

Radha Devi Karnani Vs. Mahendra Kumar Karnani

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Court : Kolkata

Decided On : Aug-08-2016

Judge : Sanjib Banerjee

Appellant : Radha Devi Karnani

Respondent : Mahendra Kumar Karnani

Judgement :

OD-4 GA No.1840 of 2015 GA No.1575 of 2015 CS No.117 of 2015 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE RADHA DEVI KARNANI Versus MAHENDRA KUMAR KARNANI BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date : 8th August, 2016.

Appearance: Mr.Pratap Chatterjee, Sr.Adv.Mr.Samrat Sen, Sr.Adv.Mr.K.Thakkar, Adv.Mr.A.Bagaria, Adv.Mr.A.Poddar, Adv..for the plaintiff Mr.S.N.

Mitra, Sr.Adv.Mr.Arindam Mukherjee, Adv.Mr.P.Jain, Adv..for the defendant The Court : This is a rather unusual matter.

The suit has been lodged, but it is still not clear as to whether the suit should or can be carried forward.

It is necessary to record some facts before the technicalities are noticed.

The named plaintiff is Radha Devi Karnani, who is said to be aged more than 90 and a widow for nearly half a century.

The suit has been filed by the grand-daughter through the second son of the named plaintiff as the plaintiff's next friend on the ground that the plaintiff is mentally and physically incapable of protecting her interests.

Radha Devi Karnani had three sons and six daughters. The second of the sons, Rajendra, has died.

Rajendra was survived by his two daughters, Rashmi Bubna and Shrutika Doshi.

Shrutika has since died and is survived by her husband and two children.

Rashmi is also married.

There is a dispute primarily between Rashmi and the defendant as to the share of Rajendra that devolved on Rajendra's surviving mother upon his death.

The impression given is that defendant Mahendra, taking advantage of mother Radha Devi living with him, has made Radha Devi sign on papers showing gift or alienation of Rajendra's estate to the extent that it devolved on Radha Devi to Mahendra or persons chosen by Mahendra.

There is a previous suit pending and in such suit, Radha Devi was subsequently sought to be added as a defendant, but the amendment petition has been withdrawn.

Radha Devi has apparently filed an affidavit in the present suit affirmed before a commissioner at her residence where she has denied some of the principal statements made in the present suit and she has apparently indicated that Rashmi has no right to represent her in any manner or form.

There are two petitions in the present suit: one for interlocutory injunction by the plaintiff through Rashmi and the other by the defendant for the rejection of the plaint or the dismissal of the suit.

The defendant claims that the suit is a non-starter since Radha Devi has not filed it at all and it has no connection with her.

The defendant also claims that Rashmi has no right to represent Radha Devi and, in any event, Rashmi's interests are in conflict with Radha Devi's.

The defendant also refers to Order XXXII Rule 15 of the Code to suggest that no grounds have been made out to either entertain the suit or to regard Rashmi as the next friend of the named plaintiff.

The initial order passed on this petition was on May 14, 2015 when the interlocutory application was received.

It is evident from such order that the Court wanted Radha Devi to be present, if it was possible for her; but the Court was informed that Radha Devi was not in a position to come to Court.

Since Radha Devi stays with the defendant, it may be presumed that such information came from the defendant.

By the order dated May 14, 2015, a special officer was appointed to ascertain the physical and mental condition of Radha Devi and, particularly, to ascertain if she was mentally infirm.

The special officer was directed to hold the inquiry without anyone being present in the room at the time that the special officer interacted with Radha Devi.

The special officer has filed a report dated June 8, 2015.

The conclusion of the special officer from the report is that the physical condition of Radha Devi was stable and she was in no apparent physical discomfort during the hour-long inquiry (she) was lucid and aware of her surroundings and was able to follow questions with ease and answer without any hesitation. Elsewhere in the report, at paragraph 10 thereof, the following is recorded: 10.

I asked Smt.

Karnani whether she knew anything about any family business or property, and if she had to do any paper work.

She replied that she did not know about business or property papers. Her sons brought her papers and she signed where they told her to sign.

She did not involve herself in any business or work and did not want to know anything more.

Smt.

Karnani reiterated that she had her own schedule, and was not interested in any details related to business, property or bank work. Since the named plaintiff was living with the defendant, this matter was adjourned after it was taken up for hearing after completion of affidavits to ascertain whether Radha Devi could be brought somewhere where she could be examined even on commission.

It is submitted on behalf of the defendant that Radha Devi has not met outsiders for a considerable period of time and she has virtually not left the room or the immediate surroundings of the room that she now occupies for some time.

The defendant also appears to be concerned if Radha Devi is exposed to any commission or any kind of inquiry that is any more obtrusive than the one already conducted by the special officer appointed by this Court.

Indeed, the defendant reminds the Court of the frail condition of Radha Devi and of the possibility of something untoward in the event her privacy was invaded in any manner.

The principal issue that has arisen is whether the self-styled next friend of the eonimine plaintiff should be permitted to, essentially, espouse her own cause in the name of her grandmother.

That issue cannot be mixed up with the larger issue that the suit raises: of the propriety of the defendant allegedly grabbing the properties of Rajendra that devolved on the mother upon Rajendras untimely death.

But the two matters are so inextricably linked that a further inquiry is called for, particularly, in the light of paragraph 10 of the report filed by the special officer, though this is the final stage of the interlocutory petitions.

In view of the encouraging report of the special officer that Radha Devi participated in couRs.of the inquiry, it is necessary to allow an exercise to be undertaken for at least 10 to 15 questions to be put to Radha Devi on behalf of Rashmi and no more than 10 questions on behalf of the defendant, primarily to ascertain whether Rashmi or any other close relative of Radha Devi or a rank outsider may be appointed as next friend and given carriage of proceedings if the suit needs to be continued at all.

For such purpose, the Superintendent or in-charge of the SSKM Hospital is requested to nominate any senior general physician for such general physician to accompany the special officer to visit Radha Devi and for the doctor to suggest a possible date not beyond four weeks from now when Radha Devi may be examined on commission with the special officer discharging the responsibilities of the commissioner.

The doctor is also requested to be present at the time of the commission.

The special officer who appears to have gained some confidence of Radha Devi will use her best judgment to ensure that the representatives of Rashmi Bubna and the defendant conduct themselves in such manner as the circumstances would demand.

In the event of any medical situation arising, the concerned doctor will take the final call; but if the commission is adjourned without it being concluded, the doctor is requested to ensure the completion thereof within a reasonable time, if not on the same day or the next day, at the earliest thereafter.

The object of the commission would be to ascertain whether Radha Devi is capable of deciding for herself as to the legal steps to be taken by her in respect of any property or money that she may own or may have owned.

The special officer should file a report, apart from the report of the commission, as to the examination of Radha Devi by the doctor and other related matters. The special officer and commissioner will be paid a further remuneration of 3000 GM by Rashmi Bubna.

The doctor to be nominated by the Superintendent of SSKM Hospital will be paid Rs.4,000/- as honorarium for every hour spent attending to Radha Devi or being present in courses of the commission.

The Superintendent of SSKM Hospital will not consult any member of the Karnani family as to the nomination of the appropriate doctor.

Let the matter appear six weeks hence.

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

(SANJIB BANERJEE, J.) bp.

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