

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FA 112 of 2016
Sri Ramesh Prasad Pathak
versus
Sri Ajit Kumar Pandey & Others
with
FA 49 of 2023
FAT 509 of 2016
Sri Ramesh Prasad Pathak
versus
Sri Ajit Kumar Pandey & Others

For the Appellant : *Mr. Ashis Chandra Bagchi,*
Mr. Prabir Kumar Misra,
Mr. Shibendra Nath Chattopadhyay,
Mr. Priyam Misra.

For the Respondents : *Mr. Sukanta Das,*
Ms. Jyoti Singh,
Mr. Rakesh Prasad Shaw.

Hearing is concluded on : *21st March, 2023.*

Judgment On : **5th April, 2023.**

Tapabrata Chakraborty, J.

1. Judgment and decree dated 2nd December, 2015 passed by the learned City Civil Court, IV Bench, Calcutta in a suit for partition being Title Suit no.

3461 of 2010, whereby rejecting the counter-claim of the defendant, a preliminary decree was passed declaring the plaintiffs to be entitled to 50% share in the suit property, have been impugned in the present appeal. The appeal against the preliminary decree has been registered as FA 112 of 2016 and the appeal against rejection of the counter-claim has been registered as FA 49 of 2023. As both the appeals arise out of the same judgment, the same have been heard analogously.

2. Facts spelt out in the plaint, in brief, are that one Mathura Prasad Pathak (in short, Mathura) happened to be sole owner of the suit property. Mathura was issue-less and hence, taking consent of his wife, Ramki Debi (in short, Ramki), Mathura took one Satya Narayan Pandey (in short, Satya) on adoption. By executing one deed of trust dated 2nd November, 1955, Mathura appointed himself to be the trustee of that property and on demise of Mathura and his wife, Satya became the sole trustee as well as the sole and absolute owner of the suit property.

3. Satya was blessed with one son, namely, Ramesh Prasad Pathak (in short, Ramesh) and one daughter, namely, Shanti Devi (in short, Shanti), since deceased and Satya himself arranged marriage of his daughter and allotted one room along with bath cum privy etc. in the suit property to his daughter and son-in-law, namely, Krishna Kumar Pandey (in short, Krishna).

4. That Shanti died leaving behind two sons and three daughters, namely, Ajit, Pradip, Arati, Kiron and Anchal. Claiming themselves to be

owners of 50% share of the suit property, they instituted the Title Suit no. 3461 of 2010 praying for partition and separate possession of the suit property.

5. Defence and/or plea taken in the written statement and counter-claim by Ramesh, in brief, is that in the deed of trust, it was stipulated that after demise of Ramki and Satya, wife and son of Satya would be the next trustees and there was no provision that daughter of Satya would be the trustee and deed of trust was modified by the settlor himself by another registered deed dated 20th January, 1958 wherein it was provided for that after demise of Satya, his wife, if she then exists or in her absence, the eldest male lineal descendant of Satya would be the sole trustee with all powers provided in the deed of trust and there was no provision for joint trustees along with any female descendant of Satya and it was claimed therein that Shanti had no share in the suit property and was merely a permissive possessor and/or licensee in respect of one room and hence, prayer was made for dismissal of the suit and in counter-claim, decree of recovery of possession was prayed for by ousting the plaintiffs from the room lying in the ground floor of the suit property.

6. In the written statement filed against the counter-claim of Ramesh, the defendant in the suit, specific plea was taken that plaintiffs, the heirs of Shanti, have been enjoying the suit property since 1973 and their possession has been determined in Title Suit no. 8017 of 1985.

7. Considering the pleadings of the respective parties, the learned Court below framed as many as five issues and in corroboration of the facts depicted in the plaint, the plaintiffs adduced oral accounts of one Ajit Kumar Pandey and one Krishna Kumar Pandey and tendered some documents which were marked as Exhibit nos.1 to 8. On the other hand, the defendant adduced oral testimony to lend support to the averments made in the written statement and the counter-claim and produced documents which were admitted in evidence as Exhibit nos. A to D.

