

(2019) 03 CAL CK 0084

In the Calcutta High Court

Case No : C.Appeal From Order (FMA) No. 1550 Of 2015

Alok Kumar Sinha Vs

Date of Decision : 15-03-2019

Acts Referred:

West Bengal Co-Operative Societies Act, 2006 — Section 70, 70(1), 72(b), 76, 92
Indian Succession Act, 1925 — Section 278
Transfer Of Property Act, 1882 — Section 54, 61(1)

Citation : (2019) 03 CAL CK 0084

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Amitava Mukherjee, Arpita Saha

Final Decision : Dismissed

Judgement

Bibek Chaudhuri, J

This First Miscellaneous Appeal is directed against the judgment and order dated 8th August, 2013 passed by the learned Additional District Judge, 5th Fast Track Court, Alipore in Act XXXIX Case No.118 of 2012.

For the purpose of deciding the questions of law involved in the instant appeal, salient facts are stated below:-

One Ahin Kumar Sinha was a member of Ayakar Griha Nirman Samabaya Samity Limited, a society, registered under the West Bengal Co-operative Society's Act. Being a member of the said society Ahin Kumar Sinha was allotted one share of the society and a plot of land being plot No.X-20 measuring approximately three cottahs of land within Mouza Chakgaria. After allotment of such land, the said Ahin Kumar Sinha made full payment of Rs.4880/- towards consideration price of the said land. However, no deed of conveyance was executed by and between the Co-operative Society and Ahin Kumar Sinha. Said Ahin Kumar Sinha appointed her aunt Bibhabati Sinha as the nominee in accordance with the provision of Section 76 of the West Bengal Co-operative Society's Act, 2006 (hereafter described as the said Act). Bibhabati Sinha, however, predeceased Ahin Kumar

Sinha and subsequently no nomination was made in respect of his estate or interest of the said society by Ahin Kumar Sinha.

The said Ahin Kumar Sinha was a bachelor. He was governed by the Dayabhaga School of Hindu Law. Ahin Kumar Sinha had an elder brother who predeceased him leaving behind his son Alope Kumar Sinha. At the time of death of Ahin Kumar Sinha, Alope Kumar Sinha, the appellant herein was the only legal heir of said Ahin Kumar Sinha.

Alope Kumar Sinha filed Act XXXIX Case No.118 of 2012 for grant of Letter of Administration in his favour in respect of the share and interest of the said Ahin Kumar Sinha, since deceased.

The aforesaid case came up for hearing before the learned Additional District Judge, 5th Fast Track Court, Alipore on 8th August, 2013 when he dismissed the application for Letters of Administration ex parte without cost.

The said order dated 8th August, 2013 is impugned in the instant appeal.

Mr. Amitava Mukherjee, learned advocate for the appellant at the outset draws my attention to the impugned judgment dated 8th August, 2013. It is ascertained from the said judgment that the learned Judge dismissed the application under Section 278 of Indian Succession Act on the ground that land in question which was allotted to the said Ahin Kumar Sinha by the Co-operative Society was not transferred by a registered deed of conveyance in accordance with Section 54 of the Transfer of Property Act and, therefore, the said Ahin Kumar Sinha had no estate for Letter of Administration could be granted.

Mr. Amitava Mukherjee, learned advocate for the appellant draws my attention to Section 92 of the said Act which deals with the rights of the members of a co-operative society.

Section 92 of the said Act reads such:-

"92. Rights of members.- (1) Any allotment (including re-allotment) of a plot of land or a house or apartment in a building made by a Co-operative housing society to its member in accordance with its by-laws shall entitle such member to hold such plot of land, house or apartment, as the case may be, with such title or interest as may be granted under the prescribed conditions, and, subject to the provisions of sub-section (1) of section 61 an instrument of transfer in accordance with the provisions of Transfer of Property Act, 1882 (4 of 1882) and the Registration Act, 1908 (16 of 1908), shall be the conclusive evidence of such title or interest in favour of such member.

(2) A member of a Co-operative housing society shall not be entitled to any title or interest in any plot of land or house or apartment in a building until he has made such payment as may be prescribed towards the cost of such plot or land or construction of such house or apartment or both, as the case may be, to the Co-operative housing society.

(3) A plot of land or a house or an apartment in a building (including the undivided interest in the common areas and facilities) shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that notwithstanding anything contained in any other law for the time being in force, such heritable and transferable immovable property shall not be partitioned or sub-divided for the purpose whatsoever:

Provided further that notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, an heir who is a nominee in respect of a share and interest in a flat or house or plot in a Co-operative housing society shall be eligible to be admitted as a member of the Co-operative housing society irrespective of the fact whether he owns any property by his own right or inheritance or by marriage provided he declares that he has requirement for such residential accommodation:

Provided also that membership of a person in a Co-operative housing society shall not cease if the member himself or any member of his family becomes owner of any land, house or flat through inheritance and if he still continues to have genuine need of accommodation in the project of the society.

