
(2019) 08 CAL CK 0246
In the Calcutta High Court
Case No : Civil Suits (CS) No. 502 Of 1999

Alok Nath Chandra

APPELLANT

Vs

State Bank Of India & Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Banking Regulation Act, 1949 — Section 45ZA
Banking Company (Nomination Rules, 1985) — Rule 2B
Code Of Civil Procedure, 1908 — Order 6 Rule 1, Order 6 Rule 2, Order 7 Rule 14(1),
Order 13 Rule 1(1), Order 13 Rule 3

Citation : (2019) 08 CAL CK 0246

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Aryak Dutta, Ruby Mukherjee, Mousumi Mitra, Sarwar Jahan

Final Decision : Disposed Of

Judgement

Shivakant Prasad, J

This is a suit for declaration and injunction whereby the plaintiff has prayed for declaration that he is entitled to receive 1/6th share of the amounts deposited by Dr. Uma Nanda Chandra since deceased in the Chowringhee Branch, Middleton Row Branch and Calcutta Main Branch of the said State Bank of India morefully shown in the statement of account of the defendant no. 1 being annexure to the plaint. The plaintiff has further claimed a decree for a sum of Rs. 19,12,085.16/- against the defendant no. 1 as claimed in paragraph 36 of the plaint alternatively for a decree for sum of Rs. 3,21,034/- against the defendant no. 3 and Rs. 15,91,850/- against the defendant no. 4 as claimed in paragraphs 31 and 34 of the plaint and further prayed for direction on the defendant no. 1 to pay to the plaintiff 1/6th of the amounts in the Fixed Deposit account and Savings Bank account standing in the name of Uma Nanda Chandra since deceased in the Calcutta Main Branch, Middleton Row Branch of the defendant no. 1 and for inquiry into the sum due and payable by the defendant nos. 1 to 6 and for such

sum as may be due upon such inquiry with consequential reliefs together with interests on the amount under deposit.

Plaintiff's case in brief is that Dinanath Chandra was the father of the plaintiff who died leaving behind his five sons and two daughters. The plaintiff is the youngest son of late Dinanath Chandra and Dr. Uma Nanda Chandra was his third son.

Specific case of the plaintiff is that in the year 1958 one of his brother Dr. Uma Nanda Chandra left for Germany where he stayed at I.M. Falken Horst, 8/24, in 5000, Cologne 90 in Germany till he died on March 2, 1996, who had attained the German citizenship from Indian origin and he died bachelor.

Defendant no. 5 is the son of the defendant no. 4 and a nephew of the plaintiff. Said Uma Nanda used to visit Calcutta from Germany and stayed with the plaintiff and the family members at the local address in Calcutta who was extremely fond of the plaintiff and he wanted to settle his affairs in India and had a desire to partition the ancestral properties. He had expressed his dissatisfaction to the plaintiff about the behaviour and conduct of his eldest brother defendant no. 2 herein as he refused to amicably partition the ancestral properties. So said Uma Nanda urged the plaintiff to join him to institute a suit for partition against rest of the brothers and partition suit being Title Suit No. 1 of 1982 was instituted in the Alipore Court against other defendant brothers and sisters. The said suit was settled amongst themselves mutually and on 21st February, 1997 the terms of settlement was filed and a decree was passed thereupon.

It is further contended that said Uma Nanda had informed the plaintiff that he was made his nominee in some of his Fixed Deposit accounts with State Bank of India, Middleton Row Branch, Calcutta and on maturity of the said Fixed Deposit accounts the plaintiff shall receive the full matured amounts of the said Fixed Deposit accounts. The said Uma Nanda exchanged several correspondence with the plaintiff from Germany. So the plaintiff had belief that he is the nominee in the Fixed Deposit account nos. I027312, II027282, III027308 respectively in State Bank of India, Middleton Row Branch, Calcutta situated at 10, Middleton Row, Calcutta.

Further, the plaintiff was informed by said Uma Nanda that he had also made Fixed Deposit accounts in Calcutta Main Branch and Chowringhee Branch of the State Bank of India and upon his death the proceeds of such Fixed Deposit accounts in various Branches of the State Bank of India should be distributed amongst the successors in India.

