

Uma Rani Sett and ors. Vs. Dipali Rani Sett and anr.

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Court : Kolkata

Decided On : Dec-09-2005

Reported in : 2006(1)CHN373

Judge : Bhaskar Bhattacharya and ;Pravendu Narayan Sinha, JJ.

Acts : [Indian Succession Act, 1925](#) - Sections 372 and 376

Appeal No. : F.A. No. 24 of 2005

Appellant : Uma Rani Sett and ors.

Respondent : Dipali Rani Sett and anr.

Advocate for Def. : Bidyut Kumar Banerjee, ;Jiban Ratan Chatterjee, ;Malay Kumar Das, ;Dipa Bhaduri and ;Bandana Chatterjee, Advs.

Advocate for Pet/Ap. : Sudhis Dasgupta, ;Asit Baran Rout, ;Chitto Binod Biswas and ;Aroon Sharma, Advs.

Judgement :

Bhaskar Bhattacharya, J.

1. This first appeal is at the instance of the plaintiffs in a suit for declaration and permanent injunction and is directed against the judgment and decree dated 31st May, 2004 passed by the learned Judge, 3rd Bench, City Civil Court at Calcutta in

Title Suit No. 2369 of 1997 thereby dismissing the said suit.

2. The plaintiffs filed the aforesaid suit for declaration that they are joint lawful owners to the extent of 5/6th share (having 1/6th undivided share each) of the total shares and securities left by one Swarup Bikash Sett, the predecessor-in-interest of the defendants and for further declaration that the defendants had no right to have those shares or securities as absolute owners thereof on the strength of the extended succession certificate granted in Act 39 in Case No. 234 of 1995 arising out of Act 39 in Case No. 227 of 1975.

3. The plaintiffs further prayed for permanent injunction restraining the defendant Nos. 1 and 2, their men and agent from giving effect to or further effect to or from acting upon the extended succession certificate issued in Act 39 in Case No. 245 of 1995.

4. The case made out by the plaintiff-appellants may be summarized thus:

(a) One Sushil Kumar Sett, the undisputed predecessor-in-interest of the parties died on 20th September, 1964 leaving one son and two daughters through his predeceased first wife, the second wife and one son and one daughter through the said second wife. The only son through the first wife namely, Swarup Bikash Sett subsequently died on 22nd March, 1971 leaving his widow and one daughter.

(b) The plaintiffs are all the other heirs of Sushil Kumar Sett than his elder son, viz. Swarup Bikash Sett and the widow and the daughter of Swarup Bikash Sett are the defendants in this suit.

(c) On the death of Sushil Kumar Sett, Swarup Bikash Sett being the eldest son in the family through his first wife was the 'Karta' and accordingly, he took over the charge of all the assets left by Sushil Kumar Sett and used to look after, manage, control and supervise all the assets of the estate of Sushil Kumar Sett in his capacity of as the 'Karta' of Hindu Undivided Joint Family.

(d) On the death of Sushil Kumar Sett, an application was filed for grant of succession certificate for the purpose of receiving the debts and securities payable to the estate of Sushil Kumar Sett and the learned Court with the consent of other

heirs granted succession certificate in favour of Swarup Bikash Sett to receive those debts and securities.

(e) Swarup Bikash Sett got those shares and securities of different companies standing in the name of Sushil Kumar Sett and subsequently, transferred those shares in his personal name with the understanding that Swarup Bikash Sett would hold those shares and securities and other shares left by Sushil Kumar Sett not for his personal benefits but for the benefit of all other heirs including himself.

(f) Having obtained succession certificate in Act 39 Case No. 212 of 1966, Swarup Bikash Sett reinvested the entire amount so realised by him from different companies, Bank Accounts, Life Insurance Corporation of India etc. in his own name and also used to collect monthly rental from different tenants from the estate of Sushil Kumar Sett and out of such total accumulation, made various investment in different money growing scheme of different companies in his personal name for the benefit of himself and also for the benefit of other heirs of Sushil Kumar Sett.

