

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

F.M.A. 110 of 2019
CAN 2 of 2020

NAZRUL HAQUE
VS.
STATE OF WEST BENGAL & ORS.

For the Appellant	: Mr. Partha Pratim Roy, Adv. Mr. Arjun Kumar Samanta, Adv.
For the Respondent Nos. 3 & 4	: Mr. Sanjoy Ghosh, Adv.
For the State	: Mr. Jayanta Samanta, Adv. Ms. Reshma Chatterjee, Adv.
Hearing concluded on	: 26 th July, 2023
Judgement on	: 2 nd August, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this appeal is to the judgement and order dated 13th September, 2016 passed by learned Additional District Judge, 4th Court, Burdwan in Title Appeal No. 3 of 2015, remanding the suit being Title Suit No. 91 of 2010 to the learned Trial Court after allowing the prayer of the petitioner under Order 1 Rule 10 (2) of the Code of Civil Procedure with a direction upon learned Trial Court to grant opportunity to the parties to the suit to put their respective claims and to pass judgement afresh.
2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.

3. Briefly stated, the plaintiff, Sk. Nazrul Hoque filed the suit for declaration of title and permanent injunction against the State of West Bengal represented by Collector, Burdwan and the Block Land & Land Reforms Officer, Burdwan stating, *inter alia*, that the suit property was originally owned by Beni Madhab Bhakat and after his demise his legal heirs and successors stepped into his shoes and by registered deed of partition dated 4th May, 1926 got the property partitioned and Sukdev Prosad Bhakat acquired the property in suit and after his demise his son Kedarnath Bhakat acquired the property by inheritance. Kedarnath Bhakat was survived by his three sons namely, Suraj Kumar Bhakat, Mohan Kumar Bhakat and Ramesh Kumar Bhakat having 1/3 share each in the suit property. They transferred 1/3 share in the suit property in favour of the plaintiff by a registered deed of sale dated 6th November, 1991 and on 14th November, 1997, they transferred remaining 2/3 share of the property in favour of the plaintiff and thus the plaintiff acquired absolute title in respect of the suit property. He has been possessing the same by mutating his name in the revenue record of rights. But in the L.R.R.O.R. the plaintiff has been depicted as 'permissive possessor'. Upon enquiry the plaintiff came to know about deed of endowment in respect of the above properties in suit in favour of Shri Shri Shyam Behari Ji and Shri Shri Sukheswar Nath Mahadev Ji by Sukdev Bhakat, Oudh Behari Bhakat and Sankar Dayal Bhakat. Upon enquiry it is further found that Krishna Mohan Bhakat, one of the successors-in-interest of Sankar Dayal Bhakat filed the suit being Civil Suit No. 255 of 1955 before the learned Court of Munsif, Balia, West, Uttar Pradesh with regard to the said deed of *Arpannama*. The suit was

however, dismissed. Sankar Dayal Bhakat and others preferred an appeal being Title Appeal No. 130 of 1957 before the learned Additional District Judge, Balia. The said appeal was dismissed with the finding that deed of endowment was not acted upon. Therefore, the application for mutation was also not entertained by the competent authority.

4. Sankar Dayal Bhakat and other then preferred a second appeal being Second Appeal No. 315 of 1957 before the Hon'ble High Court at Allahabad and by order dated 6th November, 1963, the said second appeal was dismissed and thereby the order of learned Lower Appellate Court was confirmed.
5. But the State of West Bengal after considering the aforesaid findings of Hon'ble High Court at Allahabad recorded the property in the name of deity Shyam Behari Ji in the R.S.R.O.R. The L.R. record of right does not reflect the correct picture of ownership as well as possession of the property. Hence the suit.
6. The suit was contested by State of West Bengal by filing written statement denying all material allegations made against the State. The learned Trial Court after considering the pleadings of the parties framed the issues and considering the evidence on record was pleased to declare the right title interest of the plaintiff over the suit property and perpetually restrained the defendant State from interfering with the peaceful possession of the plaintiff in respect of the suit property. The State being aggrieved by and dissatisfied with the judgement and decree passed by learned Trial Court, preferred an appeal and during pendency of the said appeal an application under Order 1 Rule 10 read with Section 107 and Section 151 of the Code of Civil Procedure was filed by

Ritesh Bhagat as Sebayet of Shri Shri Shyam Behari Ji, deity and Shri Shri Sukheswar Nath Mahadev Ji, deity seeking leave to join the proceeding as parties. Learned Appellate Court was pleased to allow the petition and passed the order impugned. Hence this appeal.

7. Mr. Partha Pratim Roy, learned Counsel for the appellant submits that Krishna Mohan Bhakat is the great grandson of Beni Prosad Bhakat and grandson of Shyam Sundar Bhakat. Sankar Dayal Bhakat was the father of Krishna Mohan Bhakat. Sukhdev Prosad Bhakat, Outh Behari Bhakat and Sankar Dayal Bhakat purportedly executed *Arpannama* dedicated the properties in favour of deities in the year 1933. Kedarnath Bhakat son of Sukdev Prosad Bhakat, Sankar Dayal Bhakat son of Shyam Sundar Bhakat and Ram Nagina Bhakat son of Outh Behari Bhakat respectively filed the suit before the competent Court of law for declaration as Sebayets of the deities. The said litigation went up to Hon'ble High Court at Allahabad but the *Arpannama* was adjudged as a document not acted upon and Hon'ble Allahabad High Court in Second Appeal No. 316 of 1960 refused to interfere with the concurrent finding of both learned Trial Court and learned First Appellate Court. It was held that the first set among the plaintiffs had really no interest in the property, the gift alleged to have been executed have not been acted upon and was therefore a dead letter to which no importance could be adjudged.
8. It is further contended that Ritesh Bhakat is claiming under Ramesh Kumar Bhakat. Ramesh Kumar Bhakat happens to be the son of Kedarnath Bhakat. Therefore, according to Mr. Roy, the finding of Hon'ble High Court at Allahabad is sufficient to hold that the deities did

