

SUPREME COURT OF INDIA

Pasupati Nath Das

Vs.

Chanchal Kumar Das

C.A.No.5822 of 2005

(Uday Umesh Lalit and Ashok Bhushan,JJ.,)

25.09.2018

JUDGMENT

Uday Umesh Lalit,J.,

1. This appeal challenges the correctness of the judgment and order dated 4th February, 2005 passed by the Division Bench of the High Court at Calcutta in Original Side Appeal No. 60 of 1984.

2. One Nandlal Das, husband of Shyama Sundari Dassi and father of two sons Kanailal Das and Pasupati Nath Das executed a Will on 12th April, 1963 in respect of properties owned and possessed by him. Schedule to the Will comprised of three parts. Properties mentioned in Part I and Part II of the Schedule were given to the family deity Sri Jugal Kishore Jew known as Sri Shyamaji at Tarapith temple of which deity the Testator was the shebait. Thus, properties mentioned in Parts I & II were to be Trust properties while properties mentioned in Part III were to be devised in accordance with the Will. Said Parts I, II and III of the Schedule to the Will were as under:

“ Part-I

1. Garden house and land at Behalf known as “Nafar Kanan” being Holding No.19, Nafar Chandra Das Road, Behalf in the district of 24-Parganas together with Tank trees, structures etc.

2. All that two storied premises No.10/1/3 Jagannath Sarkar Lane, Kidderpore in the district of 24-Parganas, on part whereof the same is erected.

3. All that brick built messuage land and premises being No.1/3, Asha Babu Lane, Kidderpore in the district of 24 Parganas together with the land etc.

4. All that land and premises at 565 Diamond Harbour Road, Behala in the district of 24 Parganas which property was purchased by me in the benami name of my wife (Smt. Shyama Sundari Dassi) together with the structures and sheds.
5. Land and tank adjoining the above premises No.565 Diamond Harbour Road being portion of Holding No.19/2 Kamarpara Road in Behala in the district of 24 Parganas.
6. All that brick built two storied messuage land and premises being No.55/2 Turff Road at Bhowanipore in the district of 24 Parganas purchased by me in the benami name of my wife (Smt. Shyama Sundari Dassi).

Part-II

1. Several Plots of land at Tarapith in Rampurhat in the district of Birbhum including agricultural land measuring about 2 Bighas and homestead land purchased by me in the benami name of my wife (Smt. Shyama Sundari Dassi) and the buildings constructed on the homestead land measuring about 3 Bighas.
2. One Plot of land at Tarapith in Rampurhat in the district of Birbhum purchased by me in my own name.

Part-III

1. All that garden house and premises at Jasidih in the district of Santhal Paraganas in Bihar purchased by me in the benami name of my wife Smt. Shyama Sundari Dassi.
2. Tenancy right in premises No.157A, Dharamtolla Street, together with pucca structures corrugated Tin sheds constructed by me at my own and costs upon the greater part of the said land. In Witness whereof I have hereunto set my hand this 12th day of April one thousand nine hundred and sixty three. ...”
3. Nandlal Das died on 1st December, 1964 leaving behind his widow and two sons. On 7th March, 1966 Kanailal Das died childless, leaving behind his widow Smt. Purnima Rani Dassi. On 3rd June, 1967 the other son Pasupati Nath Das, the present appellant, as Executor named in the Will dated 12th April, 1963 applied for grant of Probate of said Will by filing Probate Case No. 101 of 1967 in Calcutta High Court. A joint caveat was filed by Shyama Sundari Dassi and Purnima Rani Dassi. It was alleged that by subsequent Deed of Revocation dated 15th October, 1963 the aforesaid Will had stood revoked. The application for grant of Probate of the Will of Nandlal Das, being a contentious cause was numbered as Testamentary Suit No. 6 of 1971.
4. Shyama Sundari Dassi thereafter executed a registered Will on 12th October, 1973. It was stated therein that she did not want her estate to go into the hands of her younger son, the appellant; that while her husband was alive he had cancelled and nullified the Will dated 12th April, 1963 being displeased with the behavior of said son and his family; that the estate

left behind by her husband devolved equally on her and two sons; that she had received large sum of cash and ornaments from her sister and brother-in-law and that the properties mentioned in the Schedule to the said Will were her properties. By said Will, she appointed one Harendra Nath Das, Manager of the estate to be the Executor, and stated that after her death one Menoka Rani Dasi, her brother's wife and Harendra Nath Das would get equal shares in the property. The list of properties mentioned in Schedules Ka, Kha and Ga to the Will dated 12th October, 1973 were as under:

“List of Properties included in Schedule Ka My undivided V share in the properties mentioned 1st, 2nd, 3rd and 4th clauses of schedule Ka.

