

Ashok Kumar Singhal and Others

Vs

State of M.P. and Another

Civil Appeal No. 4258 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

19.02.1996

JUDGMENT

1. Leave granted.
2. We have heard learned counsel on both sides.
3. One Gyaso Bai, mother of the respondent had executed a Will on 20- 3-1964 in favour of Ram Swaroop. After her demise, he obtained a probate of the Will on 16-4-1965. The Government had acquired 57 bighas of land and by award dated 28-5-1965 determined the compensation and the Reference Court directed payment of 2/3rd and 1/3rd share respectively to the appellants and the respondents.
4. The High Court had held that the appellants and the respondents are entitled to 50% share each by judgment and order dated 2-2-1990 by the High Court of Madhya Pradesh, Gwalior Bench in FA No. 24 of 1978.
5. The question is whether the view of the High Court which is sought to be supported by the learned counsel for the respondents, Mr S.K. Jain is correct in law? According to him, in a reference under Section 18 of the Land Acquisition Act, 1894, the Court is entitled to go into the question of the share to which the parties are entitled. When the matter is in dispute, Reference Court under Section 30 or the High Court under Section 54 can go into the question and direct payment of 50% of share to each of the parties. The view of the High Court is, therefore, correct. We find no force in the contention.
6. Section 275 of the Indian Succession Act, 1925 reads thus:

"275. The application for probate or letters of administration, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorising the grant of probate or administration; and no such grant shall be impeached by reason only that the testator or intestate had no fixed place of abode or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the court."
7. It would, thus, be seen that the probate granted by the competent civil court would be conclusive and bind all parties until the probate is duly revoked in an appropriate proceedings. It may, therefore, be open to the parties to impeach the probate in the manner provided under law. But so long as that was not done, parties were bound by the probate. The Will indicates that the entitlement

of the appellants is  $\frac{2}{3}$  share and that of the respondents is  $\frac{1}{3}$  share. Therefore, the High Court and the civil court were not right in directing payment of the amount in the manner indicated by the orders.

8. The appeal is accordingly allowed. However, this order will not preclude the respondents from initiating such appropriate proceedings as may be open under law. No costs.