

Gouri Sirkar and anr. Vs. Moni Bhusan Sirkar

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Court : Kolkata

Decided On : Aug-14-2008

Judge : Indira Banerjee, J.

Appeal No. : G.A. No. 3852 of 2006 and C.S. No. 2706 of 1955

Appellant : Gouri Sirkar and anr.

Respondent : Moni Bhusan Sirkar

Disposition : Application dismissed

Judgement :

Indira Banerjee, J.

1. In this application the Deity Iswar Sri Sri Raj Rajeswar Jew Trust Estate, represented by its Secretary has sought the following reliefs:

- a) Joint Receivers, namely, Mr. Ananda Prasad Ghosh and Mr. Prasanta Naskar be discharged.
- b) Joint Receivers be directed to hand-over all assets, properties, of every description, whatever belonging to the said Deity to its Shebait the said Radhanath Sirkar including all monies and all movable properties in the form of money or otherwise kept in bank accounts since operated by Joint Commissioner of Partition/Receiver/Special Referee.
- c) To pass such further or other order or orders as to Your Lordships may seem fit and proper.

2. On or about 8th September, 1955, the plaintiffs instituted the above suit for partition of the properties of Late Manmatha Bhusan Sirkar and other reliefs.

3. On or about 1st August, 1956, after the suit was filed Krishna Gopal Sirkar, since deceased, purchased the building and premises No. 60 & 160/1 B.B. Ganguly Street, Calcutta, hereinafter referred to as the Bowbazar property, allegedly from out of his own funds.

4. On or about 18th July, 1960, Gostho Behari Sirkar filed an application claiming that the said Bowbazar property was part of the joint family property and that he was joint owner thereof.

5. On 19th September, 1960, a preliminary decree was passed in the suit by P.C. Mallick, J. In terms of the decree, a Special Referee was appointed to decide the issues specified in the preliminary decree. The Special Referee was inter alia directed to enquire into the title of Bowbazar property, which was acquired in the name of one of the defendants, subsequent to institution of the suit.

6. According to the petitioner, the preliminary decree was acted upon and by two instruments dated 16.3.1990 and 15.5.1995. The entire suit properties including the Bowbazar property was acquired by

Radhanath Sirkar to whom all the co-sharers sold out and conveyed their right, title and interest.

7. According to the petitioner, this Court by an order dated 8th July, 1999, affirmed the assignment of the properties in favour of the Deity of which Radhanath Sirkar is presently Sebait.

8. According to the petitioner, the Deity now under the care of its Sebait, Radhanath Sirkar, is the owner of the Bowbazar property. The petitioner submits that the joint receivers over the properties may be discharged in view of the registered documents whereby the properties have been transferred to and stand in the name of the Deity represented by its Sebait.

9. One Mrinal Sirkar, son of late Krishna Gopal Sirkar, was the original defendant No. 2 in the suit has opposed this application for discharge of the Joint Receivers. Mrinal Sirkar has, however, not been brought on record, on the death of his father.

10. Mr. P.K. Dutt appearing on behalf of the petitioner submits that Mrinal Sirkar, son of the deceased defendant No. 2, has no locus standi to oppose the application for discharge of the joint receivers.

11. Mr. P.K. Dutt further argued that no explanation has been given as to why Mrinal Sirkar has not been brought on record though 9 years have elapsed since the death of his father.

12. Mr. P.K. Dutt submitted that the instruments which are dated 16th March, 1990, 14th February, 1991 and 10th May, 1995 were all executed during the life of Krishna Gopal Sirkar, since deceased. Krishna Gopal Sirkar did not challenge the said deeds during his lifetime. His son Mrinal Sirkar also did not challenge the instruments at any earlier stage.

13. Mr. P.K. Dutt finally submitted that by an order dated 25th July, 1998, Ruma Pal, J. allowed the amendment of the plaint filed in the partition suit. By reason of the amendment, the Bowbazar property, has now been included in the plaint as part of the joint family property.

14. Mr. P.K. Dutt submitted that the order of amendment had not been challenged either by Mrinal Sirkar or his late father during his life time. The order could not, therefore, be challenged at this stage.

15. Mr. P.K. Dutt submitted that the amendment put an end to the contention of Mrinal Sirkar that the Bowbazar property was not a joint family property, but the self-acquired property of his father.

16. Mr. P.K. Dutt submitted that Mrinal Sirkar in his affidavit affirmed on 15th March, 2007, referred to the report of the Commissioner of Partition/Special Referee dated 28th February, 1995 wherein it is recorded that most of the properties mentioned in the schedule as well as in the body of the plaint, were still joint family properties.

17. Mr. R.N. Dutt appearing on behalf of the applicant, Mrinal Sirkar, pointed out that an application has been made on 11th February, 1998, taking exception to the report of the Special Referee filed on 18th January, 1988.

18. Mr. P.K. Dutt, however, took exception to the fact that the submission with regard to exception to the report should have been made, after 3 days of hearing of this application. Be that as it may, the fact remains that the application for exception has not yet been disposed of.

