IN THE HIGH COURT AT CALCUTTA

(Testamentary & Intestate Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

IA No. GA 4 of 2022
In PLA 165 of 2019

In The Goods Of :
Sabita Basu (Dec.)

With

IA No. GA 1 of 2019
In PLA 165 of 2019

In The Goods Of :
Sabita Basu (Dec.)

With

IA No. GA 3 of 2019
In PLA 165 of 2019

In The Goods Of :
Sabita Basu (Dec.)

Mr. Suman Dutt

Mr. Debmalya Ghoshal

Mr. Subhankar Chakraborty

Mr. Saptarshi Bhattacharjee

Ms. Stisti Paul

.....For the petitioner

Heard on : 02.12.2022

Judgment on : 08.12.2022

Krishna Rao, J.:

The petitioner Shri Subir Kumar Bose has filed PLA No. 165 of 2019 praying for grant of Letters of Administration in respect of the assets of and properties both movable and immovable of the deceased Sabita Basu. The petitioner had also filed an interlocutory application being G.A. 1 of 2019 for interim relief pertaining to estate. In the meantime one Smt. Rita Sur had filed caveat by opposing for grant of Letters of Administration and the petitioner had filed another application being G.A. 2 of 2019 for discharge of caveat filed by Smt. Rita Sur. Smt. Rita Sur had also filed an application being G.A. 3 of 2019 praying for extension of time to file affidavit in support of her caveat. Rita Sur had filed G.A. 3 of 2019 for herself as well as on behalf of other legal heirs of Nani Gopal Sur being the brothers and sisters of deceased Sabita Basu. During the said applications Rita Sur expired on 24th August, 2020 and the death of Rita Sur was recorded vide order dt.13th July, 2022 wherein Rita Sur was discharge from caveat. In the meantime, the petitioner also came to know that one Sanjit Kumar Sur who is also one of the applicants in G.A No. 3 of 2019 passed away on 27th September, 2020.

Now, only one applicant Ranjit Kumar Sur had filed an affidavit and this court vide order dt. 29th August, 2022 directed to keep the same on record.

The petitioner namely Subir Kumar Bose has filed an application being G.A. No. 4 of 2022 praying for discharge of the caveat dated 22nd August, 2019 filed by Nivedita Sur, Kabita Sur, Ranjit Kumar Sur, Sanjit

Kumar Sur and Chinmoyee Ghosh filed in connection with the instant case. Vide order dt. 23rd September, 2022 the cavetor Ranjit Sur had prayed for time to file affidavit in opposition in respect of G.A. 4 of 2022 accordingly time was granted to file affidavit and this Court had fixed the matter on 25th November, 2022. On 25th November none appeared on behalf of the caveator and no affidavit in opposition was filed accordingly this Court had fixed the matter for hearing on 2nd December, 2022 but none appeared on behalf of the cavetor and no accommodation is prayed for thus the application is taken up for hearing.

Mr. Suman Dutt, Learned senior Counsel appearing on behalf of the petitioner submits that the affidavit filed by Shri Ranjit Sur it appears that none of the brothers and sisters of deceased Sabita Basu have disclosed any caveatable right or interest to the estate of deceased Sabita Basu. He further submits that the funds standing in the name of Sabita Basu acquired the status of property possessed by female Hindu as a sole owner.

Mr. Dutt submits that in the absence of any son, daughter and husband of the deceased Sabita Basu, the property will devolve upon the petitioner being the heir of her husband as sole surviving heir of the deceased Savita Basu. He further submits that the brother and sister of the Sabita Basu are not entitle to any property of Sabita Basu.

Mr. Dutt further submits that the father of Sabita Basu namely Nani Gopal Sur, passed away some times in the year 1982. The father of Sabita Basu had certain immovable properties in his personal name and some undivided right in immovable properties by virtue of being partner of Sur and Company. After the death of father, all the brothers and sisters have inherited right to such properties and as per documents the legal heirs of Nani Gopal Sur have sold the immovable properties to third parties and the sale proceeds have been portioned and divided upon all nine legal heirs.

Mr. Dutt submits that inherited properties have been sold and has lost its existence, the legal heirs of Nani Gopal Sur cannot have any claim over the sale proceeds of the properties which is in the hand of Sabita Basu.

