

In Re: the Estate of Indrani

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Court : Allahabad

Decided On : Nov-20-1930

Reported in : AIR1931All212

Appellant : In Re: the Estate of Indrani

Judgement :

Mukerji, J.

1. The principal appeal is Appeal No. 155 of 1930 and is on behalf of an association formed for the purpose of imparting education to a community of Sarjuparin Barhmans and known as Sarjuparin Pathashala Samiti. Strictly speaking the appeal should have been on behalf of Pandit Manni Lal Pandey, the administrator to the estate of a certain lady, Mt. Indrani, but we overlook this defect in the form of the appeal as Pandit Manni Lal's name is also shown among the appellants.

2. It appears that a lady charitably disposed, Mt. Indrani,. executed a document on 2nd September 1916, which was treated as her last will and testament. By this document she bequeathed her entire property to the society described above. The Secretary of the Society, Pandit Manni Lal, applied for and obtained letters of administration with a copy of the will annexed by the order dated 23rd August 1921, The estate was without any encumbrances. No debts had to be paid. There was no other legatee either to be paid. Indeed for the administrator it was a simple

affair and involved no onerous duties.

3. It appears that the members of the samiti or society found that it would be more to the convenience of themselves and to the benefit of the school they were running to have the property bequeathed in the form of cash invested in Government Promissory Notes. The idea suggested itself to them that they should make an application to the learned District Judge, who had granted the letters of administration, for permission to sell the property bequeathed. The administrator accordingly made such applications from time to time, and with the permission of the District Judge then presiding over the Court sold moveable properties and then immovable properties, the sale proceeds being invested in Government Promissory Notes through the Imperial Bank of India.

4. Now come some important facts. On 23rd May 1929 Pandit Manni Lal made an application to the District Judge for permission to sell the entire immovable property then remaining in his hands as the administrator. His application will be found at p. 1 of the typed paper book before us. He said:

The general committee of the said....samiti Allahabad passed a resolution No. 6 in the meeting held on 21st April 1928 authorizing the secretary of the said samiti to seek permission of this Court to sell the remaining immovable property as per details given in the enclosed two statements... and to invest the sale proceeds of this property along with the sum of Rs. 7,904-13-6 already deposited in the Imperial Bank of India with the Treasurer of Charitable Endowments,

5. Then the applicant proceeded to state the reasons for the sale. Briefly the reasons given were that it was very desirable to avoid repairing of houses and to avoid litigation and that it was necessary that there should be cash income available for the benefit of the institution. When the application was put up before the learned District Judge he ordered that a notice should be published so that the people who might be interested should come before him and prefer objections if they had any. On 23rd August 1929 the learned Judge stated in his order the following:

No objection has been received to the proposed sale of the properties in response to the notification published in the U. P. Gazette of 29th June 1929 and the Leader newspaper of 1st July 1929.

6. Then the learned Judge directed the Honorary Secretary -to notify in the public press the fact that the properties were to be sold and further directed him to call for offers. The offers, the learned Judge further directed, were to be submitted to him for necessary orders. In pursuance of this order certain offers were received and ultimately the learned District Judge decided that the properties should be sold through a commissioner who was to get a certain amount of remuneration. The Official Receiver of Allahabad was chosen for the purpose, and he held some sales. Almost all the immovable properties were sold but in respect of the property of Asadullahpur, the learned Judge was not prepared to accept the highest offer. He confirmed the sales of all other properties and gave the administrator two months time to procure further offers for the property of Asadullahpur.

7. The learned Judge who had made those orders left the place and was succeeded by another officer. Before the successor, several applications were made. Some tenants of the village Asadullahpur proposed that isolated plots of land described by them might be sold to them on some high price offered by them, and Zulfiqarullah, the man who had made the highest offer at the public auction for Asadullahpur, applied to have the sale confirmed in his favour. Thereupon the learned District Judge, who had succeeded the former Judge, passed an order on 31st May 1930, and this order is the subject-matter of appeal in both the appeals.

8. The order passed is a long one, but the upshot of the whole judgment is this, that it was wrong on the part of the society and its secretary, the administrator, to try to sell the property with the sanction of the District Judge under the guise of applying Section 307, Succession Act of 1925. He held that the District Judge had no jurisdiction to pass orders for sale and that the responsibility of selling properties must rest with the samiti or its members. He accordingly concluded his judgment by saying as follows:

This being the nature of the transfer, so far as I can see, and the jurisdiction and want of jurisdiction of the Court in the matter, I think that the wisest thing to do is to

drop the whole proceeding and to leave the applicant and those who have purchased the property to settle it between themselves as to how to get out of the possible trouble which the applicant has laid in store for them.

9. In this Court it has been argued that the learned District Judge had the jurisdiction to order the sale of the property, and that at any rate the sales which have been confirmed by the late District Judge Mr. Kisch should not have been set aside, as it were, by Mr. Rup Krishna Agha who was responsible for the judgment of 31st May 1930.

10. We have considered the whole matter and are of opinion that Section 307, Sub-section 2, Clause (ii) has been misapplied to this case, That subsection reads as follows:

An administrator may not, without the previous permission of the Court by which the letters of administration were granted, mortgage, charge or transfer by sale any immovable property for the time being vested in him under Section 211.

11. The object of this rule is to enable the District Judge, as the Court of testamentary jurisdiction to see that the transfer applied for is necessary in the interests of the administration of the estate. In this case, there was nothing to administer and the property in the hands of the administrator should have been handed over to the legatee and the administration should have ended. This is the view which was taken in the case, *In re Nursingh Chunder Bysack* [1899] 3 C.W.N. 635. We found ourselves in entire agreement with what was said by Sale, J., in the case quoted. If the society believed, as they indeed do that it was in the interests of the society and the school that the property should be converted into money and invested in Government Promissory Notes, it was their duty to institute a suit under Section 92 Civil P.C., or to take such other steps as they might be advised. But certainly the method that was adopted namely an application to the Judge in his testamentary jurisdiction under Section 307; Sub-section 2, Clause (ii), Succession Act of 1925, was an entirely wrong method. We must therefore hold that all that was done by the learned District Judge was without jurisdiction.

12. This being our conclusion, we must hold that the order appealed against was a right order to pass. Appeal No. 155 sought the relief that the sales which had been confirmed should not be set aside, because the Judge in the Court below had no jurisdiction to revise the orders of his predecessor. It is wrong to regard¹ Mr. Agha as sitting as a Court of appeal over Mr. Kisch. The Court is the same whosoever may preside over it. Where a Judge for the time being discovers that an order has been passed without jurisdiction either by himself or by his predecessor-in-office, it is his duty to undo that order so far as it may lie in his power. Mr. Agha has done this, and no question of want of jurisdiction arises. Then the second point was that Section 307 of Act 39 of 1925 gave sufficient jurisdiction and legality to the proceedings.. We have held that it did not. The third ground of appeal was that the learned Judge was not justified in casting certain aspersions on the members of the society and the whole proceedings on their part were bona fide. We have no doubt, at least we have got no materials before us to lead us to doubt, that the proceedings on the part of the secretary or the society were anything but bona fide. It might have been well for the learned District Judge to have refrained from making any strictures, having sufficient materials before him. So far as we can see, no cunning or anxiety to take undue advantage of any rule of law was involved in the proceedings. We 'dismiss Appeal No. 155 of 1930 and in the circumstances direct that the parties shall pay their own costs.