19. Mr. P.K. Dutt emphasized the fact that the order dated 25th July, 1995 of Ruma Pal, J. allowing amendment of the plaint, had not been challenged by Krishna Gopal Sirkar, since deceased, or by Mrinal Sirkar by preferring an appeal therefrom.

20. Mr. P.K. Dutt argued that Krishna Gopal Sirkar, since deceased, had in any case, been driven out of the family in May, 1960. The expulsion, if any, of Krishna Gopal Sirkar, from the joint family, is immaterial, and makes no difference to the status of the Bowbazar property or the right, title, interest therein.

21. Mr. Dutt finally submitted that there being no objection to this application from any of the co-sharers, an order should be made discharging the Joint Receivers and directing them to make over possession of the Bowbazar property to the Shebait of the Deity.
22. Mr. R.N. Dutt, however, strongly asserted that the Bowbazar property had been purchased by Krishna Gopal Sirkar, since deceased, from out of his own funds, long after institution of the suit.
23. On or about 24th March, 1986, on the application of Radhanath Sirkar, in this Court for appointment of Commissioner of Partition, Sri Pradip Chowdhury had been appointed Commissioner of Partition and Special Referee, in terms of the preliminary decree in the suit.
24. On or about 7th August, 1987, the Special Referee entered into reference for the purpose of holding an enquiry as to the title of the Bowbazar property. In the said reference, the parties filed their respective statements and counter statements.
25. The Special Referee filed a report on 18th January, 1988, holding that the said premises were joint family property. Exception was taken to the report by a petition affirmed on 11th February, 1988.
26. On or about 15th February, 1988, Suhas Chandra Sen, J. issued directions for affidavits in the said application. On 26th April, 2007 the Registrar, Original Side, reported that the application is still pending.
27. Mr. R.N. Dutt submitted that the order of status quo passed in respect of Bowbazar property, over twenty years back, on 15th February, 1988, is still in force.
28. It appears that on or about 14th February, 1991, while the application taking exception to the report of the Special Referee, was still pending, the defendant No. 1 executed and registered a deed of trust in terms whereof, the Bowbazar property was to be held for the benefit of certain Deities.
29. Mr. R.N. Dutt argued that since no final decree has been passed in the partition suit, this application is liable to be dismissed.
30. Mr. R.N. Dutt submitted, that the applicant made this application for discharge of Joint Receivers over some properties, in a pending partition suit, to which he is not a party, claiming title over the properties. It is, therefore, mandatory for the applicant to obtain leave to be examined pro interesse suo.
31. Mr. R.N. Dutt submitted that the applicant would have to satisfy this Court, on evidence, that the applicant has a better title over the property, vis-a-vis, the contesting parties in the suit, and only then can the receivers appointed over the property, be discharged. Reliance has been placed on the judgment reported in 1941 CLJ 197.
32. Mr. R.N. Dutt submitted that the applicant has not sought any leave to be examined pro interesse suo. The applicant has intentionally avoided adjudication of title, in as much as the applicant is aware that the applicant has none. The application is liable to be dismissed on that ground alone.
33. The Bowbazar property has admittedly been under the Joint Special Officers for about two decades. The partition suit is still pending, as also the application taking exception to the report of the Special Referee.
34. As rightly argued by Mr. R.N. Dutt, the petitioner not being a party to the suit, it was necessary for the petitioner to get himself examined pro interesse suo, in order to obtain discharge of the Joint Receivers.
35. This Court is not inclined to discharge the Joint Receivers, on the application of a stranger to the suit. The Bowbazar property has been under Receivers for several years.
36. It is immaterial that the application for discharge of the Joint Receiver is being opposed by only one heir of a deceased defendant. The suit being for partition of joint properties, it is immaterial that the heirs of Krishna

Gopal Sirkar, since deceased, have not been brought on record. Even one interested heir might oppose an order that might be against the interest of the estate.

37. As observed above, the partition suit has not finally been decreed. The question of whether the Bowbazar property constitutes part of the joint properties of the parties to the partition suit or is the self acquired property of Late Krishna Gopal Sirkar has not finally been adjudicated. Mere allowing of an amendment of the plaint does not tantamount to a judicial verdict and/or pronouncement on the status of the properties sought to be incorporated in the plaint by amendment, or of title thereto.

38. If this Court accepts the contention of the Bowbazar property being the self-acquired property of Late Krishna Gopal Sirkar, the transfer deeds executed by the persons claiming joint ownership thereof would be rendered unenforceable, ineffective, and liable to cancellation.

39. Discharge of the Joint Receivers, at this stage would in any event, render the application taking exception to the report of the Special Referee infructuous. If the application taking exception to the report of the Special Referee has not been disposed of for 10 years, the applicant is not to suffer.

40. In my view, that the prayer for discharge of Joint Receivers cannot be entertained until the application taking exception to the report of the Special Referee is disposed of.

41. This application is, thus dismissed.

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