It is submitted that after the death of said Uma Nanda in Germany, the plaintiff wrote to the Middleton Row Branch as also to other Branches of State Bank of India through his advocate informing the death of the said Uma Nanda and for distribution of the proceeds amongst his heirs but the defendant no. 1 paid no heed to the report of the petitioner. So, the plaintiff was constrained to institute a suit being Title Suit No. 863 of 1998 before the Judge, City Civil Court at Calcutta

with the similar prayer as made in this suit with further prayer for mandatory injunction directing the banks defendant nos. 1 to 5 of that suit to furnish papers and documents relating to fixed deposits, other deposits if any with the concerned bank and nominations/changes in nomination made in respect of the said deposits and the deposits if any and the direction to the defendants not to allow with travel/transfer of such deposit without the permission of the Court of the defendants by or to any State Bank of India Calcutta Main Branch informing the plaintiff's advocate that in view of the nomination the Bank has already transferred the deposit in the name of the nominee in accordance with nomination rules and Section 45 ZA of the Banking Regulation Act and further stated that no particulars about the deposits could be diversified unless the same is required under compulsion of law in any one of the case.

The Fixed Deposits of late Dr. Uma Nanda Chandra have been still lying in the defendant bank and the same have been continued since from day to day and further the plaintiff sought for injunction restraining the defendant nos. 6 to 10 from withdrawing/transferring such deposits which they are unable to do in view of Section 45 ZA of the Banking Regulation Act and from spending any amount out of money delivered to each of them by virtue of such nomination.

In the said suit, the Judge of City Civil Court directed State Bank of India to furnish full particulars of the fixed deposits made with the said bank by said Uma Nanda Chandra and pursuant there to State Bank of India defendant no. 1 furnished statement supporting affidavit showing particulars of Fixed Deposit accounts as also Savings Bank accounts opened by said Uma Nanda Chandra at the Calcutta Main Branch, Middleton Row Branch and Chowringhee Branch defendant no. 1.

It is also submitted that the nomination in favour of the plaintiff in respect of the three Fixed Deposit accounts maintained with Middleton Row Branch had been purportedly changed by purported letters all dated 9th October, 1995 alleged to have been written by said Uma Nanda Chandra. It is submitted that plaintiff believed that the variation of nominee in favour of Dhruba Chandra defendant no. 4 has been done in collusion and in conspiracy outside the said jurisdiction between Dhruba Chandra defendant no. 4 and his son Ricky Chandra defendant no. 5 and defendant nos. 2 and 6 and that the defendant bank has not followed the mandatory provision of the said Rules being Rule 2B of Banking Company (Nomination Rules, 1985) and thus, State Bank of India defendant no. 1 by purporting to vary and change nomination from the plaintiff to defendant nos. 2, 4 and 6 has acted negligently and particulars thereof noted in paragraph 20 of the plaint.

It is further submitted that the defendant no.1 did not disclose any document in the City Civil Court proceeding of any nomination in favour of Radha Ballav Chandra the defendant no. 3 herein yet the defendant no. 1 alleged to have made payments to defendant no. 3 as nominee of the said Uma Nanda Chandra as the documents reflect that the defendant no. 1 permitted the defendant no. 3

to withdraw from the Chowringhee Branch of the defendant no. 1 of the amounts lying in the credit of the Savings Bank account No. 2150 and Fixed Deposit accounts being sum of Rs. 48,09,066/- and Rs. 18,77,241/- respectively on 16th March, 1998 aggregating to Rs. 19,26,207/-. Accordingly, the plaintiff has claimed 1/6th shares in the sum of Rs. 48,966/- and Rs. 18,77,241/- amounting to Rs. 3,21,034/-.

Plaintiff further claimed that if the defendant no. 1 is held to have lawfully paid the said sum of Rs. 19,26,207/- under valid nomination in that event plaintiff has a claim of 1/6th shares of the sum of Rs. 3,21,034/- from the defendant no. 3. Similarly, payment by the Calcutta Main Branch of the defendant no. 1 was illegal and wrongful as there was no lawful nomination in favour of the defendant no. 6. So 1/6th of the sum of Rs. 95,51,104/- which is a sum of Rs. 15,91,850/- the defendant no. 1 is bound to pay the said sum to the plaintiff and if it is held that the payment from the said Calcutta Main Branch of the defendant no. 1 has been made to the defendant no. 4 in respect of the said sum validly or lawfully then the plaintiff has a claim of Rs. 15,91,850/- being 1/6th shares payable to him from the defendant no. 4.

