

10.03.2025.
Item No. 2.
Court No. 13
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**F.A. No. 72 of 2021
With
I.A. No. CAN 1 of 2019 (Old CAN 8766 of 2019)
And
I.A. No. CAN 4 of 2025**

**Tapan Brahmachari
Versus
Jyotirmoy Sen & Anr.**

Mr. Aniruddha Chatterjee, Id. Sr. Advocate,
Mr. S. Chatterjee,

...For the appellant.

Mr. S.K. Chakraborti.

...For the respondents.

1. The instant appeal is directed against the judgment and order dated 25th July, 2019 passed by the Additional District Judge, 1st Court at Sealdah, South 24-Parganas in O.S. No. 11 of 2011.

2. By the impugned judgment, the trial Court dismissed the suit for grant of probate of the last Will and Testament of one Sri Mangalmoyee Bandopadhyay @ Samhita Devi @ Mamoni dated 23.02.201986.

3. The Court found that the subject matter of the Will could not have been owned or standing in the name of the testatrix as she was a Hindu lady and ceased to have any interest on the property and had renounced all worldly affairs.

4. The Court further went on to find that in a Title Suit being No. 30 of 2010 filed by one of the added respondents in this proceeding and other devotees of the said "Ayachak Ashram and Swarupananda

Philanthropic Trust”, that the appellant had asserted that the subject matter of the wing and the assets of the “Ayachak Ashram and Swarupananda Philanthropic Trust” were, in fact trust properties. The Small Causes Court, 1st Court at Sealdah did not have jurisdiction to entertain a suit for administration of the trust property in terms of the Code of Civil Procedure, 1908. The suit was dismissed under the provision of Section 92 of the CPC, in an application under Order VII Rule 11 of the Code

5. The other facts relevant to the case are, inter alia, that the “Ayachak Ashram and Swarupananda Philanthropic Trust” was founded by one popularly known as “Babamoni”. He published his teachings and principles in his book called “Akhandam Samhita”.

6. After demise of Babamoni, the testatrix, Samhita Devi also known as Mamoni, was the person who ran the affairs of the said Ashram. The said Ashram has its headquarters in Kakurgachi at Kolkata and branches all over the country and some parts in the world.

7. The appellant Tapan Kumar Gupta who also known as Tapan Brahmachari claimed to be an adopted son of Samhita Devi @ Mamoni and propounded a Will executed by Samhita Devi @ Mamoni dated 23rd February, 1986. There were two independent attesting witnesses to the Will. The Will contained a schedule of properties. This Court is not

concerned with the schedule of the properties or title and nature and character thereof.

8. In terms of Section 276 of the Indian Succession Act, 1925, the trial Court was required to ascertain as to whether the testatrix was of sound mind and in good health had otherwise execute the Will in question without coercion and or undue influence. The Will is required to be attested by two independent witnesses.

9. In the instant case, it is seen that the PW-2, Binoy Kanti Ray, who was also an advocate by profession. He has deposed that he had prepared the Will as per the instructions of Sri Mangalmoyee Bandopadhyay @ Samhita Devi @ Mamoni at Gurudham, P-238, C.I.T. Road, Police Station- Phoolbagan, Kolkata- 700054. He was also witness to the will. The Will was executed in the presence of the witnesses. The Will itself was proved and the signature of the testatrix was also proved. He deposed that the Will was executed in sound mind and in free will by the testatrix.

10. The PW-1, Ananda Kamal Majumder was the other attesting witness to the Will. He stated in examination-in-chief before the learned trial Judge that the Will was handwritten by PW-2, Binoy Kumar Ray, advocate as per the instructions of Sri Mangalmoyee Bandopadhyay @ Samhita Devi @ Mamoni. The place of execution was reiterated. The sound mental capacity and free will of the testatrix was confirmed.

11. Both the witnesses were cross-examined at length. The respondents, original defendants in the suit could not demonstrate or prove any suspicious circumstances surrounding the execution of the Will.

12. The learned trial Judge, however, went on to hold against the appellant on two-fold grounds. Firstly, that the testatrix who had renounced worldly affairs could not have owned any property at all. On this issue, the Court relied upon a decision of the Patna High Court in the case of **Sri Narain Singh and Ors. vs. Baleshwar Singh and Ors** reported in **1973 SCC OnLine Pat 153**. It appears in paragraph 15 of the said decision that the claimants had become sadhus and had renounced the world in a detailed ceremony and hence did not own or acquire and therefore could not sale any property in favour of the parties to the suit.

13. The Trial court however ignored the decision of the Supreme Court in the Case of **Math Sauna and Ors vs. Kedar Nath @ Uma Shankar and Ors.** reported in **(1981) 4 SCC 77**. In the said case at paragraph 8, the Court held that there can be no presumption that a property used by the Math belongs only to the Math. The Court found that there could have been little income left after meeting the expenditure of the Math. It was therefore held that the Amauli properties were the self acquired properties of the Mahant of the Math. There must therefore be a

determination based on the evidence on record as regards actual ownership of the property of a religious order.