(4) Every member of a Co-operative housing society shall be entitled to an undivided interest in the common areas and facilities pertaining to the plot of land or house or apartment allotted to him.

(5) Every member of a Co-operative housing society in whose favour a plot of land or a house or an apartment in a building has been allotted shall have the right to use the common areas and facilities as aforesaid for the purpose for which they are intended without interfering with or encroaching upon the lawful rights of other members in whose favour similar allotment has been made.

(6) The work relating to the maintenance, repair and replacement of the common areas and facilities (including additions or improvements thereto) shall be carried out in accordance with the by-laws of the Co-operative housing society and the building rules of the concerned municipality, notified area authority or competent authority, as the case may be, and the costs thereof shall be appointed amongst the members of the Co-operative housing society in such manner as may be prescribed."

Thus, he submits that on allotment of a plot of land by the co-operative society, in favour of its member, the member is entitled to hold such plot of land with such title or interest as may be granted under the prescribed conditions. The requirement of execution of a deed of conveyance comes up subsequent to allotment. Even if such conveyance is not executed by the Co-operative Society for any reason whatsoever, the interest of the member does not cease, specially when the allottee made payment of entire consideration money. He also urged that the said Ahin Kumar Sinha, as a member of the said Co-operative Society

made payment of consideration money which has been admitted by the Secretary of the Co-operative Society in writing, vide exhibit-6. Therefore, it was the duty of the Co-operative Society to execute the deed of conveyance in favour of the allottee member of the Society. Under such circumstances, the said Ahin Kumar Sinha cannot be held of having no interest on the plot of land for which entire consideration money was paid.

It is further submitted by Mr. Amitava Mukherjee, learned advocate for the appellant that the said Ahin Kumar Sinha, since deceased, was a share holder of the said Co-operative Society. Share being a property, the learned trial Court ought to have granted Letter of Administration in favour of the appellant who happens to be the sole heir of deceased Ahin Kumar Sinha for administration of the said share and interest. In support of his contention, he refers to the provisions of Section 70 of the said Act which prescribes the procedure for disposal of deceased member's share or interest. Learned counsel for the appellant has repeatedly urged that the legislature consciously used the words "share or interest" of a member of Co-operative Society. Clause (b) of sub-Section (1) of Section 70 gives right to an heir to pray by Letter of Administration to administer share or interest of the deceased member of the Co-operative Society.

According to the learned counsel, the learned trial Judge failed to consider that the deceased was a share holder of the Co-operative Society which requires to be administered by appointing an administrator under the provision of Section 278 of Indian Succession Act.

Learned advocate for the appellant next draws my attention to Section 72(b) of the said Act which provides that on termination of membership of a Co-operative Society by reason of death of a member, his possession of or interest in, and land held by him under the Co-operative Society shall vest in his heir, executor or administrator or in the person, if any, nominated by him under section 76. In the instant case the nominee appointed by said Ahin Kumar Sinha predeceased him and subsequently no nomination was made by the allottee member.

It is submitted by learned advocate for the appellant that learned trial Judge failed to consider such aspects of the matter and erred in dismissing the application under Section 278 of the Indian Succession Act.

Having heard the submission made by the learned advocate for the appellant and on perusal of the provisions of the said Act as well as the impugned judgement, it is found that learned trial Judge dismissed the application under Section 278 of the Indian Succession Act on the ground that the said Ahin Kumar Sinha, since deceased had no title over the plot of land on the ground that title of the property was not transferred by deed of conveyance by the Co-operative Society in favour of the said Ahin Kumar Sinha. However, it is a settled proposition of law that a grant of administration does not decide any question of title. It merely decides the right to administer. It is not the practice of the Court to go into the

question of title. It is sufficient if the applicant for Letter of Administration alleges that there is property to be administered and is entitled to the whole or part of it. In the instant case from the documents which were marked exhibits in the trial Court as well as from the oral evidence of P.W.2 who happened to be the Secretary of the said Society, it is found that the said Ahin Kumar Sinha had share in the Co-operative Society as well as interest in the plot of land which he acquired on payment of consideration money.

In such circumstances, though no title deed was executed in favour of Ahin Kumar Sinha, his interest over the plot of land, which was allotted, did not cease by any express order of the Co-operative Society.

The share of said Ahin Kumar Sinha in the said Co-operative Society and interest in the plot of land were required to be administered on his death and for this specific purpose, the appellant made application under Section 278 of the Indian Succession Act.

The learned trial Judge without considering the relevant provisions of the Co-operative Society's Act which have been stated above, wrongly decided against the appellant.

In view of such circumstances, the impugned judgment and order dated 8th August, 2013 passed by the learned Additional District Judge, 5th Fast Track Court, Alipore cannot be sustained. The appeal be and the same is accordingly allowed ex parte without costs.

Lower Court records, if any, be transmitted to the Court below.

Learned Court below is directed to act as per the judgment passed by this Court and accordingly grant Letter of Administration in respect of share and interest of deceased Ahin Kumar Sinha.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.