The defendant no. 2 has contested a suit by filing a separate written statement and defendant nos. 4 and 5 have jointly contested the suit by filing a written statement denying all material particulars of the plaint contending, inter alia, that the facts of institution of the suit in the City Civil Court at Calcutta are totally confined to the knowledge of the plaintiff and foreign national since, Uma Nanda Chandra since deceased was a German citizen. So, the plaintiff being an Indian citizen is not entitled to the properties of the deceased who died as a German citizen. It is not within the knowledge of the defendant no. 2 as to what happened in between the plaintiff and defendant no. 1 and its several Branches as the plaintiff has not stated in his plaint as to why he acted upon in the said matter. It is pointed out that the plaintiff had chosen a wrong forum to file a suit in the City Civil Court, Calcutta as it had no jurisdiction to entertain and determine the suit. The particulars furnished by the defendant no. 1 regarding the deposits of the deceased are well in the special knowledge of the plaintiff which the plaintiff is bound to prove in accordance with law. It is also contended that the plaintiff was an employee of the defendant no. 1 State Bank of India and he had full knowledge about the deposits made by late Uma Nanda Chandra with the defendant no. 1 and its several Branches. Therefore, asking for furnishing particulars from the defendant no. 1 was merely a show and an eye wash of the plaintiff.

As regards Banking Rules, it is submitted on behalf of the defendant that rules are mere guidelines and they are not a mandatory provision of any enactment and that there is nothing on the record in support of the plaintiff's case and contentions of the plaintiff stated in his plaint are the mere suspicion, apprehension and doubts and beliefs without any concrete proof. Thus, the defendant no. 2 has prayed for the dismissal of the suit in limine with exemplary

costs.

Defendant nos. 4 and 5 in their joint written statement have also denied and disputed the allegations made in the plaint contending, inter alia, that nomination in favour of the defendant no. 4 does not have the effect of conferring any beneficial interest in the sum received or to be received from the defendant no. 1 to the exclusion of other heirs of the said deceased. The act of the deceased in selecting the defendant no. 4 as his nominee is proof enough of his intension to make over the amounts lying in the said Fixed Deposit accounts to the defendant no. 4 in case of his death. On the death of the said Dr. Uma Nanda Chandra the defendant no. 4 became entitled to the whole amounts lying in the said Fixed Deposit amounts. By implication the said deceased made a gift of the said sums to the defendant no. 4. So it has been denied that on the death of the said Uma Nanda Chandra the said sum of Rs. 95,51,104/- formed part of the estate of the said deceased as alleged. Accordingly, these defendants have prayed for dismissal of the suit with costs.

On the above pleadings on recast issues were framed-

1. Is the suit maintainable in the present form and in fact?
2. Is the suit barred by the principles of acquiescence, estoppels, waiver?
3. Is the suit barred by limitation?
4. Is the plaintiff entitled to the decree as prayed for?
5. What relief or reliefs, if any, is the plaintiff entitled to?

Issue no.1:- Although the suit in the present form would be maintainable but the suit cannot be decreed as prayed, for want of any evidence in support of the plaint case. Plaint in this suit has been marked as Exhibit-B which cannot be treated as evidence in the proof of the averments made therein. That apart, it is settled law that mere admission of document itself does not prove its contents inasmuch as the plaint in a suit cannot be treated as a document.

In the context above this issue is decided.

Issue No. 2:- This issue is not pressed during trial. Hence, it is decided holding that suit is not barred by the principles of acquiescence, estoppels and waiver in absence of any evidence to the contrary on the part of the defendant.

Issue no.3:- This issue is also not pressed by any of the parties to the suit nevertheless, it is the Court's duty to see as to whether the suit is barred by limitation.

Taking into consideration the facts of earlier suit filed before the learned Judge City Civil Court and the time consumed for prosecution of the suit for considerable period, the claim of the plaintiff in the suit may not be held to be barred by the law of limitation.

Thus, the above issue is decided.

Issue no.4:- It is submitted on behalf of the plaintiff that the plaintiff is entitled to 1/6th shares in respect of the amount received by the nominees under the fixed deposit accounts of the deceased brother Dr. Uma Nanda Chandra who is said to have died as a German citizen.

At the outset learned advocate for the plaintiff submitted that the plaint filed on behalf of the plaintiff as a whole has been marked as Exhibit- B and invited my attention to the deposition of Mr. Sandip Chandra who has deposed as a witness on behalf of the plaintiff. The question no. 11 put to the witness on 14th February, 2019 goes to show that a genealogical chart of family tree was shown to him which is a part of the plaint as Annexure-A and by mere showing of the chart the said genealogical table was marked as Exhibit-A on being tendered.