Heard Mr. Dutt appearing on behalf of the petitioner, perused various order passed by this Court, pleadings and affidavit filed by Ranjit Kumar Sur and the materials available on record.

Perused the affidavit filed by Ranjit Kumar Sur and Rita Sur. More or less in both the affidavits the details of the properties of their father Late Nani Gopal Sur have been described but in the affidavit of Rita Sur the particulars of the properties have been categorically described.

In the affidavit of Rita Sur the property of the father have been describe as follows :

> *"6. I say that on or about 19th May, 1982 my father, the said Nani Gopal Sur, died intestate leaving behind him surviving his widow Smt. Mahamaya Sur, six daughters namely, Kabita Sur, Nivedita Sur, Gita Biswas, since deceased, Chinmoyee Ghosh, Sabita Basu, since deceased and myself and two sons namely Sanjit Kumar Sur and Ranjit Kumar Sur as his only heris who jointly inherited in equal shares the properties owned by the said Nani Gopal Sur each having 1/9th undivided share or right title and interest in the said other immovable properties as also the undivided 1/3rd share of the said Nani Gopal Sur in M/s. Sur & Company in the said firm's property thereby each owning 1/27th undivided share therein.*
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> *7. I say that on 21st May 2010, I along with Mahamaya Sur, Kabita Sur, Nevedita Sur, Gita Biswas, since deceased, Chinmoyee Ghosh,*

Sabita Basu, since deceased agreed to sell, transfer and convey in favour of one Max Cement Private Limited, having its registered office at 197/A, B.B. Chatterjee Road, Kolkata – 700042, the 7/9th share in the said other immovable properties inherited from, Nani Gopal Sur, since deceased. In this connection, a photocopy of the said agreement for sale dated 21st May 2010 is annexed hereto and marked as "Annexure-A".

8. I say that immediately upon execution of the said Agreement for Sale on 21st May 2010, the said Mahamaya Sur, Kabita Sur, Nivedita Sur, Gita Biswas, since deceased, Chinmoyee Ghosh, Sabita Basu since deceased and myself received Rs. 25,00,000/- each from the said Max Cement Private Limited.

9. I say that by a registered deed of conveyance dated 26th July 2011, the said Mahamaya Sur, Kabita Sur, Nivedita Sur, Gita Biswas, since deceased, Chinmoyee Ghosh, Sabita Basu, since deceased and myself therein jointly referred to as the Vendors, sold transferred and conveyed the said undivided 7/27th share in the said firm's property at or for Rs. 62,46,352/- in favour of one Rishikesh Dealtrade Private Limited wherein the said Max Cement Private Limited was the confirming Party. The said Sabita Basu, since deceased, being one of the vendors therein, received Rs. 8,92,336/- as consideration against the sale of her undivided 1/27th share in the said firm's property. In this connection, a photocopy of the certified copy of the said deed of conveyance dated 26th July 2011 is annexed hereto and marked as "Annexure-B".

10. I say that from time to time from the month of May, 2010 and prior to November, 2014 the said Sabita Basu received a total sum of Rs. 1,27,00,000/- towards part payment of the consideration under the said agreement for sale dated 21st May 2010.

11. I say that by an Indenture dated 19th November 2014, Kabita Sur, Nivedita Sur, Chinmoyee Ghosh, Sabita Basu, since deceased and myself sold transferred and conveyed the 5/9th share in the said other immovable properties at or for a total consideration of Rs. 12,50,00,000/- unto and in favour of M/s. ASPS Developers LLP, have its registered office at 68/2, Harish Mukherjee Road, Kolkata – 700025. The said Sabita Basu, since deceased, being one of the vendors therein, received Rs. 2.50 Crore as consideration against the sale of her undivided 1/9th share in the said other immovable properties which includes aforesaid payment of Rs. 1,27,00,000/- received by her from the said Akankha Niram Private Limited under the said agreement for sale. In this connection, a photocopy of the certified copy of the said Indenture dated 19th November 2014 is annexed hereto and marked as "Annexure-C".