not acquire any right title interest over the suit property as *Arpannama* was not acted upon. Ritesh Kumar Bhakat who is grandson of Kedarnath Bhakat therefore, could not be impleaded as party to the proceeding to deny the right title interest of the plaintiff on the strength of the *Arpannama*, which was declared to be a dead letter. It is barred by principle of res-judicata, which learned Appellate Court failed to appreciate. In support his contention Mr. Roy placed his reliance upon the decision of Hon'ble Apex Court in the case of (i) ***Anil Kumar Modi & Ors. vs. Tarsem Kumar Gupta*** reported in **(2023) 2 SCC 201**, (ii) ***Gurmit Singh Bhatia vs. Kiran Kant Robinson & Ors.*** reported in **(2020) 13 SCC 773**, (iii) ***Sudhamayee Pattnaik & Ors. vs. Bibhu Prasad Sahoo & Ors.*** reported in **2022 SCC OnLine 1234** and in the case of ***Kasturi vs. Iyyamperumal & Ors.*** reported in **AIR 2005 SC 2813**.

9. Refuting such contention of Mr. Roy, Mr. Sanjoy Ghosh, learned Counsel representing the added respondents, the deities through Sebayets, submits that though the Hon'ble Allahabad High Court affirming the concurrent finding of learned Courts below held that the deed of *Arpannama* was not acted upon, the same cannot create any bar under Section 11 of the Code of Civil Procedure. According to Mr. Ghosh, in order to attract the principle of res-judicata it is to be proved that the issue decided in the previous suit is directly and substantially in issue of the present lis under consideration and the parties are litigating under the same title. The earlier suit was between the deities and Sebayets against Shao Bachan and others. The State of West

Bengal was not a party to that proceeding. Therefore, Section 11 of the Code of Civil Procedure cannot be pressed into service.

10. It is further contended that the moment Hon'ble High Court declared that the deed of endowment was not acted upon, the properties under the said deed of endowment became secular property and came back to original owners and thus it conferred title upon Sukdev in respect of the land in suit and defendant/respondent nos. 3 and 4 inherited the said property. Therefore, there is no element to constitute res-judicata. Thus, the respondent nos. 3 and 4 therefore, are necessary parties and learned First Appellate Court was absolutely right in allowing the prayer made under Order 1 Rule 10 of the Code of Civil Procedure, acknowledging and the right of the respondent nos. 3 and 4 to contest the suit.
11. Mr. Jayanta Samanta, learned Counsel representing the State submits that by filing the suit the plaintiff wanted to get the record of rights rectified which is not permissible under the law. But with all fairness Mr. Samanta submits that Ritesh Bhakat is claiming under Kedarnath Bhakat who was one of the plaintiffs in a suit for declaration as to the status of the property as *Debouttar* property and the failure of the plaintiffs resulted into dismissal of appeal before the High Court. That judgement is binding upon the Sebayet Ritesh Bhakat who represent Shyam Behari Ji and Sukheswar Nath Mahadev Ji.
12. From the attending facts and circumstance of the case precisely from Exhibit-6 I find that Hon'ble High Court at Allahabad in Second Appeal challenging the judgement and decree of Additional Civil Judge, Balia in Civil Appeal No. 130 of 1957 refused to interfere with the concurrent

findings of the learned Trial Court and learned First Appellate Court as to the fact that deed of endowment in favour of Shyam Behari Ji and Sukheswar Nath Mahadev Ji was never acted upon. The respondent nos. 3 and 4 filed the petition under Order 1 Rule 10 not in their personal capacity as has been submitted by Sanjoy Ghosh, learned Advocate at the time of his argument, rather respondent nos. 3 and 4 are found to be the two deities represented by Ritesh Bhakat one of the Sebayets. The deed of endowment or *Arpannama* since was declared to be invalid and not acted upon, the deities cannot be impleaded as respondent nos. 3 and 4 through one of its Sebayets, Ritesh Bhakat.

13. Learned Appellate Court failed to appreciate the fact that with the finding of Hon'ble High Court at Allahabad in Second Appeal No. 316 of 1960 this issue reached its finality. It was set at rest. Thus it brings the case to the mischief of Section 11 of the Code of Civil Procedure and the deities cannot be impleaded through Sebayets in the suit. The order impugned, therefore, cannot be sustained and should be set aside, which I accordingly do. Learned First Appellate Court is directed to readmit the appeal to its original file and to dispose it of on merit. Before parting with the case, I would like to point out State, being the paramount title holder, cannot be enjoined perpetually to deal with the property in suit. Thus the appeal is disposed of along with application, if any.

14. Let a copy of this judgement along with lower Court record be sent down to the learned First Appellate Court immediately.

15. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)