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THURSDAY

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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

SAT 56 of 2021

with

CAN 1 of 2021

CAN 2 of 2023

Sasthi Charan Mandal & Ors.

Vs.

Giri Mondal & Ors.

Mr. Arijit Banerjee, Advocate

Mr. Kalidas Saha, Advocate

.....for the Appellants

1. The seminal point raised by the learned Counsel for the appellants in the instant appeal is that both the Courts erred in upholding the date of death of the predecessor of the parties as on 15.12.1958 and disbelieved the certificate of death issued by the concerned authority indicating that the said predecessor died on 25.09.1954 and, therefore, the instant appeal involves substantial question of law.
2. A suit for declaration of title and permanent injunction filed by the plaintiffs/appellants stood dismissed by the Trial Court and such decree is affirmed by the First Appellate Court. It is the specific case of the plaintiffs/appellants that the property in question originally belonged to one Bhuban Mondal who left behind him surviving two sons namely Thakurdas Mondal and Viku Mondal. It is further disclosed in the plaint that the defendants/respondents being daughters of the said original owner, after their marriage,

before the commencement of the Hindu Law, have no right, title and interest in respect of the said property. The plaint further proceeds that the defendants/respondents claiming their right, title and interest by virtue of a law of inheritance, are trying to interfere with the possession of the plaintiffs/appellants and also attempting to alienating and/or transferring the said property in favour of a third party.

3. Some of the defendants/respondents entered appearance and disputed the aforesaid contention. The contesting respondents were critical on the date of death of the said Bhuban Mondal as disclosed in the plaint which according to them is 15.12.1958 and not 25.09.1954. The defence is simplicitor on the basis of intestacy and the daughter, who is recognized within Class-I of the schedule appended to Section 8 of the Hindu Succession Act, inherits the property of the father in equal share with the brothers.
4. Both the Courts invested time on the veracity of the statements of the contesting parties taken in relation to the date of death of the said Bhuban Mondal. It is concurrently held that the said original owner died on 15.12.1958 and not on 25.09.1954 as claimed by the plaintiffs/appellants. Both the certificates of death produced by the plaintiffs/appellants and the defendants/respondents are marked exhibits in the suit.
5. It is undeniable that the certificate of death relied upon by the plaintiffs/appellants was objected to at the time of tendering the same in evidence

whereas the document in support of the death of the said original owner as claimed by the contesting respondents was marked exhibit without any objection. Though we find that the aforesaid point is mere academic and should not be projected upfront for the purpose of passing a decree for declaration as sought for but we feel that it would be apposite to make observations and the law in this regard.

6. The document relied upon by the plaintiffs/ appellants was objected to by the contesting respondents meaning thereby its mode of proof and the veracity of the contents thereof is required to be decided by the Court at a later stage of the proceeding. Any document which is marked exhibit with objection only for the purpose of avoiding the decision to be taken thereupon, the parties can raise such objection at the time of final hearing of the suit and it is an ardent duty of the Court to decide such objection at such relevant point of time. The moment the rival documents are placed before the Court and the adversary did not raise any objection in receiving a document in evidence, the rule of evidence postulates that not only the mode of proof but the authenticity and veracity of the documents has not been challenged or in other words, is accepted by such adversary.
7. There is no fetter on the part of the Court to proceed in deciding the matter on an admitted document and once the Court embarked to accept the same as uncorroborated and unchallenged

document, we do not find any illegality in this regard committed by both the Courts below.

8. For the purpose of clarity to be brought in this regard, we hasten to add that the moment the document is marked exhibit without any objection or the objection being dispensed with, it is not open to either of the parties to raise an objection at a later stage of the proceeding nor such point can be agitated before the Appellate Court. Neither the mode of proof nor the manner in which it is required to be proved nor the existence of such document can be assailed at a later stage unless the party raised objection at the threshold of its being tendered for receiving in evidence. The moment a document which is objected to and the document which is marked without objection are pitted against each other, the safest course is to accept the document admitted by both the parties unless the Court finds a strong reason to disbelieve the same.
9. We thus do not find such point sustainable under the instant appeal nor does it involve any substantial question of law.
10. Apart from the same, the parties are governed by the Dayabhanga School of Hindu Law. Even before codification of the Hindu Law in 1955. The person governed by the Dayabhanga School of Hindu Law if died intestate, his estate would devolve upon his sons and daughters in equal shares which is distinguished from the Mitakshara School of Hindu Law.
11. The right of a female heir is recognized under the

Dayabhanga School of Hindu Law and, therefore, we do not find any justification in the stand of the plaintiffs/appellants that the female heirs are debarred from inheriting the estate of a male Hindu dying intestate before the codification of the Hindu Law.

12. From whatever angle we look at, the instant second appeal does not involve any substantial question of law and, therefore, **SAT 56 of 2021** is **dismissed** under Order XLI Rule 11 of the Code of Civil Procedure.
13. The connected applications being **CAN 1 of 2021** and **CAN 2 of 2023** are also **dismissed**.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)