

25-09-2024
ct no. 13
sl. no. 37
pk

F. M. A. 282 of 2007

**Sri Benoy Prasad Singh
Vs.
Sri Ajit Kumar Sen and others**

Mr. Saunak Bhattacharya,
Mr. Manik Lal Poddar
... for the appellant.

Ms. Shetparna Ray
Mr. Tirtharaj Ghoshal
... for the respondent nos. 1-4.

1. The instant appeal arises out of an order dated 30th September, 2005 which constituted a judgment and decree passed by the learned 6th Bench of the City Civil Court at Calcutta in Misc. Case No. 2148 of 2003. The said judgment and decree were passed under the provisions of the Order XXI, Rules 97 to 101 of the Code of Civil Procedure, 1908.
2. The subject matter of the proceedings was premises 96C, Beniatala Street, Kolkata. The said property was carved out of premises No. 96B, Beniatala Street, Kolkata.
3. Premises being 96B, Beniatala Street, Kolkata originally stood in the name of one Sankar Lal Sen. Pursuant to a partition deed dated 16th February, 1945, the said property came to be distributed between two sons of Sankar Lal Sen, namely, Shhib Kisto Sen and Sambhu

Nath Sen i.e. 96B, Beniatala Street, Kolkata came into the share of Shhib Kisto Sen and 96C, Beniatala Street, Kolkata fell into the share of Sambhu Nath Sen.

4. In the said very partition deed, the mother of Sambhu Nath Sen, namely, Promodini Dasi was reserved a life interest in the property under the provisions of the then existing Hindu Women Right to Property Act, 1937. She also became entitled to a sum of Rs.15/- per month towards her maintenance.
5. On 15th June, 1955, Sambhu Nath Sen entered into an agreement for sale with one Gobardhan Prosad Singh, the father of the appellant for sale of the said premises No. 96C, Beniatala Street, Kolkata for valuable consideration. A part payment of Rs.2253/- was made. The balance payment was to be made upon execution of conveyance by Sambhu Nath Sen.
6. On the failure of Sambhu Nath Sen to execute conveyance, Gobardhan Prosad Singh filed Title Suit No. 129 of 1956, which was decreed in his favour on 8th March, 1957. The Registrar, Original Side of this Court executed conveyance of the said property in favour of Gobardhan Prosad Singh.

7. The said Sambhu Nath Sen did not part with possession of the suit property whereupon the appellant's father Gobardhan Prosad Singh filed a suit for eviction being Title Suit No. 134 of 1986.
8. The said suit was decreed on 9th April, 1997 by the 6th Bench of the City Civil Court at Calcutta. Against the said decree, Sambhu Nath Sen preferred the first appeal before the High Court which was numbered as F.A. 79 of 1998. During the pendency of the appeal, some of the present respondents being four sons of Sambhu Nath Sen, namely, Anil Sen, Susil Sen, Ajit Sen and Asit Sen were substituted as appellants.
9. In addition thereto, Sambhu Nath Sen had three daughters, namely, Tapasi Das, Malati Pal and Bharati Mallick. They were not substituted in course of the appeal.
10. The said appeal was dismissed by a judgment and order dated 11th March, 2003 by a Co-ordinate Bench of this Court.
11. It was decided in the said appeal that the substituted appellants therein, who are also inter alia, respondents herein, were disentitled to raise any claim on the basis of any right

flowing from their grandmother, Promodini Dasi.

12. It was held by the Division Bench that to allow such a claim and/or right to be raised for the first time in the appeal would amount to reopening of the suit and a new defence being taken by the substituted appellants. The defense was also otherwise held not tenable.
13. The decree came to be put into execution by the appellant herein. In course of the execution proceedings, when the bailiff sought to take possession of the property to deliver the same to the appellant, the respondents resisted him. The appellant applied for police help in the court below.
14. Two sets of applications came to be made to resist the execution of the decree for eviction. One by the same substituted appellant's sons of late Sambhu Nath Sen, namely, Anil Sen, Susil Sen, Ajit Sen and Asit Sen and another by his three daughters, namely, Tapasi Das, Malati Das and Bharati Mallick.
15. The Court below despite referring the judgment of the Division Bench dated 11th March, 2003 (supra) went on to hold that the respondents have a right, title and interest of 50% share in the property derived from their

grandmother Promodini Dasi's share therein. Based on the said right, it was held that the decree could not be executed against the respondents.

