

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Dec-17-2013

Judge : Soumen Sen

Appellant : Appellant

Respondent : Respondent

Judgement :

TS10of 2012 IN THE HIGH COURT AT CALCUTTA ORIGINAL SIDE IN THE GOODS OF SURAJ NARIAN DAGA(DECEASED) BEFORE: The Hon'ble JUSTICE SOUMEN SEN Date : 17th December, 2013.

For the petitioner : Mr.Sukumar Paul,Advocate Mr.A.Mitra,Advocate For the defendant No.1(a) : Mr.Sakya Sen,Advocate Ms.Nilanjana Adhya,Advocate Mr.A.Chowdhury,Advocate Ms.Uma Bagree,Advocate The Court : - In this probate proceeding, the widow of one of the sons of the deceased is the caveatrix.

The beneficiary under the Will is the widow of the deceased.

The said disposition in favour of the widow does not appear to be unnatural.

The probate proceeding has been marked, as a contentious cause in view of the resistance put forward by the caveatrix.

During the pendency of the probate proceedings, good sense prevailed and the widow of the testatrix expressed her desire not to deprive one of her daughter-in-laws from the benefit of the estate left behind by the testator out of natural love and affection for the caveatrix.

The beneficiary has made over a bank draft drawn on Vijaya Bank for a sum of Rs.12 lakhs to the advocate-on-record of the caveatrix.

The caveatrix is living at Mumbai.

She is having her own house.

She is also earning.

The caveatrix accepted such kind gesture on the part of the mother-in-law and expressed her desire not to contest this proceeding in view of the payment of the said sum of Rs.12 lakhs.

The duty and power of the probate court to record compromise in a probate proceeding was considered by the Division Bench of this Court in a decision reported in AIR1961 Cal 359 (A.E.G.Carapiet v.

A.Y.Derderian) in which one of our most erudite Judges, Justice P.B.Mukharji in His Lordships inimitable style held that in such a situation the terms of settlement may be recorded by the decree in a separate schedule.

The relevant observation of His Lordship is stated below :31.

Looking at this reference of the Privy Council to the case of Kamal Kumari, 9 Cal LJ19 what was said to be the correct procedure was the procedure of filing a suit in respect of terms of settlement covering extraneous matters. but it has been understood in a wider sense as approving the procedure of recording in a schedule of the decree the terms of settlement disposing of the property of the testator whose Will for the court.

The reason why I say that it was so understood will appear from the two subsequent decisions of this court in Gouri Sankar Dutta v.

Sm.

Hari Bhabini Dutta, 41 Cal WN 858 (850) and Jagadish Chandra v.

Upendra Chandra, 48 Cal WN 294 (300). Reference may also be made to the observations of Jenkins, C.J. in Surja Prasad Sukul v.

Shyama Sundari Debi, 14 Cal WN 967 where the learned Chief Justice upheld the validity of a compromise filed in this manner in a subsequent proceeding and which was enforced by a separate suit.

32. the difficulty on this branch even in the English procedure was clearly pointed out by Younger, J.

in the re King, Jackson v.

Attorney General, (1917) 2 Ch D 420 where at page 432 the learned Judge very pertinently observed : This is not the first time in which this Court, as the court of administration, has found it difficult to work out compromises of probate proceeding entered into without full regard to the interests of absent parties.

I hope that the fact that this difficulty has not in the present case, even as regards the individual legatees, materialised will be no encouragement to increase the number, already large enough, of such arrangement. 33.

Having regard to this uniform practice we do not wish to deviate from it in the present case so far as the terms of settlement are concerned.

We follow the procedure adopted by Woodroffe, J.

and direct that the probate be granted of this Will and these terms of settlement be recorded with the decree in a separate schedule. In view of the aforesaid, it is declared that the probate be granted by this Will to the executor and the affidavit forming the terms of settlement be recorded with the decree in a separate schedule.

Let the decree be drawn up as expeditiously as possible.

All parties and the department are to act on a signed photocopy of this on the usual undertakings.

(SOUMEN SEN, J.) S.Chandra AR(CR) order

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