8. The suit was decreed declaring the plaintiffs to be entitled to 50% share of the suit property and rejecting the counter-claim. Aggrieved thereby, the present appeals being FA 112 of 2016 and FA 49 of 2023 have been preferred by Ramesh contending *inter alia* that the learned court below did not consider the contents of paragraph 4 of the trust deed wherein it was stated that '*on attaining of majority of the last of the male issues of the said Satya Narain Pathak after his death or after the death of his said wife the said Trust properties shall be distributed by the Trustee amongst the heirs and legal representatives of the said Satya Narain Pathak according to the Mitakshara School of Succession of Hindu Law and this TRUST and SETTLEMENT shall cease*' and delivered the judgment without appreciating that consequently, survivorship of the party would devolve as per the provisions of Section 6 of Hindu Succession Amendment Act, 2005. It was also contended that Shanti predeceased her father and rights accrued under Hindu Succession Amendment Act of 2005 would be available to the only living daughter or living

coparcener as on 9th September, 2005 and hence, she would not be the heir of Satya since the disposition or alienation including partition which took place before 20th December, 2004 will remain unaffected. The deed of trust and modified deed of trust were in force and in the modified deed of trust, it was stipulated that Satya, his wife, Ramki and the appellant would be joint trustees and each trustee would enjoy 1/3rd of income derived from trust property and in case of death of any one of them, survivors or survivor alone shall enjoy the income and modified trust deed will prevail over deed of trust dated 2th November, 1955 and it was intention of the author of the trust that predecessor-in-interest of the plaintiffs being female member of the family shall not be one of trustees or co-sharers of the suit property.

9. Mr. Bagchi, learned advocate appearing for the appellant submits that from the contents of the trust deed dated 2nd November, 1955 and the modified trust deed dated 20th January, 1958, it would be explicit that all throughout there had been an intention on the part of the executor of the trust deed to exclude the female members. In the said documents there is no mention of the word 'heiress'. In view thereof, no interest in the property stood devolved upon the predecessor-in-interest of the respondents, namely, Shanti.

10. He contends that under the Mitakshara law the female heir had no right to the property and the intention to exclude the female member is also explicit from the contents of paragraph 4 of the lease deed wherein it has *inter alia* been stated '*that the said Trust properties shall be distributed by the*

Trustee amongst the heirs and legal representatives of the said Satya Narain Pathak according to the Mitakshara School of Succession of Hindu Law and this Trust and settlement shall cease’.

11. He further submits that Shanti was given a right only to occupy and enjoy a particular room in the suit property. She was not conferred any right to transfer the possession of the suit room and no right to claim the said room as owner, as would be explicit from the terms of compromise on the basis of which the Title Suit No. 1674 of 1988 was disposed of.

12. He argues that prior to 9th September, 2005, i.e., the date of commencement of the amendment to Section 6 of the Hindu Succession Act, 1956 (in short, the 1956 Act), the Title Suit No.1674 of 1988 was disposed of in terms of a solemnname on 12th September, 1991. The order dated 12th September, 1991 passed in Title Suit No.1674 of 1988 *‘prescribed a restricted estate’*. By virtue of the said solemnname, Shanti’s right was restricted to only one room with a kitchen in the ground floor of the suit building. Such restricted right, comes within the purview of Section 14(2) of the 1956 Act and accordingly over such right the provisions of Section 14(1) would not be applicable.

13. According to him, such right was a pre-existing right prior to amendment to Section 6 of the 1956 Act and over such right the provisions of Section 6(1) of the 1956 Act would also not be applicable in view of the proviso appended to said Section 6(1). The said proviso runs as follows :

‘Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004’.

