

Mrs. Annupam Pruthi and Others

Vs

Smt. Rajen Bal and Others

Civil Appeal No. 2731 (N) of 1977

(K. N. Singh, M. H. Kania JJ)

30.08.1988

JUDGMENT

SINGH, J. –

1. This appeal has arisen out of substitution Proceeding for bringing on record the legal representatives of deceased Prakash Bal In arbitration Proceeding pending before the High Court.
2. Prakash Bal deceased made an application before the High Court of Jammu and Kashmir under Section 20 of the Arbitration Act for referring certain disputes to arbitration which had arisen between him and other partners in respect of business carried on by the partner ship firm, named, Naaz Theatres. During the pendency of that application Prakash Bal died on June 14, 1972. Smt. Rajen Bal widow of Prakash Bal made an application before the court on June 16, 1972 for bringing on record the legal representatives of Prakash Bal. In her application she stated that Prakash Bal had died leaving behind herself as widow, Rohit Bal minor son, and two married daughters Mrs. Anupam Pruthi and Mrs. Rupum Khattan as his heirs and legal representatives. She made a prayer for bringing the names of the aforesaid persons on record as legal heirs of the deceased Prakash Bal. Since the parties did not oppose the application, the learned Single Judge before whom the proceedings were pending allowed the application by his order dated April 24, 1972 as a result of which the aforesaid persons as proposed by Smt. Rajen Bal were substituted as legal heirs and representatives of Prakash Bal, deceased. Later on Ghulam Qadir a party to the proceeding made an application of impleading one Anmol Rattan with the allegation that he was the son of deceased Prakash Bal by his first wife. The learned Single Judge rejected that application on the ground that since Ghulam Qadir had concerted to the substitution of legal representatives of Prakash Bal as proposed by Mrs. Rajen Bal therefore he could not question the earlier order dated July 24, 1972. After a year Mrs. Rajen Bal the widow of the deceased Prakash Bal filed another application on April 24, 1973 for the recall of the earlier order dated July 24, 1972 by which the legal heirs of Prakash Bal as proposed by her had been substituted. In her application she stated that she had come to know that Prakash Bal had executed a will under which he had bequeathed his entire property in favour of her and Rohit Bal, minor son to the exclusion of all his other heirs. The application was opposed by Mrs. Anupam Pruthi and Mrs. Rupum Khattan, who had already been impleaded as parties. Smt. Rajen Bal made another application seeking permission for leading evidence to prove the will. The learned Single Judge refused to recall the order of substitution dated July 24, 1972 and dismissed the two applications filed by Mrs. Rajen Bal by his order dated April 23, 1976. On a Letters Patent appeal filed by Mrs. Rajen Bal a Division Bench of the High Court by its order dated January 7, 1977 set aside the order of the Single Judge dated April 23, 1976 and directed the Single Judge to permit Mrs. Rajen Bal to lead evidence for proving the will and to dispose of the two applications dated April 14, 1973 and May 24, 1973 on merits in the light of the observations made

in the judgment. Aggrieved by that order Mrs. Anupam Pruthi and Mrs. Rupum Khattan have filed this appeal after obtaining special leave against the aforesaid order of the Division Bench.

3. Learned counsel for appellants urged that once substitution application made by Smt. Rajen Bal had been allowed by the learned Single Judge, the order had become final and it could not be recalled or modified by the learned Single Judge on the application of Smt. Rajen Bal merely because she had raised claim on the basis of a will alleged to have been executed by Prakash Bal, deceased. He further urged that the Division Bench of the High Court erred in holding that the question as to who were the legal heirs and representatives of Prakash Bal deceased had been raised, it was mandatory duty of the learned Single Judge to decide the same as enjoined by Order 22 Rule 5 of the Code of Civil Procedure. He further urged that Mrs. Rajen Bal and Rohit Bal being consenting parties to the order of substitution dated July 24, 1972 they were stopped from questioning the legality of the said order or for asking the court to recall or modify the same. Learned counsel for the respondents on the other hand urged that once a dispute relating to the question as to who were the legal representatives and heirs of Prakash Bal had been raised by Smt. Rajen Bal, it was the mandatory duty of the court to decide the same under Order 22 Rule 5 of the Code of Civil Procedure, which require the court to decide the same on merits and if necessary it could examine the witnesses. The Division Bench had therefore rightly set aside the order of the Single Judge and directed him to decide the dispute in accordance with the provisions of Order 22 Rule 5.

4. We have given our anxious consideration to the questions raised by the learned counsel for the parties. We are however of the opinion that having regard to the facts and circumstances of the case the Division Bench was not justified in setting aside the order of the learned Single Judge dated April 23, 1976. Admittedly Smt. Rajen Bal had herself made an application for bringing on record the legal heirs and representatives of Prakash Bal deceased and according to her Mrs. Anupam Pruthi and Mrs. Rupum Khattan, the two married daughter of Prakash Bal were legal heirs and representatives along with her and Rohit Bal, minor son. Since no party raised any objection, the learned Single Judge was justified in directing the substitution of legal heirs of Prakash Bal deceased as proposed by Smt. Rajen Bal. Smt. Rajen Bal made another application for the recall of the order dated July 24, 1972 on the basis of will alleged to have been found later on. The question whether will is genuine and whether Prakash Bal had executed the will gifting the entire property in dispute to Mrs. Rajen Bal and her minor son, exclusively is highly disputed, which can be decided in an appropriate proceedings on the basis of evidence produced by the parties. Since the substitution application had already been disposed of, that question could not be reopened subsequently at the instance of Smt. Rajen Bal. Provisions of Order 22 Rule 5 stood fully complied with when the question of substitution of heirs and legal representatives of Prakash Bal was decided by the order dated July 24, 1972. That order could not be recalled at the instance of Smt. Rajen Bal. We are therefore of the opinion that the learned Single Judge's order dated April 23, 1976 must be upheld. It would however be open to Smt. Rajen Bal to claim her right under the will through appropriate proceedings before competent court and this order will not prejudice her claim.

5. We accordingly allow the appeal, set aside the order of the Division Bench and restore the order of the learned Single Judge dated April 23, 1976. We further direct the learned Single Judge to decide the arbitration proceedings at an early date. There will be no order as to costs.

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