

22.03.2022
SL No.29
Court No.8
(gc)

FAT 132 of 2020
With
CAN 1 of 2020
(Old No: CAN 2827 of 2020)
with
CAN 2 of 2020
(Old No: CAN 2828 of 2020)

Smt. Manju Bandopadhyay & Ors.
Vs.
Smt. Parul Chakraborty
(Via Video Conference)

Mr. Supratick Syamal,
....for the Appellants.

Re: CAN 1 of 2020
(Old No: CAN 2827 of 2020)

This is an application for condonation of delay.

There is a delay of 59 days in preferring the memorandum of appeal. We have perused the application for condonation and we feel that sufficient cause is being shown for not being able to prefer the appeal within the period of limitation.

On such consideration, the application for condonation of delay being CAN 1 of 2020 (Old No: CAN 2827 of 2020) is allowed and disposed of.

Re: FAT 132 of 2020
with
CAN 2 of 2020
(Old No: CAN 2828 of 2020)

The appeal is directed against the judgment passed by the probate Court in connection with an application for grant of probate. Shortly put, one Anila

Bandapadhyay was the testatrix and mother of the plaintiff and the defendant No.1. At the time of her death, she was survived by the plaintiff and Sankar Lal @ Tulshi Bandapadhyay. She acquired interest over 5 cottahs of land approximately by way of settlement in her favour after she migrated from East Pakistan now Bangladesh. She executed the Will on 5th August, 1995 and thereafter she expired on 11th November, 1999. The son of the testatrix filed an objection against the petitioner for grant of probate. It was stated in the objection that Anila Bandapadhyay did not have the capacity to execute the Will in respect of the suit property by reason of the transfer she made in favour of her son, Sankar Lal. It was alleged that the land was settled in favour of his mother in terms of the provisions of the West Bengal Land Development and Planning Act, 1948. At the time of settlement of the said land, one agreement was alleged to have been entered into by and between the State of West Bengal and New Barrackpore Co-operative Homes Limited. Anila Bandapadhyay was allotted a plot of land in the said Co-operative Society and subsequently she surrendered her allotment right in favour of the said Co-operative Society on 17th December, 1998. Subsequently, Sankar Lal became a member and the said property in question was transferred in the name of Sankar Lal. Sankar Lal also claimed that one deed was executed in his favour by the State on 13th April, 1999. It was alleged that since

then, Sankar Lal was possessing the said property being its owner.

The fact remains that at the time of execution of the Will, Anila Bandapadhyay has interest in the said property. Sankar Lal has cited subsequent provisions to show that Anila Bandapadhyay did not have the capacity to bequeath a portion of the land in favour of the daughter. Even by the showing of Sankar Lal in 1995, there has been no surrender of Anila Bandapadhyay in favour of the society or Sankar Lal.

It is elementary that the Court of probate does not decide on any question of title. It is clear from the evidence on record that Anila Bandapadhyay has the capacity to bequeath the property in favour of her daughter. The subsequent events are not relevant for the purpose of proving due execution of the Will. The Will was proved in accordance with Section 63 of the Indian Evidence Act. Sankar Lal never alleged incapacity of mind of Anila Bandapadhyay at the time of execution of the Will.

On such consideration, we do not find any reason to interfere with the order passed by the learned Trial Judge.

The appeal being FAT 132 of 2020 and the application being CAN 2 of 2020 (Old No: CAN 2828 of 2020) stand dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)