12. I say that in the premises as aforesaid the said Sabita Basu, since deceased, during her lifetime received a total sum of Rs. 2,58,92,336/- as consideration for sale of her share in the immovable *properties inherited by her from her late father on and from 21st May 2010. In this connection, photocopy of the passbook pertaining to Savings Banking Account No. 20061704008 in the name of the said Sabita Basu with the State Bank of India, 9, J.L. Nehru Road, Kolkata – 700013, evidencing receipt of the aforesaid sale consideration is annexed hereto and marked as "Annexure-D".*

13. I say that the said sum of Rs. 2,58,92,336/- and the income derived and/or generated out of the investments made from time to time was used and utilized by the said Sabita Basu for the purpose of creating various movable and immovable assets and properties. In this connection, photocopies of the returns filed by the said Sabita Basu for the Assessment years 2015-2016, 2016-2017, 2017-2018, 2018-2019 and 2019-2020 are annexed hereto and collectively marked as 'Annexure-E'.

14. From a careful perusal of the said final accounts of the said Sabita Basu for the Assessment years 2015-2016, 2016-2017, 2017-2018, 2018-2019 and 2019-2020, it will be manifest that the said Sabita Basu, during her lifetime had made investments in various movable and immovable properties out of the said sum of Rs. 2,58,92,336/- received by her from the sale of her share of immovable properties inherited from her father."

Submissions made by Mr. Dutt corroborates the affidavit filed by Rita Sur which clarifies that after the death of Nani Gopal Sur the properties have been sold to third parties and the sale proceeds have been divided amongst the legal heirs of Nani Gopal Sur.

Section 218 of the Indian Succession Act reads as follows :

"218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person*.— (1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.*

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased."

Section 14 and 15 of the Hindu Law reads as follows :

"14. Property of a female Hindu to be her absolute property

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation: In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

15. General rules of succession in the case of female Hindus

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

In the case reported in AIR 1966 Mad 369 (Ayi Ammal – versus-Ubramaniua Asari and Another) the Madras High Court held that :

"Thus, under S. 14, absolute title is given to the female Hindu in property possessed by her subject to the provisions in Sub-S (2) of S. 14, in whatever manner the property had been acquired by the female. It is devolution of the property thus acquired that is provided for under S. 15, in a case where a female Hindu dies intestate. The explanation to S. 14 sets out the various modes in which property may be acquired by the Hindu female and S. 15(2) picks out therefrom property acquired by inheritance from certain specified persons for special provision in the matter of devolution on intestacy, when the female died childless. While S. 15(1), as already stated, provides for devolution generally, Sub-S (2) makes an exception in regard to the devolution of property acquired by the female Hindu in particular circumstances. I see no reason whatsoever for departing from the common and ordinarily understood meaning of the word "inherited" set out above already.

If that be so, the present petitioner, that is the sister, cannot claim the outstandings, as the father's heir, to the deceased Kanniammal. As set out above, the case of the petitioner is that Kanniammal, the deceased female, got the property from her father by way of gift and that she is entitled to the same as the father's heir under S. 15 (2) (a) of the Act. As it cannot be said that the property has been inherited by Kanniammal, the exemption cannot be availed of. The rules of devolution provided under S. 15 (1) apply, and the respondents as the heirs of the husband of the deceased female, will take the property. In the circumstances there is no reason for interfering with the order of the learned District Judge."

In the case reported in AIR 1976 Andhra Pradesh 337 (Emana Veeraragavamma -versus- Gudiseva Subbarao & Another), the Andhra Pardesh High Court held that:

> ***"5.*** *The above section in effect provides a general rule of succession to the property of a female Hindu dying intestate and also two special rules of succession contained in clauses (a) and (b) of sub-section (2). Under clause (a) of sub-section (2), the property inherited by a female from her parents shall devolve upon the heirs of her father, in the absence of any son or daughter to her, while clause (b) thereof provides the mode of succession to the property inherited from her husband or from her father-in-law. Those two clauses in sub-section (2) are in the nature of exceptions to the general rule of succession provided in sub-section (1). We are of course concerned only with clause (a) of sub-section (2) in this case. Now, while interpreting the said clause (a), it must be borne in mind that the female inheriting a property from her father or mother becomes the absolute owner of such property and that she can deal with it in such manner as she likes. If she alienates the property inherited by her, it cannot then be said, on her death, that the property inherited by her, is still available for devolution. We are of the opinion that the expression 'property inherited by a female Hindu from her father or mother' occurring in this sub-clause must be given a restricted meaning consistent with the absolute right of disposition of the female owner. The special rule of succession applies only in case the very 'property' inherited by a female from her father or mother is still available at the time of her death, otherwise, the rule does not apply. For example, if the identity of the property is changed or if the property is substantially altered or improved or if the property has been substituted, the said special rule can have no application. We are of the opinion that placing a broader meaning upon the said expression 'property inherited by a female Hindu from her father or mother' would lead to much mischief not contemplated by the Parliament. If the property were to be followed by the father's heirs irrespective of the change in the identity and/or character of the property it would give scope for unsavoury litigation and complications. This case itself in a small measure indicates the same. If the broader interpretation is placed upon the said expression and the plaintiff and the second defendant are allowed to pursue the said property in whosoever's hands and in whatever shape, then we would be obliged to pass a decree for partition to the extent of the original 1/3rd share of late GudisevaSubbamma. The question of interest accruing on the consideration for the original share, its accretions and separation of the said interest from the 1/6th interest acquired by the said Subbamma under her mother's gift deed as well as the determination and separation of the interest in the said property attributable to the funds provided by her husband will all have to be gone into. The learned*

counsel for the appellant however relied upon Surayya v. Mangayya, (1) A.I.R. 1941, Mad. 345. That was a case where the widow blended funds from several sources including from her husband's estate and invested the same in reacquiring the property which previously formed part of her husband's estate but has been alienated by him. It was held that having regard to the surrounding circumstances and facts of the case, the acquired property must be taken to be part of the husband's estate and available for reversioners. But that was a case of a widow's estate while we are dealing here with an estate of a female who was the absolute owner of the property with unfettered right of disposition over the same and, therefore, we are not prepared to import the principle applicable in the case of widow's estate to the present case.

6. *Applying the above principle, it would be seen in this case that the deceased Subbamma sold the 951/2 cents of land situate in the village of her parents and with the said consideration and other funds provided by her husband, she purchased the property in her husband's village. The original property inherited by her is no longer available on the date of her death. We do not see any justification or principle behind the theory of substitute property applied by the trial court, and the lower appellate court. In fact, the said theory applicable in the case of widow's estate is clearly inapplicable when we are dealing with the succession to the property of an absolute owner. When the property which was inherited by the female is no longer available at the time of her death, it is not necessary to enquire any further. The original property may have been exchanged with another property or the consideration of the same may be used for acquiring another property or may be partly frittered away and partly invested or may have been used in any other manner."*

In the present case the petitioner has filed an application for Letters of Administration in respect of the assets and properties of Sabita Basu who passed away on 31st March, 2019. The petitioner is the brother of the deceased as the deceased had no issue and her husband Sameer Kumar Basu was pre-deceased to her who died on 18th March, 2015. The brothers and sisters of Sabita Basu have filed their caveat objecting for grant of Letters of Administration to the petitioner on the ground that the assets and properties acquired by Sabita Basu from her father. Though the brothers and sisters have filed caveat but have not filed affidavit and in the meantime, two of the legal heirs namely Rita Sur and Sanjit Sur have passed away and Rita Sur has been discharged from caveat but the affidavit filed by Ranjit Sur is not accepted as subsequent of filing of affidavit he has not appeared before this Court.

In the affidavit filed by Ranjit Sur and Rita Sur it is admitted that after the death of Nani Gopal Sur the father of Sabita Sur, the properties have been sold to third parties and the sale proceeds have been divided amongst the legal heirs of Nani Gopal Sur.

In view of the settled position of law as enshrined in Section 15(2) of the Hindu Succession Act and the judgment of Ayi Ammal (Supra) and judgment referred in Emana Veeraragahavamma (supra), this Court allow the prayer (i) of PLA No. 165 of 2019.

Issue Letters of Administration on completion of all formalities including upon furnishing bond of Rs. 20,00,000/- (Rupees Twenty Lacks only).

G.A. 1 of 2019 with G.A. 3 of 2019 are dismissed.

G.A. 4 of 2022 is allowed in terms of prayer (a) of the Masters Summons.

PLA No. 165 of 2019 is disposed of.

(Krishna Rao, J.)