(g) Subsequently, Swarup Bikash Sett died in 1971 leaving the defendants as his sole heirs and legal representatives and after such death, the defendant No. 1 being his widow duly filed an application under Section 372 of the Indian Succession Act for grant of succession certificate for receiving the debts and securities payable to Swarup Bikash Sett in her favour which was registered as Act 39 Case No. 227 of 1975 and in paragraph 4 of the said application, she categorically stated that deceased left other near relations, namely, his stepmother, stepbrother and two sisters and one stepsister, being daughter of late Sushil Kumar Sett through his second wife.

(h) Prior to filing of the said application for grant of such succession certificate, the defendant No. 1 wrote a letter to the Income Tax Authorities informing that her husband Swarup Bikash Sett had only 1/6th share of the total dividend income out of the shares and securities so left by him and accordingly, the appellate Assistant Commissioner of Income Tax, Range-AA, Calcutta was pleased to pass an order holding inter alia that her husband had only 1/6th share in the dividend income.

(i) It further appears from the annexure appended to the application for succession certificate filed by defendant No. 1 that the total debts and securities were divided in five separate categories. So far item Nos. A and B were concerned, those were the shares and securities of various companies inherited from Sushil, and so far item Nos. C, D and E were concerned, those were the money lying in the personal name of Swarup Bikash Sett in two different Life Insurance Policies and money lying with Excel India Limited in his personal name. It further appears that the defendant Nos. 1 and 2 claimed only 1/6th share in item Nos. A and B.

(j) Upon receipt of notice of such succession case being Act 39 Case No. 227 of 1975, the plaintiffs entered appearance therein and filed their written objection and categorically stated that the said application for succession certificate was not maintainable in its form and the deceased Swarup Bikash Sett being the eldest member of the family of Sushil Kumar Sett duly invested huge amount out of the assets left by Sushil Kumar Sett and all the shares and securities standing in his name were so invested for the benefit of all the heirs of Sushil Kumar Sett.

(k) After filing of such written objection in the said succession certificate case being Act 39 Case No. 227 of 1975, the defendant No. 1 found it difficult to succeed in the said case and in such a situation, filed an application definitely stating therein that she was inclined to obtain succession certificate only in respect of item Nos. C, D and E and accordingly, the Court granted such succession certificate in respect of those items.

(l) In the month of February, 1996, the plaintiffs for the first time came to learn from searching of the Court record that the defendant No. 1 subsequently had obtained and extended the succession certificate in respect of the shares and securities which were mentioned in the schedule of shares and securities on the basis of further application under Section 376 of the Indian Succession Act which was registered as Act 39 Case No. 234 of 1995 (Extn.) by praying for grant of extended succession certificate of all the shares and securities for which she had earlier abandoned her claim and the Court granted such succession certificate without giving any notice to the plaintiffs.

(m) The plaintiffs, therefore, filed an application for revocation of the grant of extended certificate before the Court below but the learned Court did not allow such application.

(n) The aforesaid action on the part of defendant No. 1 cast a cloud upon the 5/6th share of the plaintiffs in the assets left by Sushil Kumar Sett and as such, the said suit was filed.

5. The aforesaid suit was contested by defendants by filing written statement thereby denying the material allegations made in the plaint and the defence taken by the defendants may be summarised thus:

(i) Swarup Bikash Sett was never the 'Karta' of undivided family as alleged by the plaintiffs. Swarup Bikash Sett during the life-time of Sushil Kumar Sett had been living in separate mess because his stepmother formed a separate unit along with other children and that Swarup Bikash Sett at that time was left under the care of relatives till his marriage. All the shares and securities standing in his name had been accumulated in his name from his personal earnings. Swarup Bikash Sett was a partner of M/s. Sushil Kumar Sett & Brothers and he used to receive his remuneration therefrom and invested his savings to purchase shares and securities. The defendant No. 1 being an innocent lady put her signature on the application in succession certificate in Case No. 227 of 1975 without understanding the contents of the same.

(ii) Swarup Bikash Sett got 1/6th share on the death of Sushil Kumar Sett and after obtaining succession certificate paid the 5/6th share of the assets of his father realised by him on the strength of the succession certificate to the plaintiffs and got receipt in the presence of Mr. Anil Kumar Sett, his uncle but subsequently the defendant No. 1 broke open the almirah of defendant No. 1 and had stolen away the said receipt.