1. The premises No. 157A, Dharamtolla Street in the town of Calcutta including the tenancy right and together the business styled as the Indo-British Motor Industries situated in the said premises and the interest in the said business.

2. No. 10\1\3, Jagannath Sarkar Lane, Kidderpore, Calcutta- 23, District 24 Parganas - Three storied masonry house and the land thereunder.

3. No. 1\3A, Ashu Babu Lane, Kidderpore, Calcutta, District 24 Parganas - Fallow land and the incomplete construction thereon.

4. The garden house at Behala known as Nafar Kanan (and) the trees, rank and construction on it, Holding No.11 Nafar Das Road Behala.

5. Indu Bhaban, Jasidih, Santhal parganas, Bihar. The said Indu Bhaban is the property purchased with my own money. Introduction of the properties in Schedule Kha

1. District Birbhum, Police Station, Chowki and Sub-Registry Rampurhat, Mouza Kamdebpur, J.L.No.61 Touzi No.15, Khatian No.81, Dag No.9 within the said dag a plot of land measuring 34 decimals proportionate Jama Rs.2.19 Paises Sthitiban-Venue Rs.100/-.

2. Mouza same, Khatian No.64, present Khatian 87, Dag No.7 the area of the land 20 decimals, proportionate jama. 62 paises, Sthitiban value Rs.300/-.

3. Mouza Kamdebpur, Khatian No.60, present No.86. Dag No.8 homestead .5 decimals Dag No. 8\300 danga 04 decimals Total 9 decimals only proportionate jama. 25 Paises Sthitiban value Rs.200/-.

4. In the district of Birbhum under the police Station, Chowki and sub-Registry Rampurhat within the limits of Mouza Chandipur, J.L.No.62, Touzi No.477, Khatian No.130, present Khatian No.322, Dag No.748, House 07 decimals and the pucca house etc. standing thereon including the fixtures proportionate jama. 25 Paises, Raiyat Sthitiban value Rs.2210/-.

5. Mouza same, Khatian No.136, present Khatian No.308,Dag No.902, North Pratap Doyen .16 decimals out of .32 decimals Dag No.184, 8 as share in 111(?) decimals .5 decimals, Dag No.67, Garh Layak Follow (land) out of .8 decimals, 8 as. Share in this right, 4 decimals total 29 decimals only proportionate rent 10 as. 3 pies, Raiyat Sthiban value Rs.700/-

6. Mouza same, Khatian No.281, present No.321, Dag No.8, Danga out of .42 decimals 8 as. Share in this right .21 decimals, Dag No.799, homestead, out of .08 decimals 8 as. Share in the right .04 decimals. Total .25 decimals only proportionate jama 9 as. Raiyat Sthiban - value Rs.600/-.

7. District as aforesaid included in Mouza Kadebpur, J.L.No.61, Khatian No.16, present No.5, Danga .94 decimals, dag No. 74 double crop yielding land 115 decimals, Total Rs.2.09 paises. Sthiban - value Rs.900/-

8. Mouza same, Khatian No.63, Present Khatian No.89, Dag No.6 Dahar Saiyam out of .11 decimals the share in this right, out of 14 decimals 1/3rd share .5 five decimals only proportionate jama. 8.p.Total jama 4 as. Sthitiban - value Rs.200/-.

Landlond West Bangal Government, Schedule Ga

1. District Birbhum, Police Station Chowki, Sub-Registry Rampurhat, Mouza Jamshedpur, J.L. No.61, Touzi No.15, Khatian No.63, present Khatian No.89, Dag No.6, North Behar, out of .16 decimals .31 decimals, proportionate rent .01 P. Total jama .25 P. Value Rs.25/-

2. District 24 Parganas, Sub-Registry Behala, Police Station Behala. Diamond Harbour Road, Holding No.308 and Holding No.314, House No. 565, area 2 Bighas together with the factory standing on including (illegible) shed and adjoining boundary and land including some brick built pucca factory premises having tin and asbestos on the roof, privy, urinals, all the iron gates and the rooms under the occupation of the durwans including fittings and fixtures. To this import in own accord having full sense and without being instigated by others the deed has been written in accordance with my own directions. Having understood I sign and execute this will or last testament. Finis 25th Aswin, 1380 B.S. corresponding to English Calendar 12th October, 1973.”

