

Calcutta High Court

Kapileshwar Singh vs Maharani Adhirani Kamsundari & ... on 23 December, 2022

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IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

APO No. 35 of 2021
with
PLA No. 18 of 1963

Kapileshwar Singh

Vs.

Maharani Adhirani Kamsundari & Ors.

Appearance:

For the Appellant : Mr. Ahin Choudhury, Sr. Adv.
Mr. Mainak Bose, Adv.

Mr. Souvik Majumdar, Adv.

Mr. Soumabho Ghose, Adv.

Ms. Ananya Das, Adv.

For the Respondent No. 1 : Mr. Rishav Dutt, Adv.

Mr. Zulfiqar Ali Al-Ruadin, Adv.

Ms. Vaibhavi Pandey, Adv.

Mr. Soumalyo Ganguly, Adv.

For the Respondent No. 2 : Mr. Jayanta Mitra, Sr. Adv.
Ms. Sarvapriya Mukherjee, Adv.
Ms. Sohini Bhattacharyya, Adv.

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Judgment On : 23.12.2022

Harish Tandon, J.

The instant appeal arises from the order dated 9th February, 2021 passed by the Single Bench disposing of 6 applications filed by the parties to the proceeding by appointing the three Special Officers to administer the estate of Maharajadhiraja Sir Kameshwara Singh Bahadur of Darbhanga upon discharging the committee of management.

By virtue of last Will and Testament of the said Maharajadhiraja Sir Kameshwara Singh Bahadur, the properties were intended to be settled in favour of the beneficiaries under the said appeal. An application for probate was taken out before this Court by an executor appointed under the said Will and Testament dated 5.7.1961 which was duly granted on 26.9.1963.

The disputes subsequently arose in relation to the administration of the estate of the said Maharajadhiraja Sir Kameshwara Singh Bahadur and ultimately the matter reached to the Supreme Court. A family settlement was entered into on March 27, 1987 and the same was filed before the Supreme Court in a pending proceeding. The said family settlement was accepted by the Supreme Court by an order dated October 15, 1987 and one of the relevant clauses contained in the said family settlement was that there shall be a committee of beneficiaries consisting of Maharani Kamsunderi Devi, Rajkumar Subheshwar Singh (and one representatives of the beneficiaries of the other branches) for distribution of the shares of the other properties and administration of the estate within a period of 5 years or an extended time or within such time extended by the Court. Since the administration of the estate could not be completed within initial period of 5 years, an application was taken out before the Court for extension of the said time which was extended by an order dated May 7, 1993 for a period of 3 years by the Supreme Court.

Though the time was further extended by the Supreme Court yet, the implementation of the family settlement could not be achieved and ultimately, the trustees under the said family settlement applied for their discharge before the Supreme Court. Initially the prayer was refused but later on the Supreme Court allowed the prayer and discharged the trustees subject to the filing of the

accounts to be verified by the Committee of management as constituted in terms of the earlier order.

Subsequently, by an order dated 25.6.1998, the committee of management consisting of the parties were replaced by the members of the Bar who were directed to dispose of and sell the residuary properties of the estate of the said testator either by public auction or by private treaty within two years from the said date. The keys of the treasury was also directed to be handed over by the trustees to the committee of management who were further entrusted to distribute and handed over the jewellerys, ornaments, golds, utensils and antiques. The record would further reveal that despite being the constitution of a committee of management consisting of 3 members of the Bar, the estate of the testator could not be administered in terms of the family settlement and by consent of parties, the said committee of management was discharged by an order of the High Court dated 20th January, 2003 appointing Kapileshwar Singh, the appellant herein, Subheshwar Singh and Maharani Kamsundari Devi as committee of management to deal with the property in terms of the order passed in the instant proceedings.

In course of the proceedings Subheshwar Singh died and his son Rajeshwar Singh was included in the committee of management which continued till date. Ironically, the estate of the testator has not been administered as yet as the parties filed several applications in the instant proceeding seeking various directions relating to the release of funds from the corpus lying with the Registrar, Original Side and the appointment of the Special Officer. Subsequently, the Special Officer was appointed and the retired Judge of this Court was nominated as the Special Officer under whose supervision and guidance the committee of management would function.

Five meetings were held by the Special Officer and the resolution was passed which the Special Officer in its wisdom thought fit and proper. An application was taken out by the appellant for setting aside the fourth and fifth sitting of the Special Officer being GA no. 14 of 2021 by the impugned order. Six applications were taken up together for the reliefs indicated hereinbefore including the setting aside of the minutes of the fourth and fifth sitting of the Special Officer which have been disposed of by the impugned order. The Single Bench found that the allegation against the Special Officer, the retired Judge of the High Court in GA 14 of 2021 contains unsavoury words which cannot be appreciated and ultimately, the applicant withdrew the said application but because of the intemperate expression having been used in the said application the Single Bench imposed a cost to the tune of 10 lakhs to be paid by the appellant to the State Legal Services Authorities from the fund which he is entitled from the corpus lying with the Registrar, Original Side. Simultaneously, the Single Bench discharged the committee of management and appointed three Special Officers out of which two are the retired Judge of the High Court and one the retired Additional District and Session Judge, Sahibganj.

Kapileshwar Singh, the appellant herein challenged the said order in the instant appeal not only on the score of the discharge of the committee of management and appointment of three Special Officers but also the imposition of costs.

Our attention is drawn by the respective Counsels to the various orders passed in course of these proceedings and all the Counsels are unison on the score that the estate of the testator should be

administered in terms of the family settlement. A point has been taken by the appellant that though the application for discharge of the committee of management and appointment of the Special Officer being GA no. 11 of 2018 was taken out yet there was no occasion on the part of the Single Judge to discharge the committee of management solely on the ground that some remarks were made by one of the members of the committee of management against the Special Officer.

