

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

CO 3664 of 2022

Rupam Chowdhury
vs.
Gautam Dutta & ors.

For the petitioner : Mr. Sukanta Das.

For the opposite parties : Mr. Shibaprasad Ghosh,
Mr. Shyanti Poddar.

Hearing concluded on: 28.06.2023

Judgment on: 04.08.2023

Shampa Sarkar, J.:-

1. The revisional application has been filed challenging an order dated November 9, 2022, passed by the learned Civil Judge, Junior Division, Additional Court at Sealdah, District 24th Parganas (South) in the Title Suit No. 10 of 2010, which was further renumbered as Title Suit No. 11734 of 2014.
2. By the order impugned, the learned court below rejected the application dated March 23, 2021. By the said application, the petitioner and one Uma Chowdhury sought to be added as parties, claiming to be the heirs of the deceased defendant No. 2. The learned court below rejected such prayer. The learned court held that as the defendant No. 2 died intestate on January 23, 2020 and her husband predeceased her. In terms of Section 15(1) of the Hindu Succession Act 1956, the right of inheritance of a Hindu

married woman, who died intestate, without leaving behind either a husband or children, would devolve upon the heirs of the husband. The petitioner was the nephew of the deceased and son of late Ratan Chowdhury (brother of the deceased). Smt. Uma Chowdhury, wife of late Ratan Chowdhury, was the sister-in-law of the deceased.

3. Mr. Das, learned Advocate for the petitioner submitted that as per the plaint case, the addition was permissible as the plaintiffs denied the marriage between Haridas Dutta and the deceased defendant. The plaint case was that defendant No. 1, Haridas Dutta had developed an illicit relationship with the defendant No. 2, Krishna Dutta Chowdhury and the property which Krishna Dutta Chowdhury had tried to grab, by impersonating herself as the legally married wife of the defendant No. 1 Haridas Dutta, actually belonged to the Hindu Undivided Family. The defendant No. 1 was the Karta. A declaration was prayed for, that Krishna Dutta Chowdhury (since deceased) did not have any right to claim any ownership with regard to the suit property which was part of a Hindu Undivided Family, comprising of the wife of defendant No1/ plaintiff No. 1 (since deceased), plaintiff No. 2 and proforma defendant No. 3.

4. It was urged that as the plaintiffs themselves claimed that the defendant no.2 was not the legally married wife of the defendant No. 1, the provisions of Section 15(1) of the Hindu Succession Act, would not be applicable. The property should devolve upon the petitioner and his mother. The son and wife of the brother should be added as parties to the suit, as heirs of the deceased defendant No. 2. It was further urged that when the plaintiffs had categorically stated that the defendant No. 2 did not have any

right, title and interest, not being the legally married wife of Haridas Dutta, the property of the defendant No2 would devolve upon the petitioner and his mother. Hence, they were necessary parties to the suit. The question of reversion of the property to the family of Late Haridas Dutta would not arise, as per the plaint case.

5. Mr. Ghosh, learned advocate appearing on behalf of the plaintiff/opposite party submitted that the specific cases of the defendant Nos. 1 and 2 were that the defendant No. 2 was the legally married wife of late Haridas Dutta. Haridas Dutta had acquired the property from his own funds. By acknowledging the defendant No. 2 to be his legally married wife, a gift deed was executed by the defendant No.1 (since deceased). The defendant No 2 (since deceased) became the absolute owner of the property. The defendant No. 1 denied that the suit property belonged to the Hindu Undivided Family.

6. Having heard the learned advocates for the respective parties, it appears to the Court that the suit was filed by the wife and one son of late Haridas Dutta against Haridas Dutta as the defendant No. 1 and Smt. Krishna Chowdhury, daughter of late Kali Shankar Chowdhury as the defendant No. 2. The defendants Nos. 3 to 6 were the proforma defendants and children of late Haridas Dutta.

7. The plaintiffs' case was that the suit property belonged to the joint Hindu Undivided Family property. The defendant No. 1 as the 'Karta' had directed that the property be partitioned, but the said deed of partition had not been acted upon. Subsequently, Haridas Dutta started living with the defendant No. 2. The defendant No 2 falsely claiming to be the legally

married wife, took away some of the valuable property with the help of her brother and anti-social elements. The defendant No.1 surrendered to the power and threats of the defendant No. 2. The defendant No. 1 did not have any right to transfer the property to the defendant No. 2. Plaintiffs had right, title and interest over all the property along with the defendant No1(since deceased) but the defendant No. 2 did not have any right on the same, whatsoever. By forcing the defendant No1 to sign on blank papers, the defendant No2 took possession of the property.

8. In the application for addition of party, the petitioner stated that Krishna Chowdhury, the defendant No. 2 was wrongly described in the plaint and she should have been described as Krishna Dutta Chowdhury. That Krishna Chowdhury died on January 23, 2020, when she went to her nephew's house at Siliguri. Thereafter, the petitioner (nephew) came to know that a suit was pending before the learned court below. The petitioner and his mother as the sole legal heirs of deceased Krishna Dutta Chowdhury, prayed for addition in the suit

9. The petitioner also submitted certain documents in support of his contentions, namely, the Voter Card of Krishna Dutta Chowdhury, (defendant No. 2) the Aadhar Card, Death Certificate, Post-mortem report etc. He sought to establish the connection between Krishna Dutta Chowdhury and his father Ratan Chowdhury.

