SUPREME COURT OF INDIA

Uma Shashi Devi

Vs.

Dibakar Banerjee & Ors.

C.A.No.4110 of 2006

(Deepak Verma and K.S.Radhakrishnan,JJ.)

11.07.2012

JUDGMENT

Deepak Verma,J.

1. It is, indeed, unfortunate that siblings are fighting for right of ownership over properties left behind by their mother, Smt. Mrinalini Devi.

2. Dispute with regard to properties described in Schedules A,C and D and B and E appended to the Plaint, between real sister, deceased Uma Shashi Devi and her brother Sudhangshu Kumar Banerjee, has come to this Court for deciding as to whether properties as mentioned hereinabove in the Schedules have fallen exclusively to the share of brother or part of it has fallen to the share of sister.Facts shorn of unnecessary details are mentioned herein below: Original plaintiff - (sister) Uma Sashi Devi (since dead)filed a suit for declaration of a Title to the properties described in Schedule A, C and D and for partition of other properties described in schedule B and E, left behind by their mother Smt. Mrinalini Devi (against her real brother) Defendant Sudhangshu (also dead). During the pendency of the matter, as described hereinabove, sister and brother both have died but for the sake of convenience, they would be described as Plaintiff (sister) and Defendant (brother). Even though original parties to the Suit are dead but no peace could be made with the legal representatives. Original deceased parties are now being represented by their legal representatives.

3. Plaintiff filed a Title Suit No. 26 of 1973 in the 1st Court the Subordinate Judge, Hooghly, against Defendant, mentioning therein that all the disputed properties originally belonged to Smt. Mrinalini Devi, their mother. Thus, the Plaintiff would also have a share in the same. Smt Mrinalini Devi died on 5.5.1971 at Chandernagore in the District of Hooghly. According to the Plaintiff, during her life time, she settled some of the properties described in Schedules A,C and D appended to the plaint, with the plaintiff by executing two registered Deeds of Settlement on 22.02.1961. Properties described in

Schedules B and E remained as her personal properties. On her death, these properties were inherited jointly by plaintiff and defendant as her legal heirs. According to plaintiff, after the death of her mother on 5.5.1971, she became absolute owner of properties shown in Schedule A,C and D but with regard to properties shown in Schedule B and E, she was entitled to claim 50 percent of the same along with her brother Sudhangshu, Defendant to the Suit.

4. Since defendant refused partition of properties as demanded by plaintiff, she was constrained to file the aforesaid suit for declaration of her title to described in schedule A and D and for partition of the other properties left behind by her mother.

5. Defendant admitted that mother Mrinalini Devi was the exclusive owner of the properties shown in Schedule A,B,C,D and E but contended that she had executed a 'Will' before the Notary Public at Chandernagore on 19.9.1932 bequeathing properties to Defendant only. By virtue of the said 'Will' executed in his favour by Mrinalini Devi, he has become absolute owner of the entire property that belonged to their mother. Defendant further averred that mother had no right to execute Deeds of Settlement in favour of the plaintiff after execution of the 'Will' in favour of the Defendant. He further alleged that in any case, the Deeds of Settlement were obtained by practising fraud, coercion and misrepresentation and thus, were not binding. Their mother had become completely blind and hard of hearing. She had also lost her mental balance since 1956. Looking to her mental and physical condition, it was not possible for her to understand the import of the Deeds of Settlement and without understanding the same, she had put her thumb impression. Even though thumb impressions have been obtained on the Deeds, the same had been procured only by mis-representation or fraud. Thus, the Deeds would not convey any right, title or interest to the Plaintiff.

6. On the pleadings of the parties, Trial Court framed several issues. Parties went to trial and led evidence to prove their respective cases. In respect of the certified copies of the two Settlement Deeds executed in favour of plaintiff, marked as Exh. I and I A, the writer of those Deeds was examined in the Trial Court by the plaintiff. On appreciation of evidence available on record, the trial court dismissed the suit.

7. Trial Court recorded a finding that at the time of execution of the 'Will', Indian Succession Act, 1925 for short "Succession Act" was not applicable in Chandernagore which was governed by French Laws as it was a part of French Colony. Therefore, after execution of the Will in favour of the Defendant, she had no right, title or interest to execute the Deeds of Agreement.

8. Being aggrieved by the judgment and decree of the Trial Court, Plaintiff preferred an appeal under Section 96 of the C.P.C. before 1st Court of Additional District Judge, Hooghly registered as Title Appeal No. 183 of 1981. The lower appellate Court vide its judgment and

decree dated 25.09.1982 remanded it to Trial Court for disposal in terms of the directions in the said order. This order of remand was challenged by the Defendant by filing an appeal in the High Court of Calcutta. The Division Bench of the High Court of Calcutta allowed the appeal of the defendant and sent it to the lower Appellate Court to decide it on merits, in accordance with law.