“8. It is urged for the appellants that where a nucleus of dedicated property exists, the acquisition of additional property should be attributed to the application of the nucleus and must, therefore, be regarded as property belonging to the math or the deity. As has been observed, there can be no presumption either way. All the facts and circumstances must be taken into consideration and on a balancing of the entire evidence it has to be determined whether the property can be said to belong to the math or deity or is the personal property of the mahant, the burden of proof resting on the party who makes the claim. In the present case, it is difficult to conclude from the material before us that the total income from the properties belonging to the math and the deity left any appreciable surplus after meeting the expenditure on account of bhog, arpan, deepdan, daily and annual puja and the other obligations specified in the waqf deed. We are in agreement with the High Court that the fund from which the Amauli properties were acquired constituted the personal property of Mahant Shivphar Yati. On his death in 1917, the fund passed to Mahant Shivshanker Yati, who in 1921 employed it for the purchase of the Amauli properties.”

14. What is, however, moot and germane to the issue in the instant case is that a probate Court cannot and does not decide the title, nature and character and ownership of any of the properties that are subject matter of a bequest under a Will.

15. Reference in this regard is made to the decision of the case of **Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon and others** reported in **(2007) 11 SCC 357**. At paragraph 12 it was held as follows:-

“12. In Chiranjilal Shrilal Goenka v. Jasjit Singh [(1993) 2 SCC 507] this Court while upholding the above views and following the earlier decisions of this Court as well as of other High Courts in India observed in para 15 at SCC p. 515 which runs as under:

“15. In Ishwardeo Narain Singh v. Kamta Devi [(1953) 1 SCC 295 : AIR 1954 SC 280] this Court held that the court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. Therefore, the only issue in a probate proceedings relates to the genuineness

and due execution of the will and the court itself is under duty to determine it and preserve the original will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the Probate Court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the Probate Court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus it does no more than establish the factum of the will and the legal character of the executor. Probate Court does not decide any question of title or of the existence of the property itself.”

(emphasis supplied)

That being the position and in view of the nature of allegations made in the plaint, we do not find any reason as to how the High Court as well as the civil court could come to a conclusion that after the probate of the will executed by late S. Kirpal Singh was granted, the suit for declaration for title and injunction on the above allegation could not be said to be maintainable in law. The High Court also while holding that the suit was not maintainable, in view of the probate granted of the will of late S. Kirpal Singh had relied on a decision of this Court, as noted herein earlier, in Rukmani Devi [(1985) 1 SCC 144] . We are not in a position to agree with the High Court that this decision could at all be applicable in the facts and circumstances of the present case. A plain reading of this decision would not show that after the grant of probate by a competent court, the suit for title and permanent injunction cannot be said to be maintainable in law. What this Court held in that decision is that once a probate is granted by a competent court, it would become conclusive of the validity of the will itself, but, that cannot be decisive whether the Probate Court would also decide the title of the testator in the suit properties which, in our view, can only be decided by the civil court on evidence. It is true that the probate of the will granted by the competent Probate Court would be admitted into evidence that may be taken into consideration by the civil court while deciding the suit for title but grant of probate cannot be decisive for declaration of title and injunction whether at all the testator had any title to the suit properties or not.”

16. Applying the aforesaid, this Court is of the view that the learned trial Judge has committed error in ignoring the mandate of Section 276 of the Indian Succession Act, 1925 and entering into the question of the propriety, nature and character and title of the testator to the properties being subject matter of the Will. In a proceeding for grant of probate, more so when it is contested, a Court is required to decide as to whether the testator has physical and mental

capacity and soundness of mind to execute the Will in question. The Will must be attested by two independent witnesses and there must be no suspicious circumstances surrounding the execution of the Will.

17. In the instant case, each of the aforesaid ingredients of Section 276 of the Indian Succession Act, 1925 having been fulfilled. The trial Court erred in refusing probate of the Will and Smt. Samhita Devi @ Mamoni dated 23rd February, 1986. The execution of the Will has been duly proved by the two independent witnesses, PW-1 and PW-2 who are the scribed and attesting witnesses. The respondents have not even suggested any suspicious circumstances in execution of the Will in question.

18. In such circumstances, this Court is of the view that the impugned judgment and order dated 25th July, 2019 passed by the Additional District Judge, 1st Court at Sealdah in O.S. No. 11 of 2011 is erroneous and is liable to be set aside. There shall be a probate of the last Will and Testament of Sri Mangalmoyee Bandopadhyay @ Samhita Devi @ Mamoni dated 23rd February, 1986.

19. Let the records of O.S. 11 of 2011 along with the records of T.S. 30 of 2010 be returned back with a direction to grant probate along with a copy of this judgment to the trial Court below.

20. It is absolutely made clear that this Court has not decided or pronounced upon, in any way or in whatsoever manner, upon the title of the testatrix and the nature and character of the properties that are subject matter of the Will in question. The issue raised by the respondents that the properties are trust properties and not the personal properties of Sri Mangalmoyee Bandopadhyay @ Samhita Devi @ Mamoni, the testatrix, are left open to be decided in independent proceedings that may be taken out by the parties as they may be advised.

21. With the aforesaid observations, F.A. 72 of 2021 along with all connected applications shall stand disposed of.

22. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)