14. It is the contention of Mr. Bagchi that since Shanti had only retained a restricted right in the concerned property, she, being a daughter of a coparcener, in a joint Hindu family, cannot get the same rights in the coparcenary property as she would have had if she had been a son. Had there been no retention of such restricted right, prior to amendment with effect from 9th September, 2005, she would have got the benefits of Section 6 (1) of the 1956 Act. In support of the arguments advanced, reliance has been placed upon the judgments delivered in the cases of *Bhura and others –vs- Kashiram*, reported in *AIR 1994 SC 1202*, *Vankamamidi Venkata Subba Rao –vs- Chatlapalli Seetharamaratna Ranganayakamma*, reported in *(1997) 5 SCC 460*, *Gumpha (Smt) and Others –vs- Jaibai*, reported in *(1994) 2 SCC 511* and *Himi (Smt) D/o Lachhmu (Smt) and Another –vs- Hira Devi (Smt) Widow of Budhu Ram and Others*, reported in *(1996) 10 SCC 642*.

15. Mr. Das, the learned advocate appearing on behalf of the respondents submits that admittedly the trust deed ceased with the death of Satya on 28th September, 2006. Thus on and from the said date, succession would be guided by the provisions of the 1956 Act. Section 6 of the said Act was amended on and from 9th September, 2005. In view thereof, the daughter of a coparcener

became entitled to the property in the same manner as the son. Such statutory right which stood devolved upon a daughter of a coparcener cannot be defeated by the provisions of Section 14(2) of the said Act. All the judgments upon which reliance has been placed by Mr. Bagchi are distinguishable on facts and none of the said judgments deals with a *lis* originating from a deed of trust.

16. Indisputably, the first trust deed was executed by Mathura on 2nd November, 1955. The same was modified subsequently by a deed dated 20th January, 1958. In the former deed it was categorically incorporated that after the death of Satya or his wife the properties shall be distributed amongst the heirs and the legal representatives of Satya. By the latter deed it was *inter alia* specified that the net income of the trust properties would be distributed equally amongst the trustees and it was also declared that '*the terms and conditions of the original Deed of Trust dated the 2nd day of November, 1955 will remain intact in all other respects*'. Thereafter, Satya expired on 28th September, 2006 but prior thereto, Shanti expired on 25th January, 2006. Shanti was thus alive when the amendment came into effect and on and from 9th September, 2005, as per Section 6(1) of the 1956 Act, Shanti became entitled to the same rights in the coparcenary property as she would have had if she had been a son.

17. The purpose and object of Section 6 is very wide. Its provisions need to be liberally construed in order to advance the object of the Act. The concept

of un-codified Hindu law of unobstructed heritage (where right is created by birth) has been given a concrete shape under the provisions of Sections 6(1)(a) and 6(1)(b). Conferral of such right is not based on the death of a father or other coparcener. The daughter would step into the coparcenary as that of a son if she is alive on the date of enforcement of the amendment. She becomes a coparcener with effect from such amendment dated 9th September, 2005 [See the judgment delivered in the case of *Vineeta Sharma –vs- Rakesh Sharma and others*, reported in (2020) 9 SCC 1].

18. Shanti being alive on the date of amendment became entitled to the same rights in the coparcenary property as she would have had if she had been a son. Such conferment of right is in no manner restricted by the proviso to Section 6(1) of the 1956 Act. Section 6 deals with '*devolution of interest in the coparcenary property*' whereas Section 14 is as regards '*property of a female hindu to be her absolute property*'. The provisions of Section 6 and the provisions of Section 14 apply on different contexts/fields. The former pertains to devolution of interest in coparcenary property whereas the latter relates to property possessed by a female hindu whether acquired before or after the commencement of the Act.

19. For the reasons discussed above, the argument of Mr. Bagchi that the right conferred by the amended provisions of amendment Section 6(1) of the 1956 Act is eclipsed by the provisions of Section 14 of the Act, is not acceptable to this Court.

20. Accordingly, we are of the considered view that the respondents, being the heirs of Shanti are entitled to get their share in the suit property and the counter claim of the appellant/ Ramesh is not sustainable and hence both the appeals being FA 112 of 2016 and FA 49 of 2023 are dismissed. The judgment and decree impugned herein are affirmed, however, without any order as to the costs.

21. Let a decree be drawn up, accordingly.

22. Let a copy of this judgment along with the LCR be sent down forthwith.

23. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)