9. The following directions were given by the Division Bench of the High Court, reproduced herein below:

> "It appears that the deeds were admitted in evidence by the learned trial judge. If the appellate court thought that these deeds could not be admitted in evidence on the fact of the particular case it ought to have decided that question in appeal and if that is decided, there cannot be any further question for decision as to the nature and character of the documents themselves and if the documents have been properly admitted in evidence, the documents were available in the records and the appeal court is quite competent to determine the nature and character of the documents themselves. The appellate court had all the materials before it for determining the nature and character of the documents. Without deciding that question, the appellate court was wrong in remanding the matter back to the trial court for decision on that point. The question whether these documents witnesses a testamentary disposition is also not relevant as the plaintiff herself never claimed it to be so. In this view of the matter, we find no justification for remanding thesuit back for trial according to the direction given by the impugned order. The appeal is accordingly allowed without any order as to costs. The impugned order is set aside, and the appeal will go b a c k to the appellate court below which will decide the same in accordance with law. We make it clear that we have not entered into the merits of the case of respective parties. No formal decree need be drawn up."

10. In the light of the aforesaid directions, the Appellate Court was once again seized of the appeal filed by the plaintiff, but it proceeded to dismiss the same on merits.

11. Thus, the plaintiff was constrained to file Second Appeal No. 178 of 1997 against the judgment and decree of Appellate Court, confirming the judgment and decree of Trial Court, before learned Single Judge of the High Court.

12. Plaintiff's Second Appeal was admitted on the following substantial questions of law:

> “i. Whether the defendant is entitled to claim his right, title and interest in the suit properties unless a probate is granted of the Will (Ext.A) by a court of competent jurisdiction.

ii. Whether the deeds of settlement (Exh. 1 and 1A) are valid in the eye of law or in other words the plaintiff has been able to prove due execution and registration of the same s as to create right, title and interest in favour of the plaintiff in respect of the properties mentioned therein."

13. Learned Single Judge of the High Court vide impugned Judgment and decree dated 21.5.2004 dismissed the second appeal of the plaintiff. Hence this appeal.

14. In the Second Appeal, High Court recorded a finding that plaintiff has not been able to make out a case for loss or destruction of original documents Exh. A and A1, Deeds of Settlement in her favour. Thus, no case was made out for leading secondary evidence as the loss of the originals was not established. In view of this, findings as recorded by the Appellate Court that Settlement Deeds Exh. 1 and 1A, have not been proved in accordance with law, was confirmed by High Court.

15. Consequently, it held that plaintiff is not entitled for any declaration of her right, title or interest with regard to the property shown in Schedule A,C and D. Thus, substantial question of law No. (ii) as mentioned hereinabove was decided against the plaintiff.

16. As regards question No. (i), it was held by learned Single Judge that indisputably, properties involved in the 'Will' Exh. A were situated within French Chandernagore and the said Will having been executed within the said territory, testatrix Smt. Mrinalini Devi had all rights of its disposition by 'Will' executed on 19.9.1932 in favour of the defendant.

17.Referring to Section 213 of the Succession Act, it came to the conclusion that there was no need for the 'Will' to be probated as it would fall within sub section 2 of Section 213 of the said Act.

18. Learned counsel for the Appellants submitted that Exh. A and A1 were duly proved in accordance with law. Thus, properties shown in Schedules A, C and D would fall to the exclusive share of Plaintiff only. As the original register containing the same were brought by PW - 2, who had proved that the certified copies filed thereof are the true and correct copies of Exh. A and A1 as per the register maintained by the Registrar. It was also contended that admittedly testatrix of the 'Will' dated 19.9.1932 was an illiterate lady and therefore, as per French Civil Code, the 'Will' could have been proved by an affidavit, duly sworn by another witness mentioning therein that this is the copy of the 'Will' said to have been executed by testatrix as she was unable to sign. It was also contended that when there is Division of estate amongst Class I heir, then Class I legal heir cannot be given more than half the portion in the estate of the deceased.

19. Learned Senior counsel Mr. Arvind Varma, appearing

for the Plaintiff submitted that since Mrinalini Devi had executed the 'Will' in the year 1932, when Chandernagore was a French Colony, then the French Civil Code and French laws alone would apply to the Will. Irrespective of the date of death of the testatrix, which took place on 5.5.1971, learned counsel for the appellant also submitted that Chandernagore Act 1954 as Chandernagore (Assimilation of Laws) Act, 1955 would be required to be considered in extenso in this appeal.

