

Ava Pyne and Ors. Vs. Biva Pyne

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SooperKanoon Citation : sooperkanoon.com/109939

Court : Kolkata

Decided On : Apr-24-2017

Judge : Sanjib Banerjee

Appellant : Ava Pyne and Ors.

Respondent : Biva Pyne

Judgement :

OD-5 GA No.3067 of 2016 APO No.347 of 2008 CS No.163 of 2008 GA No.1198 of 2017 GA No.1333 of 2016 GA No.866 of 2017 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE AVA PYNE & ORS.Versus BIVA PYNE BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE The Hon'ble JUSTICE SIDDHARTHA CHATTOPADHYAY Date : 24th April, 2017.

Appearance: Mr.Ranjan Bachawat, Sr.Adv.Mr.Sumon Dutt, Adv.Mr.S.Sengupta, Adv.Ms.S.Das, Adv.Mr.S.Banerjee, Adv..for the petitioners Mr.S.N.

Mitra, Sr.Adv.Mr.Sourav Sengupta, Adv.Mr.Udaynarayan Betal, Adv.Mr.Anunoy Bagaria, Adv.The Court : The appeal has been disposed of by an order of December 17, 2008.

A final decree was passed in a partition suit, with provisions made for payments to all branches.

Hopefully, the matter will rest with the present order.

The partition suit, CS No.163 of 2008, was in respect of the immovable properties of Chaitanya Charan Pyne and Annapurna Dassi.

Chaitanya died in 1958 and his wife, Annapurna, in 1963.

At the time of the institution of the suit, three of the five sons of Chaitanya and Annapurna had died: Hiralal Pyne in 1973; Motilal Pyne in 2002 and Pannalal Pyne in 1995.

The third son, Chunilal Pyne, and the youngest son, Jaharlal Pyne, died after the appeal was disposed of in 2010 and 2014, respectively.

There were three immovable properties that the Pyne family owned.

All three properties were valued and sold and Motilal's widow, the sole plaintiff, purchased all three properties at a total value of Rs.2.25 crore.

The actual amount tendered by the plaintiff was Rs.1.80 crore since the plaintiff was entitled to 1/5th of the total consideration and the consideration less the 1/5th value thereof amounted to Rs.1.80 crore.

The plaintiff has walked out with the properties and there is no dispute in such regard.

The sum of Rs.1.80 crore was directed by appellate orders to be retained by the Registrar, Original Side.

The respective branches or the heirs of the original parties were required to obtain succession certificates and receive their shares from the Registrar.

Indeed, orders were passed for the branch of Hiralal, the eldest of the five brothers, to be paid off its share.

However, the Registrar had some doubts as to how the inter se shares were to be worked out between the persons claiming under Hiralal.

There is no dispute among the appearing parties that Hiralal, who was entitled to 1/5th of the estate of Chaitanya and Annapurna, is survived by widow Ava, son

Hem Chand, daughters Supriya Dutta and Ranita Dutta and grandchildren Amaresh Auddy and Bijoli Mullick through deceased daughter Bela Auddy.

Thus, the widow and each offspring of Hiralal would have been entitled to 1/5th of Hiralals share or, 1/20th of the amount of Rs.1.80 crore retained with the Registrar (since the share of the plaintiff may be disregarded).The two grandchildren of Hiralal through the deceased daughter would be entitled to 1/40th of Rs.1.80 crore or the share assigned to Hiralals branch.

It is submitted by Hiralals branch that following a previous order for payment to the members of such branch, the amount was withdrawn by the Registrar and a sum of about Rs.46 lakh and odd is available for disbursement as at sometime in February, 2017.

The Registrar will deduct his usual commission, if not deducted already, and release the balance amount held to the credit of Hiralals branch in the following manner: (i) Widow Ava - 1/5th ; (ii) Son Hem Chand and daughters Supriya Dutta and Ranita Dutta 1/5th each; (iii) Grandchildren Amaresh Auddy and Bijoli Mullick on account of their deceased mother Bela Auddy- 1/10th each.

The branch of Hiralal will not be entitled to any further money other than as indicated above.

The above directions have been issued upon the members of Hiralals branch not referring to any Will or testamentary document executed by Hiralal or by Bela Auddy.

Now to the branch of Chunilal, the third son of Chaitanya and Annapurna.

On the face of it, upon Chunilals widow Shovas death, Chunilals sons Chandra Sekhar and Debasish are entitled to half share each of Chunilals 1/5th share in the estate, subject to their rights under any Will of either Chunilal or Shova.

Thus, both brothers Chandra Sekhar and Debasish may present themselves with appropriate identification before the Registrar and claim their half share each out of their branches allocation of 1/3rd of the balance amount (after deducting Hiralals

branches money) remaining with the Registrar.

If both brothers do not appear at the same time before the Registrar, the Registrar will not release the payment till appropriate documents as to entitlement are furnished.

Chaitanya and Annapurnas fourth son Pannalal would have been entitled to 1/3rd of the balance amount retained by the Registrar (after deducting Hiralals branches share). Pannalal was survived by widow Kalpana and five daughters Manjusree Sen, Anjusree Mullick, Ranjushree Auddy, Rebecca Pyne and Rumeeka Pyne.

Second daughter, Anjusree, died on September 15, 2016.

Thus Kalpana and the four surviving daughters of Pannalal will each be entitled to 1/18th of the remaining amount with the Registrar after paying off Hiralals branch and the husband of Anjusree, Hiralal Mullick, and son Promit Mullick will be entitled to 1/36th each of the amount lying with the Registrar after paying off Hiralals branch.

All the members of such branch will present themselves at the same time to be entitled to receive the payment and for appropriate release orders being issued.

This order is made upon the representation of the members of the relevant branch that no Will or other testamentary document was executed either by Pannalal or by Anjusree.

Jaharlal, the youngest son of Chaitanya and Annapurna, died in 2014 and is survived by daughters Mousumi Dutta and Moutusi Dutta after Jaharlals death, since his wife predeceased him.

Such position is not disputed by the appearing parties.

Thus, the 1/3rd share out of the amount retained by the Registrar on account of Jaharlals branch, will be paid in equal measure to Mousumi and Moutusi, subject to such persons appearing together, identifying themselves and submitting on affidavit that there is no Will or other testamentary document either by Jaharlal or Supriya Pyne.

In view of the detailed directions as aforesaid, nothing further survives of the applications for payment and the like made after the disposal of the appeal.

GA No.3067 of 2016 has not been pressed and the same is dismissed.

GA No.1198 of 2017 and GA No.866 of 2017 are disposed of as above.

GA No.1333 of 2016 is an application for payment of interest since the applicants in such application will receive the payments due to them after considerable delay.

The applicants are all of Hiralals branch.

Since the money due to Hiralals branch has been kept apart by the Registrar and the initial deposit has earned interest, there is some interest which will be payable and which the members of Hiralals branch will earn.

However, to the extent the applicants say that the plaintiffs or some of the other parties should compensate the applicants for the delayed receipt of the payment by the applicants, the same is found to be without merit.

GA No.1333 of 2016 is disposed of.

The computer section should be immediately informed that the appeal stands disposed of by the order of December 17, 2008 and all matters pertaining to the appeal should be treated as closed, subject to the payments in terms of this order being made by the Registrar in accordance with law.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SANJIB BANERJEE, J.) (SIDDHARTHA CHATTOPADHYAY, J.) bp.

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