

IA No. GA 1 of 2022
APOT No. 26 of 2022
with
CS No. 25 of 2021
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Varsha Jobanputra
Versus
Mahendra Thakkar & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 16th February 2022

Appearance:
Mr. Sakya Sen, Sr. Advocate
Mr. Meghnad Dutta, Advocate
Mr. Arindam Paul, Advocate
for the appellant

Mr. Suman Dutt, Advocate
Mr. Rajarshi Dutta, Advocate
Mr. A. P. Agarwalla, Advocate
for respondent nos. 12 & 14

Mr. Aniruddha Mitra, Advocate
Ms. Parna Mukherjee, Advocate
for respondent no. 28

The Court: This appeal against the judgment and order dated 2nd February 2022 passed by a learned single judge in the interim application (IA No. GA 2 of 2022) for appointment of a Receiver over the subject property is formally admitted.

All the parties and the necessary papers are before us.

So we proposed to hear out the appeal, dispensing with all formalities.

The appellant is the daughter of the late Dayalji Bhawanji Baru (Thakkar) and the late Mitha Bai Dayalji Baru. She founds her claim to the subject property on intestacy. It is said that the said property is tenanted and a huge amount of outstanding rent together with the

current rent is collected by the respondent nos. 13 and 14 and their mother, the respondent no.12.

It appears from the submissions made that Dayalji Bhawanji Baru by his last Will and testament bequeathed the subject property to one of his sons Ramesh Thakkar, a long time ago. His Will was probated as long back as on 17th May, 1972. Ramesh Thakkar died in 2020. By an alleged Will he has bequeathed the said property to his niece Tejal, the respondent no. 14. An application has been made for probate of this Will. It is pending.

In 2021 the appellant made an application for revocation of the grant of probate of the said Will of Dayalji Bhawanji Baru which was probated in 1972.

Anticipating that his client's application for grant of probate could succeed, the said property would be thrown open to division on intestacy and in such eventuality the appellant would be entitled to a part of the rent, relief of a Receiver to take possession of the property and collect the rent was sought from the learned single judge.

Mr. Sen, learned advocate for the appellant submitted that Tejal, the respondent nos. 12, 13 and 14 were collecting and misappropriating the rent from the said property and that they should be restrained from doing so and the rent deposited with a Receiver to be appointed by the Court.

The father of the appellant made his Will in 1971. It was probated on 17th May 1972.

We are all familiar with the law that the estate of the testator, on his death vests in the executor irrespective of probate (S.211 of the Indian Succession Act, 1925). Upon obtaining the probate he can exercise those rights in a court of Law (S.213 of the said Act).

Ramesh Thakkar executed a Will bequeathing the subject property to the respondent no.14. Subsequently he died in 2020 and the application for grant of probate of that Will is pending.

By the same principle the legal title of the state is vested in the executor of Ramesh's Will and it will continue to be so vested till the appellant is able to successfully obtain revocation of the grant.

All these years the property has remained tenanted.

The application for revocation of the grant has been made after half a century in 2021.

Furthermore, there is already an order of this court made on 8th May 2021 in this suit restraining the parties from creating any third party right over the subject property.

In our opinion, the claim of the appellant of a right to the said property on intestacy appears to be very remote at this point of time.

Considering the above circumstances, we do not think it necessary at this stage to appoint a Receiver.

Time for exchanging affidavits before the learned trial court is extended as follows:

Affidavit-in-opposition be filed by 23rd February 2022; reply, if any, thereto by 28th February 2022.

Any observation made by us is tentative. At the time of final hearing of any connected interim application on exchange of affidavits the learned court is requested to consider the case of the parties afresh.

We find no infirmity in the impugned judgment and order dated 2nd February 2022 and we affirm the same.

The appeal is dismissed.

The stay application is also accordingly dismissed.

(I. P. MUKERJI, J)

(ANIRUDDHA ROY, J.)