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THURSDAY

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

APPELLATE SIDE

SAT 64 of 2023

with

CAN 1 of 2023

Gautam Neogi

Vs.

Ashish Neogi & Anr.

Mr. Tapas Kumar Bhattacharyya, Advocate

.....for the Appellant

1. Both the Courts have concurrently held that the plaintiffs and the defendants have equal shares in respect of a joint property on the death of the predecessor by passing the preliminary decree.
2. Admittedly, the property belonged to the father of the plaintiffs and the defendants, who during his lifetime executed a deed styled as the deed of family settlement which was duly registered with the Sub-Registrar. After the death of the father and upon the death of the mother, the instant suit came to be filed seeking separation of shares by partition. A plea is sought to be taken that the said deed of family settlement indicates that the mother was given a limited right on the death of the settler and on her death it will go to the respective sons.
3. Both the Courts have held that the said deed of family settlement cannot be regarded as immediate divestation of right, title and interest by the settler or akin to a deed of gift. It is further held that the intention of the settler can be gathered from the language employed therein which would indicate that an arrangement was made for the user of the respective portions of the joint property which

cannot be regarded as a partition or separation amongst the sons.

4. A plea is sought to be taken that the limited interest created by virtue of the said deed of family settlement in favor of the wife was not affected by virtue of Section 14(1) of the Succession Act but comes within purview of Section 14 (2) of the said Act and, therefore, upon the death of the father, limited interest created in favour of the mother, the property passes on to the sons and not to the daughter.
5. The Court disbelieved the aforesaid contention that it is not a case of creating a limited interest but on the death of the mother it would pass on to the heirs under the law of succession.
6. Mr. Tapas Kumar Bhattaharyya, learned Advocate appearing for the appellant vociferously submits that the mother cannot claim an absolute interest if the right is created by virtue of a document styled as the deed of family settlement and, therefore, in absence of any heir in respect of a joint property, there is no question of devolution of her interest into the class-1 heir under Section 15 of the said Act.
7. In support of the aforesaid contention, reliance is placed upon the judgment of the Apex Court in case of ***Ranvir Dewan Vs. Rashmi Khanna & Anr.***, reported in ***(2018) 12 SCC 1***. The admitted owner executed a Will bequeathing his moveable and immoveable properties which further provides that the ground floor of the immoveable property will go to his sons exclusively whereas the first floor to his daughter. However, the interest of the widow was

restricted to a lifetime interest with a right to reside in the suit property till her death. She was also permitted to recover the rent and other usufructs of the said properties to her exclusive use and enjoyment with an additional right to take all steps for recovery of possession of the tenants.

8. Since the words 'lifetime interest' were used in the said deed, it was sought to be contended that she was, in effect, enjoying the status of a Trustee of its legal heirs and subsequent disposition by the son is improper.
9. The Apex Court in the backdrop of such facts held that in order to attract the provisions contained under Sub-Section 1 of Section 14 of the Act, one of the seminal aspects required to be considered is that the person must have a pre-existing right. In absence of the pre-existing right, it would come within the purview of Section 14(2) of the said Act,.
10. There is no quarrel to the proposition of law as laid down in the said report relied upon by Mr. Bhattacharya but the question still begging an answer is whether the purported deed of family settlement is in the nature of a gift or a Will. It appears from the language employed in the said deed of family settlement that though a lifetime interest was sought to be created in favour of the mother by the father but such interest would take effect after his death and even the right of the sons were not created in presenti but to have been created on the death of the life-interest holder.
11. Even if we construe the same to have come within the purview of Section 14(2) of the said Act, yet the effect of the deed does not evince the passing of the

right, title and interest in favour of the sons but can at best be regarded as a Will to take effect after his death.

12. Both the Courts have found that the purport of the deed does not indicate any exception to be carved out nor any case has been made out which would lead to an inescapable conclusion that an interest is created into the persons immediately upon the execution thereof and, therefore, in absence of any recognition or giving sanctity to the wish and desire of the said settler, the property would still be regarded to have been based on by virtue of the provisions contained under the Hindu Succession Act.
13. Precisely for such reason, the plea of the defendants that the suit is bad for misjoinder of party was turned down. From whatever angle we looked at, do not find any involvement of substantial questions of law in the instant appeal.
14. The appeal being **SAT 64 of 2023** is **dismissed** under Order XLI Rule 11 of the Code of Civil Procedure.
15. The connected application being **CAN 1 of 2023** is also **dismissed**.

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)