5. In Testamentary Suit No. 6 of 1971, Shyama Sundari Dassi and Harendra Nath Das gave evidence. By order dated 19th September, 1975 Single Judge of the High Court granted Probate of the will dated 12th April, 1963 of Nandlal Das in favour of Pasupati Nath Das. On 22nd September, 1975 Shyama Sundari Dassi died. Appeal No.371 of 1975 was thereafter filed by Harendra Nath Das against the aforesaid judgment dated 19th September, 1975. Further, an application for grant of Probate of the Will dated 12th October, 1973executed by Shyama Sundari Dassi was filed by Harendra Nath Das and Menoka Rani Dassi. Since a caveat was filed by Pasupati Nath Das and the matter was contested, it was numbered as Testamentary Suit No.8 of 1976.

6. In Testamentary Suit No.8 of 1976, following issues were framed by Single Judge of the High Court

“i) Was the Will dated October 12, 1973 duly executed and attested?

ii) Is the Will dated October 12, 1973 genuine?

iii) a) Did the testatrix Shyama Sundari Dassi have testamentary capacity to execute Will?

b) Did the testatrix suffer from Senile Dementia at the time of execution of the Will?

iv) Was the Will executed under undue influence exercised by Harendra Nath Das?

v) To what relief, if any, the propounder is entitled?

7. On 14th October, 1982, the Division Bench of the High Court dismissed Appeal No.371 of 1975 and confirmed the judgment and decree dated 19th September, 1975 passed in Testamentary Suit No. 6 of 1971.

8. On 27th February, 1984 Single Judge of the High Court dismissed Testamentary Suit No.8 of 1976 in which the grant of Probate of the Will dated 12th October, 1973 of Shyama Sundari Dassi was sought. Issues i), ii) and iiib) were found in favour of the propounders of the Will while issues iiiia) and iv) were answered against said propounders. This decision was challenged by Harendra Nath Das and Menoka Rani Dassi by filing Appeal No. 60 of 1984 before the Division Bench of the High Court.

9. Since there was no cross appeal, only two issues namely iiiia) and iv) were required to be considered by the Division Bench. After going through the entirety of the matter the Division Bench accepted the appeal. On facts it was found that there were no suspicious circumstances and that the testatrix was in sound disposition of mind at the time of the execution of the Will. The Division Bench observed as under:

“ The fact remains that the solicitor was called at the residence and the doctor was present. There is no allegation of threat being given to the lady. There is no material to show that there was any occasion for the testatrix to execute the Will in favour of Harendra Nath to purchase peace. There is no material to show that Harendra Nath had exploited the sentiment of the lady or otherwise had exerted any force or fear or had given any hopes. The signature on each page and the signature of all corrections are also indicative of the fact that she knew the contents of the Will. The Will was read over and explained to her and she had signed in the presence of the attesting witnesses, which have since been so found by the learned Single Judge ”

Directing that Probate as prayed for be granted, the appeal was allowed by judgment and order dated 4th February, 2005, which decision is presently under appeal.

10. During the pendency of this appeal, both Pasupati Nath Das and Harendra Nath Das expired. The heirs of deceased Harendra Nath Das were brought on record. Interlocutory Application Nos.5 and 8 seeking to bring the heirs of the deceased Pasupati Nath Das on record are allowed. One of the legal representatives of deceased Pasupati Nath Das is no more, and his legal representatives are sought to be brought on record vide Interlocutory Application No.11156 of 2018. Said application is also allowed. Cause title shall stand amended accordingly.

11. We heard Mr. Raja Chatterjee, learned Advocate for the appellants and Mr. Ajay Kumar Gupta, learned senior advocate for the respondents. It was submitted by Mr. Chatterjee, learned Advocate that under the Will of Nandlal Das, properties mentioned in Parts I and II of the Testament were given in charity while those mentioned in Part III were given absolutely in favour of his two sons and Shyama Sundari Dassi, the widow, was given only a life estate and right of maintenance. Therefore, according to him, Shyama Sundari Dassi could not have dealt with those properties which were inherited from her husband. These submissions were countered by Mr. Ajay Kumar Gupta, learned Senior Advocate who submitted that very comparison of properties mentioned in respective Schedules to the Wills would show that there were various properties which belonged to Shyama Sundari Dassi in her individual capacity and that she was entitled to dispose of the same by executing a Will.