6. At the time of hearing of the suit, the plaintiff No. 2 alone gave evidence on behalf of the plaintiffs while the defendant No. 1 deposed on behalf of the defendants for the purpose of refuting the claim of the plaintiffs.

7. As indicated earlier, the learned Trial Judge by the judgment and decree impugned herein has dismissed the said suit holding that the plaintiffs failed to prove that the shares standing in the name of Swarup Bikash were really purchased from the money received from the estate of Sushil by accepting the defendants' case that on the death of Sushil Kumar Sett, his 5/6th share of the money realised by Swarup Bikash was given to the plaintiffs on taking receipt but subsequently, plaintiff No. 2 had stolen such receipt.

8. Being dissatisfied, the plaintiffs have come up with the present first appeal.

9. Mr. Dasgupta, the learned Senior Advocate appearing on behalf of the appellants at the first instance contended that there is no dispute that on the death of Sushil Kumar Sett, the succession certificate was granted in favour of Swarup Bikash Sett, the predecessor-in-interest of the defendants. Mr. Dasgupta contends that there is also no dispute that huge amount of shares and securities lying in the name of Sushil Kumar Sett were handled by Swarup Bikash Sett on the basis of succession certificate and as such, it is the duty of the defendants to show that the said 5/6th share arising out of those shares and securities were paid to the plaintiffs. Mr. Dasgupta contends that in this case no prudent person will believe the defence of the defendant No. 1 that such receipt was stolen from her almirah although not a single complaint had been lodged before the police in this connection. Mr. Dasgupta, thus, submits that in the absence of any evidence showing that either Swarup or the defendants paid the 5/6th share to the plaintiffs out of the assets left by Sushil Kumar Sett, the learned Trial Judge ought to have decreed the suit.

10. The aforesaid contentions of Mr. Dasgupta are seriously disputed by Mr. Banerjee, the learned Senior Advocate appearing on behalf of the defendant Nos. 1 and 2. Mr. Banerjee practically supported the judgment and decree passed by the learned Trial Judge and contended that the defendant No. 1 being a half-educated lady was not aware of the contents of the application for succession certificate where so far as the shares and securities mentioned therein are concerned, the defendants were shown to have 1/6th share. He, therefore, prays for dismissal of the appeal.

11. After hearing the learned Counsel for the parties and after going through the materials on record we find that on the death of Sushil Kumar Sett, all his properties devolved upon his six heirs including the predecessor-in-interest of the defendants, each having 1/6th share. Subsequently, Swarup Bikash Sett, the eldest son and Sarmistha, one of the daughters through his first wife died and their heirs have been brought on record. There is also no dispute that on the death of Sushil Kumar Sett, it was Swarup Bikash Sett, the predecessor-in-interest of the defendants who got the succession certificate and was authorised to realise all the shares and securities and debts payable to Sushil Kumar Sett. Therefore, as the holder of succession certificate, it was the duty of the heirs of Swarup Bikash Sett to show that he had discharged such duty by handing over the actual amount received by him to the heirs of Sushil according to their respective shares.

12. In this case, specific defence taken by the defendants was that such 5/6th share was given to the plaintiffs on the basis of receipt granted by them in the presence of Anil Kumar Sett, Advocate but subsequently, the plaintiff No. 2 had stolen the said receipt from the almirah of the defendant No. 1 after the death of her husband. In cross-examination, she had, however, admitted that she could not remember the date of the incident and that no such incident was reported to the police. It is needless to mention that plaintiff No. 2 has specifically denied such allegation in his evidence but in spite of such denial, the learned Trial Judge proceeded as if Shyamal, the plaintiff No. 2, had not denied such event. Therefore, the findings of the learned Trial Judge that the 5/6th share of the plaintiffs realised by Swarup was paid after granting a receipt is a perverse finding of fact and no reasonable man would come to such conclusion from the materials on record.

