lifetime of the other, and each party further covenants that he or she will permit any Will of the other to probated, and will allow administration upon his or her personal estate and effects to be taken out by the person or persons who would have been otherwise entitled thereto had the one party died during the lifetime of the other. Each party releases and relinquishes any and all claims and rights that he or she may have had, or may now have, or may hereafter acquire except as provided in this Agreement (a) to share in any capacity or to any extent whatsoever in the estate of the other party upon the latter’s death, whether by way of statutory allowance or distribution[,] intestacy or election to take against the other party’s Last Will and Testament under Section 5-1.1 of the Estates, Powers and Trusts Law of the State of New York, or otherwise; (b) to act as executor or administrator of the other party’s estate. It is the intention of the parties that the provisions of this Agreement shall constitute a mutual waiver of and they hereby mutually waive (each for himself or herself) the right of election by a surviving spouse against or in the absence of testamentary provisions, in accordance with the requirements of Section 5-1.1 of the Estates, Powers and Trusts Law (or any prior or subsequent similar provision of law of this or any other jurisdiction), as against and Last Wills and Testaments or Codicils at any time heretofore and hereafter made by the parties hereto and/or each of them. However, the foregoing cannot bar a claim on the property of either party against the other for money damages for any cause or causes arising out of a breach of this Agreement during the lifetime of the deceased party, against whose

²The document is entitled “Stipulation of Settlement”, but is referred to generally therein as the “Agreement”.

estate such claim can be made.”

Lolita maintains that Asha lacks standing in the probate proceeding because of the language quoted above. Lolita asserts that the terms of the stipulation of settlement are binding on Asha despite the fact that Asha and the decedent were not divorced at the time the decedent died. In support of her position, Lolita also cites to language contained in the stipulation of settlement in Article XXIII (Matrimonial Action): “The parties further agree that the terms and provisions of this Agreement shall survive any Judgment of divorce between the parties, and shall not merge therein, and shall remain fully enforceable an [sic] as an independent contract between the parties.”

Lolita relies on this court’s decision in *Matter of Pavese* (195 Misc 2d 1 [Sur Ct, Nassau County 2002]), wherein the court defined the issue then before it as “whether or not the stipulations or agreements [the decedent] entered into with his spouse, Barbara Pavese, during their divorce action are valid and enforceable or did they ‘die’ with Michael Pavese” who died before the couple’s divorce was finalized (*id.* at 3). After nearly two decades of marriage, Michael left the marital abode at the end of May 2001 and by summons and complaint dated June 1, 2001 commenced an action for divorce against Barbara in Supreme Court, Suffolk County.³ The couple executed several stipulations in the divorce proceeding (*id.* at 3). Michael died on August 12, 2001 before the divorce was granted. His brother, Peter, offered his will for probate in this court, and Barbara filed objections to its probate (*id.* at 3-4). Relevant to the issue of

³Michael died a resident of Nassau County.

Asha's⁴ standing is this court's reliance in *Matter of Pavese* (*id.* at 19) on *Brower v Brower* (226 AD2d 92, 95 [3d Dept 1997]), wherein the Third Department stated, "It is clear from the agreement that the parties thereto intended it to be an independent contract, to be performed regardless of whether the parties ever actually terminated their marriage." Although the stipulations in *Brower v Brower* are not identical to the stipulation of settlement executed by Asha and the decedent, the court finds from the plain language contained in the stipulation of settlement that it was an independent contract between Asha and the decedent and was operative at the time of its execution. Its viability was not dependent upon a judgment of divorce and it did not abate upon the decedent's death. This conclusion is further bolstered by the fact that the parties assumed certain obligations immediately upon executing the stipulation of settlement. For example, in Article XXIII, (Matrimonial Action), the "parties agree[d] that upon execution of this Stipulation of Settlement, the Wife shall immediately serve a counter-claim upon the Husband, on the grounds of DRL § 170 subdivision (2) (Constructive Abandonment), and the Husband will not interpose a defense and will consent to the Wife obtaining a final Judgment of Divorce as an uncontested matter." Immediately following that language is the language quoted above: "The parties further agree that the terms and provisions of this Agreement shall survive any Judgment of divorce between the parties, and shall not merge therein, and shall remain fully enforceable an [sic] as an independent contract between the parties."

⁴The brief submitted on Asha's behalf does not address the issue of her standing to contest probate of the propounded instrument, although Asha was given the opportunity to address that issue. Rather, the brief is limited to the question of Asha's rights to the real and personal property that is discussed in the agreement. Those issues are not before the court at this time.

The court finds that Asha explicitly relinquished her rights with respect to the decedent's estate in Article IV of the stipulation of settlement and, therefore, lacks standing to object to the probate of the propounded instrument. Accordingly, Asha's objections to probate are dismissed.

Turning to the miscellaneous proceeding, Asha's letters of administration are hereby revoked and she is ordered to judicially settle her account as administrator within 30 days of the date of the decree to be settled in that proceeding.⁵ Deo's claim for the decedent's funeral can be made against the decedent's estate (SCPA 1803).

Settle separate decree in each proceeding.

Dated: September 24, 2009

JOHN B. RIORDAN
Judge of the
Surrogate's Court

⁵Asha claims that she did not collect any estate assets in her capacity as administrator.