It is curious to take note of the question no. 20 wherein the question was put to the effect that the plaint was drafted at the instance of the father of the witness to which he answered in the affirmative, thereafter, the plaint was tendered and was marked Exhibit-B with the signatures appearing thereon at pages 28 and 29 as Exhibit-B-1 and Exhibit-B-2 respectively. It appears that Hon'ble Justice Shekhar B. Saraf allowed tendering of the plaint as a whole for marking the same as an Exhibit through inadvertence. It is to be noted that the genealogical table of late Dinanath Chandra Exhibit-A is part of the plaint.

It is profitable to take into consideration the provision of the Order VI Rule 2 and Order VI Rule 1 of Civil Procedure Code which provides for the pleadings generally to mean the plaint and written statement. The object of the Rule 2 is two folds. Firstly, to afford the other side intimation regarding the particular facts of his case so that they may be met by the other side. Secondly, to enable the Court to determine what is really the issue between the parties and the true rights of the parties to the suit.

It is a settled principle of law that in case of variance in pleadings and evidence such evidence cannot be relied upon. An adverse inference has to be drawn when the pleadings and evidence are self-contradictory (see: Kashinath Vs. Jagannath 2003 Volume 8 SCC 740). The Rule 2 of the Order VI provides that every pleading shall contain and contain only a statement in concise form of the material facts on which the party pleading relies for his claim or defence as the case may be but not the evidence by which they are to be proved. In this context it would be apt to take note of the provision of Order VII Rule 14(1) of the Civil Procedure Code as well which enjoins upon the plaintiff to file all his documents along with the plaint and that unless he puts forth convincing reason, the Court cannot allow him to file the document at a later stage. The Rule 14(1) of Order VII reads thus-

"where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall,

at the same time deliver the document and a copy thereof, to be filed with the plaint."

The plaint contains illegible copy of the statement probably of the year 1998 showing the particulars of deposit made by late Dr. Uma Nanda Chandra on different branches of State Bank of India in diverse accounts which appears to have been submitted as per the direction of the learned Second Judge City Civil Court, Calcutta which has not been properly explained on evidence by the plaintiff. The Exhibit-A being genealogical table of the deceased Dinanath Chandra's family if taken into consideration would go to show undoubtedly that the plaintiff happens to be one of the brother of Uma Nanda Chandra who used to live in Germany and lived his full life as a German citizen in absence of any evidence to the contrary at the best. The list of documents relied upon by the plaintiff as noted in the plaint are-

1. Title Suit No. 863 of 1998 in the City Civil Court at Calcutta.
2. A statement of documents furnished by State Bank of India.
3. Letter dated 9th October, 1995 written by Mr. Uma Nanda Chandra Form DA 3 of State Bank of India.
4. Nomination form dated 24.8.1992 and 6.9.1993.

It is pertinent to note that the plaint has not been proved up to the hilt as required by law to be proved to substantiate the claim of the plaintiff for a decree for sum of Rs. 19,12,885.16 and alternatively decree for Rs.3,21,034/- against the defendant no. 3 and Rs. 15,91,850/- against the defendant no. 4 as claimed in paragraphs 31 and 34 of the plaint claiming 1/6th share in the amount in fixed deposit account and saving bank account standing in the name of the Dr. Uma Nanda Chandra since deceased in the Calcutta Main Branch, Middleton Row Branch and Chowringhee Branch of the defendant no. 1.

This suit was filed in the year 1999 and the plaintiff has hardly cared to take proper steps in the suit for proof to be had as to whether at all the alleged nominees being brothers in the array of defendants have at all received the amount of the fixed deposit and the saving bank accounts of the deceased Uma Nanda Chandra. Since proof before this Court is only the plaint as a whole as an Exhibit-B admitted on being tendered to the witness plaintiff herein, it cannot be said that the averments in the plaint have been well proved by the plaintiff. Therefore, this Court comes to a conclusion that even the provision of Order XIII relating to production of documents before the settlement of issues have not been taken care of, which provides that the original documents to be produced at or before the settlement of the issues being all the documentary evidence in original where the copies thereof have been filed along with the plaint or written statement and then only the Court can receive the documents so produced provided that they are accompanied by an accurate list thereof prepared in the form as per the rule and the directives of the High Court however, nothing in Sub