12. We must, at the outset, say that the scope of the matter arising from Probate proceedings is very limited. The scope of the matter is primarily and principally regarding the genuineness of the execution of the testament or Will. This part has been succinctly dealt with in a decision rendered by this Court in Krishna Kumar Birla v. Rajendra Singh Lodha and Others. . Paragraphs 57, 66 and 67 of the said decision spell out the scope of the enquiry in Probate proceedings as under: “57. The 1925 Act in this case has nothing to do with the law of inheritance or succession which is otherwise governed by statutory laws or the custom, as the case may be. It makes detailed provisions as to how and in what manner an application for grant of probate is to be filed, considered and granted or refused. Rights and obligations of the parties as also the executors and administrators appointed by the court are laid down therein. Removal of the existing executors and administrators and appointment of subsequent executors are within the exclusive domain of the court. The jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the will. A question of title arising under the Act cannot be gone into the (sic probate) proceedings. Construction of a will relating to the right, title and interest of any other person is beyond the domain of the Probate Court.

(Emphasis by us)

66. We may, however, at the outset, notice a decision of this Court in Elizabeth Antony v. Michel Charles John Chown Lengera (1990) 3 SCC 333 which is binding

on us. Therein, the testatrix viz. one Mary Aline Browne, was the wife of one Herbert Evander Browne, the eldest son of John Browne. Mary died on 28-3-1972. She had executed a will on 12-3-1962. An application for grant of a letter of administration with a copy of the will annexed was filed by Michel. Petitioner Elizabeth Antony and her husband Zoe Enid Browne filed caveats on the plea that the said will was a forged document. The petitioner therein also claimed that her daughter Browne had executed a will on 23-6-1975 and she had executed a deed of gift in favour of the petitioner. She also claimed herself to be a trustee of John Browne Trust. The Probate Court held that they had no caveatable interest. Caveatable interest, therefore, was claimed as an executor and legatee of the will executed by Zoe Enid Browne as also a deed of gift in respect of one item of the estate executed in their favour. Caveatable interest was also claimed on the premise that the petitioner was appointed a trustee of John Browne Trust. This Court noticed a large number of High Court judgments. It was, however, opined that the petitioner therein failed to establish a caveatable interest stating: (SCC p. 336, para 6)

“6. ... We have perused the entire order of the trial court in the context. Admittedly neither the original nor a copy of the will said to have been executed by Zoe Enid Browne, was filed. Now coming to the trust, it is in the evidence of PW 1 that John Browne Trust has come to an end in March 1972 and the same was not in existence. The trial court has considered both the documentary and oral evidence in this regard and has rightly held that the petitioner has no existing benefit from the trust. Likewise the registered gift deed or a copy of it has not been filed. Before the learned Single Judge of the High Court also same contentions were put forward. The learned Judge observed that from the objections filed by the caveator she desires the court in the probate proceedings to uphold her title on the strength of a gift deed and the trust deed. It is observed:

'Equally, the petitioner has not placed before the court the will dated 23-6-1975 stated to have been executed by Zoe Enid Browne to establish that under the will dated 12-3-1962 stated to have been executed by Mary Aline Browne some interest given to the petitioner under the will dated 23-6-1975 of Zoe Enid Browne, is liable to be in any manner affected or otherwise displaced, by the grant of letters of administration in respect of the will dated 12-3-1962 stated to have been executed by Mary Aline Browne.'

Accordingly, the learned Judge held that the petitioner has not established that she has a caveatable interest justifying her opposition to the probate proceedings for grant of letters of administration. In this state of affairs, we are unable to agree with the learned counsel that the petitioner has caveatable interest.”

This Court, thus, categorically opined that while granting a probate, the court would not decide any dispute with regard to title. A separate suit would be maintainable therefor. If probate is granted, they have a remedy in terms of Section 263 of the 1925 Act also.

67. In the recent judgment of *Kanwarjit Singh Dhillon v. Hardy Singh Dhillon* (2007) 11 SCC 357 this Court *inter alia* relying upon *Chiranjilal Shrilal Goenka v. Jasjit Singh* (1993) 2 SCC 507 and upon referring to a catena of decisions of the High Court and this Court, held that the Probate Court does not decide any question of title or of the existence of the property itself.” (Emphasis by us)

13. We, therefore, confine ourselves only to the issue whether the execution of the Will of which Probate is prayed for has been satisfactorily proved and whether there are any suspicious circumstances impinging upon the execution of the Will. Out of four issues, three were answered in favour of the propounders of the Will by the Single Judge wherefrom no appeal was preferred. The matter was thus limited in scope before the Division Bench which, in any case, has answered the other issues also in favour of the propounders of the Will. Having gone through the judgment under appeal, we do not see any reason to take a different view in the matter nor has any ground been made out to upset the decision under appeal.

14. We, thus, confirm the decision of the Division Bench. All the issues, including those whether the properties in respect of both the Schedules are identical or not will have to be raised and dealt with in properly instituted proceedings. Reserving all those rights, we dismiss the present appeal. No costs.