

GA No.1208 of 2018
APO No.153 of 2018
in
ATA No.1 of 2018

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IN THE MATTER OF:
MADHAW PRASAD DEORA & ANR.

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE SUVRA GHOSH
Date : 4th February, 2019

Appearance:

Mr. R. L. Mitra, Adv.
Mr. Nirmalya Dasgupta, Adv.
Ms. Priyanka Dhar, Adv.

Mr. Amar Nath Das, Adv.
Mr. Sankar Narayan Saha, Adv.
Ms. Reshmika Prasad, Adv.

The Court : The appeal has arisen from an order rejecting a petition under Section 34 of the Trusts Act on the ground of perceived discrepancy in the trust deed.

The material part of the trust deed of October 7, 1929 executed by settlor Motilal Deora provides as follows as regards the beneficiaries:

“...for the use and benefit of the said Srimati Shivdeyi
Devi during the term of her natural life and from and after the

death of the said Srimati Shivdeyi Devi for the use and benefit of the said Srimati Annardeyi Devi during the term of her natural life and from and after the death of the said Srimati Annardeyi Devi for the use and benefit of the said settlor during the term of his natural life and from and after the death of the said settlor for the use and benefit of all the male issues of the said settlor either adopted or born of his own loins or to be adopted to him after his death absolutely and for ever and if after the death of the said settlor there be no male issues either adopted or born of his own loins then for the use and benefit of Sabitri Kanya Pathshala situate at No.5B, Mukhtaram Babu Street, Calcutta and if the said Sabitri Kanya Pathshala be not in existence at the time. Then for the use of any other school for education of Marwari girls at the discretions of the trustees of these presents.”

It is submitted by the appellants, who claim to be the trustees of the trust, that Shivdeyi Devi died on September 27, 1965, Annardeyi Devi died on July 8, 1986 and settlor Motilal Deora predeceased them, having died on February 12, 1949. Motilal Deora apparently adopted Om Prakash Deora on February 2, 1949, some ten days before his death. Om Prakash Deora died on May 15, 2002.

It is evident from the deed of trust that the first beneficiary thereunder would be Shivdeyi Devi and, after Shivdeyi's death, it would be Annardeyi Devi. Shivdeyi Devi died in 1965 and Annardeyi Devi died in 1986. Till such point of time, there is no difficulty.

After Annardeyi Devi's death on July 8, 1986 the trust was to be "for the use and benefit of the said settlor during the term of his natural life and after the death of the said settlor for the use and benefit of all the male issues of the settlor either adopted or born of his own loins or to be adopted to him after his death absolutely and forever...". Since settlor Motilal was already dead at the time that Annardeyi Devi died, in terms of the deed, the sole beneficiary thereafter was the only son of the settlor, Om Prakash Deora who had been adopted some ten days before settlor Motilal's death. The trust really came into an end upon the death of Annardeyi Devi and the trust properties vesting "absolutely and forever" in the settlor's adopted son Om Prakash. Indeed, the trust may have been meaninglessly continued after July 8, 1986.

As to the other limb of the relevant clause beginning with the words "and if after the death of the said settlor there be no male issue either adopted or born of his own loins...", the same did not come into operation and, as such, has to be ignored. At the time of Annardeyi Devi's death, even though settlor Motilal had died, the settlor's adopted son Om Prakash was alive and the trust property vested "absolutely and forever" in Om Prakash and the trust property became Om Prakash's personal property thereupon. The alternative situation did not arise.

Though it is of no significance in the present context, the manner of dealing with the property will be as per the laws of succession applicable to any property of Om Prakash Deora.

This being the legal position, the appeal and the applications, if any, do not survive since no permission of the Court was necessary to be obtained under Section 34 of the Trusts Act. Accordingly, APO No.153 of 2018 and GA No.1208 of 2018 along with ATA No.1 of 2018 are disposed of with the observation that no permission of this Court is required in respect of the properties originally covered by the deed of trust dated October 7, 1929 executed by Motilal Deora. As a consequence, all previous orders passed in this appeal pertaining to the sale or development of the trust property will be of no effect. It is also held that the appellants as purported trustees have no rights in such capacity in respect of the Harrison Road property, though if the appellants have not been excluded as successors of Om Prakassh Deora, they may have their individual rights therein as successors.

No act or deed pertaining to the relevant Harrison Road property needs to be governed by any order of this Court in proceedings arising out of the Trusts Act.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(SUVRA GHOSH, J.)