

Radha Devi Karnani Vs. Mahendra Kumar Karnani

Radha Devi Karnani Vs. Mahendra Kumar Karnani

SooperKanoon Citation : sooperkanoon.com/51427

Court : Kolkata

Decided On : May-14-2015

Judge : Soumen Sen

Appellant : Radha Devi Karnani

Respondent : Mahendra Kumar Karnani

Judgement :

ORDER

GA No.1575 of 2015 CS No.117 of 2015 IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction RADHA DEVI KARNANI Versus MAHENDRA
KUMAR KARNANI BEFORE: The Hon'ble JUSTICE SOUMEN SEN Date: 14th
May 2015.

Appearance: Mr.Pratap Chatterjee, Senior Advocate Mr.Samrat Sen, Senior
Advocate Mr.K.R.

Thaker, Advocate Mr.A.Bagaria, Advocate ...for the applicant.

Mr.S.N.

Mitra, Senior Advocate Mr.Arindam Mukherjee, Advocate Mr.Deepak Kumar Jain,
Advocate ...for the defendant.

This is an application by the granddaughter of Indra Kumar Karnani, since deceased.

The granddaughter apparently puts a claim that her grandmother, Radha Devi Karnani was so unwell and of frail mental condition that she could not have executed a deed of gift in the year 2012 and a deed of declaration in the year 2013.

She says that the grandmother became aware of the said deed only on the eve of the Ramnavami day in the year 2015.

In the petition it is stated that the disposition of the property by the deed of gift was so unnatural that a person with alert mental faculty would not have executed the said deed.

She, as the next kin and guardian of the grandmother, prays for leave to file a suit on behalf of the grandmother seeking a declaration for setting aside of the deed of gift dated 28th September 2012 and the deed of declaration dated 24th June 2013.

learned Thaker senior submits counsel that appearing at this with stage Mr.Pratap Chatterjee, Mr.the Samrat other Sen and Mr.parties are not required to be heard since it is a matter between the court and the plaintiff whose interest is required to be protected.

Mr.Chatterjee has relied upon a Division Bench decision of the Patna High Court in Godawari Devi versus Radha Pyari Devi reported at AIR1985 Patna 366 and submits that in a situation like this and where the issue is of mental infirmity of a party, it is primarily a matter between the court and that party and is not a dispute between the parties themselves.

It is submitted that the court in such a situation exercises parental power and uses such discretion judiciously so that the person who is incapable of looking after his/her own interest is protected by appointment of the next kin and guardian.

Although the applicant wanted to move the application ex parte, I have directed the registry to put the matter in the list pursuant whereof Mr.S.N.

Mitra, learned senior counsel on behalf of the sole defendant has appeared application is clearly mala fide.

and submitted that this Mr.Mitra has referred to the pleadings between the parties filed in the earlier proceedings and pending proceedings and submitted that the applicant was aware of the existence of the deed of gift and the deed of declaration inasmuch as whenever a reference was made in any earlier proceedings with regard to the existence of the said deed of gift or the deed of declaration, there was no assertion that grandmother was incapable of executing such documents.

submitted that the applicant has never stated in the It is any of the earlier proceedings that the grandmother was not mentally alert or was of frail health and mind and as such she could not have executed such deeds in favour of the sole defendant.

Mr.Mitra has referred to the letters exchanged by and between the parties wherefrom it appears that the existence of the deed of gift and the deed of declaration executed in the years 2012 and 2013 respectively were contemporaneously communicated to the applicant.

It is on this premise that Mr.Mitra would question the locus and bona fide of the applicant.

Mr.Mitra has referred to a Division Bench judgment of our High Court presided over by one of the eminent Chief Justices of this Honble Court in Smt.

Usha Doshi versus Smt.

Suparna Sundari Devi & ORS.reported at 1995(1) CHN4for the proposition that before the court could exercise the power under Order 32 Rule 15 of the Code of Civil applicant must make out a prima facie case.

Procedure, the The Division Bench however noted with caution that failure to hold an enquiry may in certain situations result in benefit of the person seeking to prevent an enquiry being made in exercise of the said power.

I find some substance in the argument made by Mr.Mitra with regard to the locus of the applicant.

However, there is a much larger issue which is required to be addressed.

The court is required to see whether the grandmother is being tossed from one side to the other and made to execute the documents she never intended to.

years old.

This court is informed that the grandmother is 94 It was the desire of this court that the grandmother, if possible, could be present in court at 2 PM today so that the court can put a few questions to her.

I am informed that Radha Devi Karnani is not in a position to come to the court.

Irrespective of the fact whether the applicant approached this court with any mala fide intention, once an application of this nature is filed, I feel that the court is duty bound to ascertain if the lady was really in a position to execute any such documents or whether she has done so in her free volition or will.

This finding, in any event, would not give any right to the applicant to represent the mother if the court finds that the purpose of filing this application is otherwise i.e.to espouse and pursue her own cause of action against the sole defendant under the garb grandmother.

of a pretended injury being caused to the However, it cannot be disregarded, as Mr.Mitra has rightly pointed out, that three years have almost passed since the execution of the deed of gift and the mental condition existed in the year 2012 may not be the same in 2015.

that That the grandmother is of advance age is not in dispute.

Under such circumstances, Ms.Ranjabati Sen, a Member of the Bar Library Club is appointed as a Special Officer who shall immediately proceed to find out the physical and mental condition of Radha Devi Karnani and also to ascertain if she is mentally infirm.

The applicant has given a copy of this application to Ms.Sen so as to enable her to hold the enquiry and file a report.

The Special Officer shall hold the enquiry and file her report in a sealed envelope on the returnable date.

The Special Officer shall not permit any person to be present in the room during her examination of Radha Devi Karnani.

If required, the Special Officer may call for the medical reports of Radha Devi Karnani for the last three years. The Special Officer shall be entitled to a remuneration of 1200 GMs to be shared by the parties equally.

The matter is made returnable on 8th June 2015.

(SOUMEN SEN, J.

) S.

Kumar A.R.(CR)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com