

Ranjit Kumar Ghosh and Another

Vs

Sirish Chandra Bose and Others

Civil Appeal No. 1205(N) of 1981

(A.M. Ahmadi, K. Ramaswamy JJ)

17.01.1992

### JUDGEMENT

1. This appeal is directed against the judgment of the Division Bench of the High Court at Calcutta in Appeal No. 377/ 78. The litigation which gave rise to the said appeal concerns the appointment of a Trustee in regard to the properties settled in trust by one Smt. Sailajini Desai (Wife of Akshoy Chandra Bose, a well-known solicitor of Calcutta). The Trust Deed is dated February 7, 1945. When this appeal was called on for hearing, counsel for the respondents raised a preliminary contention that the appeal had become infructuous in view of Clause 4 of the Trust Deed, which reads as under:

"After the determination of the aforesaid trust and upon the death of all the aforesaid., beneficiaries the trustees or their heirs shall forthwith convey and transfer the trust property to the then surviving heirs of the said Akshoy Chandra Bose, the husband of the said settler."

It is not in dispute that all the beneficiaries named in the Trust Deed have since expired. Clause 4 has, therefore, become operative. The property has to be conveyed and transferred as envisaged by that clause. The question of appointment of a Trustee, therefore, does not now survive. The preliminary objection raised by counsel for the respondents is, therefore, well-founded.

2. But Mr. Goswami, the learned counsel for the appellants, submitted that certain observation made by the High Court in regard to the interpretation of the expression 'the then surviving heirs' employed in Clause 4 of the Trust Deed is likely to cause difficulty in a future litigation and, therefore, this Court would have to consider whether the interpretation placed by the High Court on this expression used in Clause 4 of the Trust Deed is sustainable. We do not think that it is necessary for us to examine whether the High Court was right in the construction it placed on the said expression in Clause 4 of the Trust Deed for the simple reason that the said question did not arise directly but it was called upon to interpret the said expression for the limited purpose of deciding whether or not to appoint the appellants as trustees. It was a matter which had to be gone into only incidentally and the question of appointment of trustees could have been decided even without interpreting that expression. That expression was interpreted only because a submission was made that the property would come to him and hence the trustee Sri Arun Kumar Paul should be replaced by the appellant. We are, therefore, of the view that the observations made by the High Court in regard to the said expression were for the limited purpose of making the choice in regard to the appointment of trustees. Counsel for the respondents also agree that the interpretation placed on the said expression used in Clause 4 of the Trust Deed would not stand in the way of the appellants and it would be open to the appellants in any pending or subsequent litigation to contend that under the said clause they are entitled to inherit the property. The conclusion reached by the High Court

insofar as the said expression in Clause 4 of the Trust Deed is concerned is as under:

"The expression 'heirs' mentioned in Clause 4 means and includes only the heirs as on intestacy and not Akshoy's heirs under the instrument i.e. his will."

We propose to make it clear that we do not express any opinion on the correctness or otherwise on this interpretation. We also make it clear that any Court called upon to decide the rights of the appellants under Clause 4 of the Trust Deed will not be guided or influenced by these observations. As stated earlier, the Court had looked into in this clause for a limited purpose and was not called upon to decide the rights accruing to the appellants on the death of all the beneficiaries named in the Trust Deed. With this clarification, we uphold the preliminary objection and dismiss this appeal with no order as to costs.

3. No order on the application for the deletion of the name of the respondent No. 1.

Appeal dismissed.

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