16. Learned counsel Ms. Shetparna Roy, appearing for the respondents has taken great pains and has very ably argued the defence of the respondents in the instant appeal. It is submitted by Ms. Roy that since after coming into force of the Hindu Succession Act, 1956, the life interest and maintenance that was the subject matter of the original partition deed dated 16th February 1945, in favour of Promodini Dasi stood converted to a 50% share in premises No. 96C, Beniatala Street, Calcutta, such right being inherited by the respondents. It is also argued that since after coming into force of the Act of 1956, Sambhu Nath Sen had lost the right to convey the 50% share of Promodini Dasi in favour of Gobardhan Prasad Singh. It is therefore submitted that the Trial Judge was right in disallowing execution of the decree against them.
17. This Court appreciates the arguments advanced on behalf the respondents by Ms. Shetparna Roy, Advocate.

18. The law, however, on the subject would stand on a different footing. It must be borne in mind that when the agreement of sale dated 15th June 1955 was executed the 1956 Act was not in force. The execution of the conveyance dated 24th April, 1958 by the Registrar, Original Side was, in fact, pursuant to a decree dated 8th March, 1957 passed in T.S. No. 129 of 1956. Promodini Dasi who was alive and well at the relevant point of time did not intervene in the suit to assert any right either in the 1956 Act or in derogation of the partition deed dated 16th February 1945, between her two sons and herself.
19. The execution of the conveyance in the year 1958 albeit after coming into force of the 1956 act would not create any new rights in favour of Promodini Dasi. All her rights stood restricted to and crystallized in a right of residence/life interest and that too only against her sons. Such right, cannot in any way affect the claims and entitlement under the decree dated 8th March 1957 obtained by the father of the appellant.
20. Reference in this regard is made to the decision of State of **West Bengal Vs. Hemant**

Kr Bhattacharjee reported in **AIR 1966 SC 1061**.

21. In addition thereto, the assertion by the respondents resistors, even otherwise stood negated by the decision of a Co-ordinate bench of this Court dated 11th March, 2003.
22. The arguments of Ms. Roy that the daughters of late Sambhu Nath Sen being granddaughters of Promodini Dasi were not substituted in the appeal being F.A. No. 79 of 1998 and hence the said judgment could not bind the daughters, cannot be accepted either.
23. This Court finds that it is the right, title and interest of Promodini Dasi in the suit property that was determined, irrespective of which legal heirs had challenged the same. The said decision would be binding on all the legal heirs of Promodini Dasi. In fact, the decision rendered hereinabove is in respect of the rights of Promodini Dasi. Reference in this regard is made to the decision of **Daya Ram Vs. Shyam Sundar** reported in **AIR 1965 SC 1049**, particularly, paragraph 11.
24. In the backdrop of the aforesaid, the trial Court could not have entertained any rights asserted by the respondents in resistance to

the execution of the decree in Misc. Case No. 2148 of 2003.

25. For, inter alia, the reasons stated herein above, the impugned judgment and decree dated 30th September, 2005 is not sustainable in law and the same is set aside.

26. Accordingly, the instant appeal is allowed.

27. In view of disposal of the appeal, connected applications, if any, are also disposed of.

28. The respondents shall deliver possession of the property to the appellant within a period of 3 months from date. In default whereof the executing court shall direct police assistance to the bailiff to deliver such possession.

29. Let the Trial Court Records, if any, be returned. The Registry shall communicate this order to the Trial Court.

30. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)