It is to place on record that during the course of the proceedings the Special Officers appointed in terms of the impugned order have conducted a meeting and the report was submitted before this Court which is lying on record. The appellant is very much critical on the role of Maharani Kamsundari Devi represented by the constituted Attorney to put a spanner in every such resolution taken in the meeting held by the Special Officer which impedes the progress of administration of the estate left by the testator.

Indubitably, the trustees appointed in terms of the family settlement could not administer the estate of the testator and were replaced by the committee of management which continued over a decade yet the entire estate could not be administered as of now and the main concern in relation thereto is to bring end to the impasse having been created by the members of the committee of managements, beneficiaries and the legatees under the said Will. The litigation cannot be allowed to remain in the docket of the Court eternally. The concern of the Supreme Court as well as the High Court in the instant litigation was to bring end to the litigations after administration of the estate left by the testator which could not be fructified as on the date.

The various modalities were explored by appointing the trustees committee of management and the Special Officer but the desired result could not be achieved. Allegations and counter-allegations were made in the litigations not only against one or other members of the committee of management but also the Special Officer and, therefore, it is the ardent duty of the Court to bring end to the litigations by administering the estate of the testator in its entirety. Simply because there is some observations, not expected in a litigation cannot be projected affront for the purpose of discharge of the committee of management and replacement with the appointment of the Special Officers being completely unoblivion of the nature of the estate and various litigations pending in the different Courts against the squatters/trespassers of the estate, even the Counsel appearing for the appellant and Maharani Kamsundari Devi uniformly submit that there was no occasion to scrap the committee of management and appointment of the Special Officers which has not been seriously disputed by the Counsel representing the Rajeshwar Singh.

The Court of probate is a Court of conscience and administration of the estate of the testator being the integral part of the dispensation, the Court should be slow and circumspect in uprooting the existing modalities which was continuing for over a decade. The Special Officer was appointed to supervise and guide the committee of managements which was accepted by the parties and the allegations made by the appellants to the minutes of the fourth and fifth sitting was subsequently withdrawn. It is contended by the appellant in the instant appeal that such withdrawal was made on a threat being perpetrated by the Single Judge which is evident from some of the grounds enumerated in the memorandum of appeal. The Special Officer was the retired Judge of the High Court and it is beyond cavil of any doubt that the person who hold such high post should be treated

in the manner as indicated in the grounds incorporated in the memorandum of appeal; even apart there are aspersions made against the Single Bench in the ground of appeal contained in the memorandum of appeal which is not appreciated. It lies within the exclusive wisdom of the litigant whether to withdraw the application or not and, therefore, it is inconceivable that such withdrawal was a resultant effect of the threat being perpetrated by the Single Bench. There is no iota piece of evidence which is forthcoming in this regard and such bald allegations cannot be treated lightly but a strong message must be percolated in the litigants to protect and preserve the sanctity of the Courts. The imposition of costs on a perceived consideration may not have been appropriate but the subsequent conduct of the appellant cannot be brushed aside nor overlooked. The fairness and transparency in wisdom is the hallmark of dispensation of justice. The litigant shall not be allowed to undermine the sanctity, majesty and the confidence which the people of the country reposed upon the Court and, therefore, such unsavoury and scurrilous remark made against the Court cannot be viewed lightly. We, therefore, do not intend to interfere with the cost imposed upon the appellant by the Single Bench and such portion of the order is uninterfered with.

So far as the main issue is concerned, the committee of management was working over a decade and several steps have been taken under the supervision and guidance of the Special Officer. The allegation made by one of the applicant does not appear to have been substantiated to replace the committee of management nor we find any justification in this regard. The unsubstantiated allegations should not play the pivotal role for discharge of the committee of management and the appointment of the Special Officers to administer the estate. Even though the Special Officers appointed in terms of the impugned order have held the meeting and submitted the report but we find that there was no justification to discharge committee of management. The portion of the order by which the committee of management was discharged and the three Special Officers were appointed are hereby set aside.

The committee of management is directed to continue with the administration of the estate of the testator. An endeavour shall be shown to complete the exercise within six months from date.

We cannot overlook the important fact that the Special Officer has expressed his intention nor to continue in such capacity which we appreciate in view of the unsavoury expressions having been used against him though later on withdrawn and, therefore, the said Special Officer is hereby discharged.

We appoint Mr. Gopal Kumar Roy, the Additional District and Sessions Judge, Sahibganj (retired) as a Special Officer under whose supervision and guidance the committee of management shall function.

The Special Officer shall held the periodic meeting of the beneficiaries of the committee of management to monitor the progress of the administration of the estate, at least twice in a month. The minutes of each of such meeting shall be circulated upon the beneficiaries in electronic mode and all the beneficiaries shall provide the e-mail to the Special Officer. Since the minutes of the fourth and fifth sitting of the erstwhile Special Officer remained on record as the appellant subsequently withdrew the application challenging the same, the direction passed in the said

meeting shall be carried out by the Special Officer appointed in terms of the said order and shall see that the entire work is completed as expeditiously as possible. The committee of management under the guidance and supervise of the Special Officer shall indicate the mechanisms for due administration of the estate on the basis of meeting to be called by the Special Officer and shall act on the basis of the directions passed by the Special Officer in this regard. The remuneration of the Special Officer is fixed at Rs. 1 lakh per month to be paid from the corpus of the estate. The appeal is disposed of in the orders made hereinabove.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)