

Sanat Kumar Auddy and Another

Vs

Prodyot Kumar Auddy and Others

Civil Appeal No. 2009 of 1968

(H.R. Khanna, R.S. Sarkaria JJ )

10.01.1977

JUDGMENT

KHANNA, J. –

1. This appeal by special leave is against the judgment of the Calcutta High Court affirming on revision the decision of the trial Court whereby certain amounts had been ordered to be paid to the defendant-respondents.
2. The appeal arises out of a suit for partition and rendition of accounts instituted on August 19, 1937. In that suit, there was a compromise between the parties and on June 18, 1953 a decree was awarded in terms of that compromise. According to the compromise-decree, the predecessors-in-interest of some of the defendant cosharers had overdrawn out of the joint family funds to the extent of Rs. 2,86,000. Those defendant cosharers would hereinafter be described as debtor cosharers. It was agreed that the aforesaid amount would be payable by the debtor cosharers to the other cosharers, hereinafter referred to as the creditor cosharers. Clause (3) of the compromise-decree provided that the aforesaid sum of Rs. 2,86,000 would be paid by the debtor cosharers to the creditor cosharers, within three years from the date of the final decree. Certain further concessions were also in the matter of payment to the debtor cosharers in the even of their paying half of the amount within the stipulated period. No final decree, it is stated, has so far been passed.
3. It appears that some of the joint properties were acquired and an amount of Rs. 4,48,571.67 was paid as compensation for those properties. On the application of the creditor cosharers, an order was made that they be paid their share of the compensation money. An application was thereafter made on behalf of the debtor cosharers for payment of their share of the compensation amount. This application was resisted by the creditor cosharers. The trial Court repelled the objections of the creditor cosharers and directed that the debtor cosharers be paid their share of the compensation amount. Revision filed by the creditor cosharers against that order was dismissed by the High Court. It is this order of the High Court which is subject-matter of the present appeal.
4. We have heard Mr. Mookerjee on behalf of the appellant and Mr. Sukumar Ghose and Mr. Majumdar on behalf of the respondents and are of the view that the order of the High Court under appeal cannot be sustained. Clause (8) of the compromise-decree specifically deal with the amount of compensation paid in connection with the acquisition of immovable property jointly held by the parties. It is provided in that clause that so far as such compensation amount is concerned, the debtor cosharers would be entitled to that part of it as constitutes the surplus after the payment of the amount due to the creditor cosharers. In view of this clause, the High Court, in our opinion, was in error in directing the payment of the share of the debtor cosharers straightway to those cosharers.

Any such payment to the debtor cosharers without first satisfying the money claim of the creditor cosharers against those debtor cosharers would be contrary to clause (8) of the compromise decree. We, therefore, are of view that the impugned order should be set aside. To obviate the possibility of the amount of compensation on account of the share of the debtor cosharers not earning any interest, we direct that the same may be deposited in the bank in fixed deposit. This order would not stand in the way of the trial Court making payment to the creditor cosharers in respect of their share in the compensation which may be awarded on account of the acquisition of the joint property.

5. We accept the appeal and dispose it of in the above terms. Looking to the facts of the case, we leave the parties to bear their own costs.

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