Rule 1 of Rule 1 of Order XIII shall apply in respect of the documents produced for cross-examination of the witnesses of other parties or handed over to a witness merely to refresh his memory. The provision of Rule 3 of Order XIII clearly provides for rejection of irrelevant or inadmissible documents which the Court at any stage of the suit can reject if considered irrelevant or otherwise inadmissible by recording the grounds of such rejection. The question as to admissibility of evidence has to be decided as they arise and should not be reserved until the judgment in the case is given. I do not find on record any original documents adduced by the plaintiff to convince the Court about the claim of the plaintiff as made in the plaint. However, taking note of the observation in the dictated order passed on October 6, 1999 by the Hon'ble Justice Sengupta in connection with application being G.A. No. 4279 of 1999 that all the branches of State Bank of India concern were given liberty to allow the respective recorded nominees to encash the fixed deposits and to hand over proceeds thereof to them but all the recorded nominees shall not spend, disburse or appropriate any amount so to be received by them excepting the defendant no. 2. All the defendants nominees excepting defendant no. 2 shall after receipt of the aforesaid amount from the Banks keep the same in a separate Fixed Deposit accounts in their own name and shall not disburse, withdraw or transfer any amount without leave of the Court so far the defendant no. 2 is concerned. The defendant no. 2 will be at liberty to realize and/or spend the amount out of the aforesaid proceed arising out of Fixed Deposits after retaining 1/6th share of the total matured value of the Fixed Deposits and such 1/6th share of the amount shall be kept in a separate account in the same Bank itself and the same shall be held by the defendant no. 2 until further order of the Court.

It would further appear from the order dated 01.12.1999 that interim order dated 9th October, 1999 was varied and modified to the extent that all Banks concerned will allow the recorded nominees to encash the Fixed Deposits but the amount equivalent to the 1/6th share of these Fixed Deposits shall not be handed over by the Bank concerned. If any amount has been withdrawn in its entirety by any of the recorded nominee then 1/6th of that amount shall be put back in the Bank and would be kept in a separate account in the same Branch and the same shall not be disposed without leave of the Court and the order of putting back the money will apply to Mr. Dutta's client. Accordingly, the order was passed that all the recorded nominees/parties shall disclose in the affidavit as to the exact amounts so far withdrawn by them if any and also the amounts lying in their names in any bank or concerned branch. None of these directives in the order so passed in interlocutory applications appears to have been shown before this Court at this final stage of the suit and taking cue from the proposition of law held in case of *Srimati Sarabati Devi & Anr. Vs. Srimati Usha Devi* reported in 1984 AIR 346 holding that a mere nominee under the Insurance Act, 1938 does not have the effect of conferring on the effect any beneficial interest of the amount. The nomination only indicates the hand which is authorised to receive the amount on the payment of which the insurer gets a

valid discharge of its liability under the policy. The amount however can be claimed by the heirs of the assured in accordance with law of succession governing there, I am of the view that as per the direction passed in the interlocutory applications given to the banker to pay to the nominee or nominees and on receipt of the sums, the nominee's liability is to proportionately disburse the same amongst the heirs. I do not dispute on such count but the question remains that though the suit is maintainable in law as it has been framed yet no decree can be granted in favour of the plaintiff for the reason that no amount of evidence has been adduced before this Court in support of his claim save and except averments made in the plaint.

In the context of what has been discussed above, the suit is dismissed however, without any order as to costs. I make it clear however, that as a brother being the legal heirs of second schedule of Hindu Succession Act the plaintiff would be entitled to proportionate share and further I make it clear that if 1/6th share of the total proceeds have been received by the nominees pursuant to the orders aforesaid passed in interlocutory applications and 1/6th share has been kept in a separate account with the Bank, the defendant no.1 may on proper verification and identification disburse the said amount to the plaintiff. Accordingly, the above issue is decided.

Issue no.5:- Though, I hold that the plaintiff is not entitled to the decree as prayed for, notwithstanding, if the defendant no. 1 had held amounts towards 1/6th share of the proceeds in the various accounts of Uma Nanda Chandra deceased maintained by it in view of the order dated 01.12.1999 passed in G.A. 4279 of 1999, G.A. 4558 of 1999 then the amount may be disbursed to the plaintiff. I reiterate that the nominees, though, are entitled to receive the proceeds under the deposit receipts nevertheless, the liability of the nominee remains for disbursement of the same to all the heirs of the deceased depositor. And if it is found by the defendant no. 1 that the nominees have received the amount and kept 1/6th share out of the proceeds in a separate account in defendant bank then the defendant no. 1 would be at liberty to pay to the plaintiff/claimant on proper verification and identification on furnishing indemnity bond. Accordingly, the above issue is decided and the suit stands dismissed but without any order as to costs.

In the result C.S. No. 502 of 1999 and all connected applications stands disposed of.