20. On the other hand, learned Senior Counsel Mr. Bhaskar P. Gupta, assisted by Mr. Partha Sil, appearing for the Respondents, submitted that following proposition of law would be required to be addressed by this Court in this appeal.

> "1) The validity of execution of the Will of 1932 will be judged by the law governing the execution of Wills on the actual date of execution. Such execution was a concluded event, on the date of the merger of the Chandernagore with India. The instant Will, being a Will made by public act, conforms to all the requirements under the French Code.
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> 2) The validity and legality of the disposition under the Will of 1932, will have to be judged by the law prevailing and governing the testatrix at the time of the death of the testatrix i.e. 1971 when the Will spoke and not by the law obtaining on the date of the execution of the Will.
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> This Will was not required to be probated under the Indian Succession Act.
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> 3) The French law as administered in the colonies recognized Hindu Wills and unmodified Hindu law as they were matters of personal law.
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> 4) The Deeds are not settlement in law as settlement can only be made in presenti. Further, the foundation of leading secondary evidence not laid, the Deed Writer's Evidence does not establish the connection between Uma Sashi and the Deed."

21. In the light of the aforesaid submissions advanced by learned senior counsel appearing for the parties, we have heard them at length and perused the records.

22. After giving our thoughtful consideration to the whole matter, we thought it appropriate to give a chance to parties to settle the matter amicably. We are of the considered opinion that after all parties is closely related to each other. Thus, it is a fit case to get it settled mutually instead of deciding it by this Court. We accordingly requested the learned Senior Counsel

appearing for the parties to explore the possibility of a settlement, but nothing concrete came out, even though several proposals and counter proposals were exchanged.

23. We have examined the details of the proposals floated by Appellants in the light of various Schedules annexed to the Plaint showing details of the disputed properties and have worked out tentative market value thereof since Respondents were not ready and willing to part away with the properties and to give any thing out of it to the Appellants, except for meagre monetary amount worked out by them. The amount offered by them was so little that we do not even feel proper to reflect it in the order.

24. We have, therefore, given our serious thought to the whole matter and suggested learned senior counsel appearing for the Respondents that they should pay in all a sum of Rs.5,00,000/- (Rupees Five Lacs) to the Appellants, so that all disputes and litigation may come to an end.

25. One of the Respondents, namely Dibakar Banerjee, was also present in the Court. Learned senior counsel took instruction from him. Initially, he was not ready and willing to pay the aforesaid amount on the ground that it is not possible for him to arrange this amount. We then asked him to give proportionate land of the aforesaid value to the Appellants. But this suggestion was also not acceptable. Later Respondents agreed that they would pay the aforesaid amount of Rs.5,00,000/- (Rupees Five Lacs) in all to the Appellants, but it can only be paid in installments spreading over a period of 18 months. According to us, this was a reasonable suggestion given by the Respondents. The Appellants agreed for this mode of payment. We accordingly pass the following order.

26. Respondents are directed to pay an initial amount of Rs.1,00,000/- to the Appellants on or before 14th of August, 2012. Remaining amount of Rs.4,00,000/- would be paid by the Respondents in five quarterly installments of Rs.80,000/- each, until the balance is paid. In case Respondents fail to make the aforesaid payment of Rs.5,00,000/- in total period of 18 months from today, then they would also be liable to pay interest on delayed payment at the rate of 9 per cent per annum from the date the payments have become due.

27. The interim order passed by this Court on 8.9.2006 hereby stands vacated. However, till the aforesaid payment of Rs.5,00,000/- is not made, property shown in Schedule A of the Plaint shall not be disposed of or encumbered in any manner, and no third party rights would be created thereon.

28. With the aforesaid directions, admittedly all disputes between the parties have come to an end and the appellants would not claim any right, title and interest in the Schedule properties shown in Schedules A, B, C, D and E appended to the Plaint.

29. We, indeed, highly appreciate the efforts made by learned Senior Counsel Mr. Arvind Verma appearing with Mr.

Vikramjeet, Advocate, for the Appellants and learned Senior Counsel Mr. Bhaskar P. Gupta appearing with Mr. Partha Sil, Advocate, for the Respondents. But for their persuasion and perseverance with their respective parties, it would not have been possible to arrive at this amicable settlement.

30. This appeal accordingly stands disposed of with a direction to the Registry to send back Original Record forthwith. Parties to bear their respective costs.