10. In the said application, the petitioner himself had stated that Krishna Chowdhury should have been described as Krishna Dutta Chowdhury in the plaint. Thus, he accepted the factum of marriage between the Haridas

Choudhury and Krishna Dutta Chowdhury. Moreover, the documents supplied by the petitioner, namely, the hospital discharge certificate, death certificate, etc. indicate that the defendant No 2 was described as the wife of Haridas Dutta. At no point of time, the petitioner and the family members of Krishna Dutta Chowdhury, denied the factum of marriage. The defendants themselves asserted the marriage all along. The defendant No.2 claimed the property, on the basis of gifts made by the defendant No.1 (her husband).

11. The learned court below, upon considering the provisions of Section 15 of the Hindu Succession Act, held that the property of a Hindu female would revert to the family of her husband in the absence of any children and husband. The application for addition of party was rejected, inter alia, holding that the nephew and sister-in-law could not have any right to be impleaded as the heirs of the deceased Krishna Dutta Chowdhury, as they did not acquire any right, title and interest in the property involved in the suit, as per the laws of succession.

12. Such order is under challenge on the grounds that the learned court below did not take into consideration the plaint case. The plaintiffs stated that the defendants were involved in an illicit relationship and were never married. Hence, the question of the property reverting to the family of Haridas Dutta, would not arise.

13. The plaintiffs prayed for the following reliefs:-

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- i) A decree of declaration declaring that the suit properties were the properties of Hindu undivided family of plaintiffs, defendant No.1 and defendant No.3.
- ii) A decree of declaration that the defendant No.2 had no right, title and interest over the suit properties and/or any portion thereof.

- iii) A decree of permanent injunction restraining the defendant No.1 from transferring, alienating and/or otherwise dealing with the suit properties and/or over any portion thereof in any manner whatsoever,
- iv) A decree of permanent injunction restraining defendant No.2 from claiming any right title and interest over the suit properties and/or any portion thereof in any manner whatsoever,
- v) Costs,
- vi) Any other relief and/or reliefs to which the plaintiffs are entitled under the law.”

14. The issues which are relevant are:-

- (a) Whether the suit property belonged to a joint Hindu Undivided Family or was the self acquired property of the defendant No.1
- (b) Whether any partition between the members of the Hindu Undivided Family had been acted upon thereby giving right to the defendant No.1 (Haridas Dutta) to enjoy the same as his own property and transfer the same to the defendant No.2
- (c) Whether the defendant No.2 had any right, title, and interest in the property.

15. There was no declaration sought with regard to the marriage between the defendant Nos. 1 and 2 (both since deceased)

16. The defendants contested the suit by filing separate written statements. The defence case was that the property was self acquired property of defendant No.1. The factum of marriage was asserted between the defendant No.1 and 2. According to the defendants Nos. 1 and 2, the marriage was registered on February 21, 1997. The defendant No.1 asserted his right to transfer his property and stated that he enjoyed the property exclusively as his own property. The defendant No 2 also asserted her right

as the wife and relied on the marriage registration certificate. Moreover, the property which was gifted to Krishna Dutta Chowdhury by several deeds of gifts by Haridas Dutta, clearly mentioned that the defendant No.2 (since deceased) was the wife of Haridas Dutta. There also appears to be averments with regard to annulment of marriage between the plaintiff no.1 and the defendant no.1. Moreover, it appears that in the death certificate of Krishna Dutta Chowdhury and in the medical discharge certificate, the deceased was described as the wife of Haridas Dutta. Hence, the claim of the petitioner for addition of himself and this mother in the suit, as the legal heir of Krishna Dutta Chowdhury, fails. Krishna Dutta Chowdhury always claimed to be the legally married wife of Haridas Dutta and that the suit property was the self acquired property of Haridas Dutta. The nephew and the sister-in-law (son and widow of brother) of the defendant No.2 (since deceased) are neither necessary nor proper parties in the suit. The question of adding the wife and the child of the deceased brother of defendant No.2 would not arise. Whether the plaintiffs acknowledged the defendant No. 2 to be the legally married wife or not is not relevant as the defence case cannot be altered only to incorporate the nephew and sister-in-law as the heirs of the deceased, in the absence of a surviving husband or children. The defendant No. 2 claimed to be the wife of Late Haridas Dutta.

17. The property will devolve as per the Hindu laws of succession and the heirs of the husband have a precedence of claim. The heirs of the husband is the second entry of Section 15(1)(b) whereas, heirs of the father is the fourth entry of Section 15(1)(d). Moreover, the property inherited from the husband will revert to the heirs of the husband in the absence of husband

and children. **Section 15 of the Hindu Succession Act, 1956** is quoted below:-

“(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 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.”

18. Under such circumstances, the revisional application is dismissed.

The order impugned does not call for any interference.

19. There will be no order as to costs.

20. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)