13. The fact that such share was not given to the plaintiffs would appear also from the conduct of defendant No. 1. It appears that after the death of her husband, she applied for fresh succession certificate for receiving the debts and securities standing in his name and in that application, the schedules A and B properties were the shares and securities which are the subject-matter of the present suit in the said application, she specifically claimed 1/6th share in respect of A and B schedules and so far the schedules C, D and E are concerned, she claimed to be full owner along with her daughter. In view of objection raised by the plaintiffs, she

abandoned her claim in the shares and securities mentioned in schedules A and B and was satisfied with items mentioned in the schedules C, D and E. Subsequently, long twenty years thereafter, in the year 1995, she prayed for extension of the certificate by claiming absolute right over those self-same securities and shares over which she abandoned her claim earlier and such certificate was granted in her favour without giving notice to the plaintiffs.

14. It is now settled law that mere grant of succession certificate in favour of a co-sharer does not vest such co-sharer with the title of the property and it is the duty of the certificate holder to distribute the assets to the heirs in accordance with their shares.

15. Once we hold that plaintiffs did not receive their 5/6th share in the property, it is the duty of the defendants, being the heirs of Swarup Bikash Sett, to account for the assets dealt with by him by virtue of the succession certificate granted in his favour on the death of Sushil.

16. Although, the learned Advocate for the parties argued considerably on the question whether original shares held by Sushil were really transferred in the name of Swarup Bikash Sett, we find from the record that sufficient evidence has not been adduced at the time of hearing as to exact number of shares and securities held either in the name of Sushil or Swarup and the learned Trial Judge did not come to a definite conclusion whether those shares were really transferred in the name of Swarup Bikash Sett or are still appearing in the name of Sushil. Even the actual amount of money realised by Swarup by virtue of the succession certificate is not brought to the notice of the Court.

17. In such a situation, we hold that plaintiffs are entitled to get 5/6th share of money already realised by Swarup Bikash Sett by virtue of succession certificate granted in his favour as nothing has been paid to them.

18. In this proceeding, as the original shares could not be produced by either of the parties indicating whether those have been really been changed in the name of Swarup Bikash Sett or not, we are of the view that the matter should be remanded back to the learned Trial Judge for the purpose of giving opportunity to the parties

to lead further evidence on the aforesaid question.

19. Parties are free to summon the concerned companies where those shares are lying for the purpose of showing the strength of the disputed shares as it stands today. If it appears to the Court on the basis of such evidence that the original shares of Sushil are still continuing in his name and that those were not transferred in the name of Swarup Bikash Sett pursuant to the succession certificate granted in his favour, the Court will declare 5/6 th share of the plaintiffs and 1/6th share of the defendants in those shares.

20. If it appears that any new share was purchased in the name of Swarup Bikash Sett and the same is not the continuation of the original one standing in the name of Sushil nor is such share a bonus share or right issue arising out of the share standing in the name of Sushil nor was such share even purchased at a premium on the basis of the benefit conferred on the share standing in the name of Sushil, the plaintiffs will not have right in those shares. However, the plaintiffs will be entitled to get 5/6th share of the amount of money already realised by Swarup Bikash Sett by virtue of succession certificate and so long such amount is not paid to the plaintiffs, the said amount will remain charged over the assets of Swarup. The learned Trial Judge will further grant interest in favour of the plaintiffs over the 5/6th share of Sushil that will be found to be due from the date of realisation of the amount by Swarup Bikash Sett till date of actual payment at a rate to be fixed by him after taking into consideration the then bank rate as well as existing bank rate of interest on which the parties will be entitled to lead evidence. The parties will also be entitled to lead further evidence on the question as to the amount of money actually realised by Swarup by virtue of the succession certificate granted in his favour.

21. Since the matter is pending from 1997, the learned Trial Judge is directed to hear out the suit for the purpose of deciding those questions and for passing a decree accordingly on the basis of evidence already on record and also on the basis of further evidence that will be adduced by the parties on the basis of this order. We make it clear that we have decided the issue as regards share of plaintiffs in Sushil's property to the extent of 5/6th and we further hold that neither

Swarup Bikash Sett nor his heirs have paid anything to the plaintiffs after realisation of amount, if any, on the basis of succession certificate granted in his favour and the Court will proceed on the basis of such findings.

22. The appeal is, thus, allowed to the extent indicated above. The judgment and decree passed by the learned Trial Judge are set aside. In the facts and circumstances, there will be, however, no order as to costs.

Pravendu Narayan Sinha, J.

23. I agree.

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