
(1992) 05 AHC CK 0093
In the Allahabad High Court
Case No : Testamentary Suit No. 2 of 1986

Ashok Dutt and Another

APPELLANT

Vs

Vinod Kumar Dutt and Others

RESPONDENT

Date of Decision : 15-05-1992

Acts Referred:

Citation : (1992) 3 AWC 1825

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Advocate : Ashok Bhatnagar, for the Appellant; R.K. Saxena, B.R. Tripathi and K.K. Tripathi, for the Respondent

Final Decision : Disposed Of

Judgement

Ravi S. Dhavan, J.—Among parties, today, the following are present Ashok Dutt Plaintiff, Rajendra Nath Dutt, Indu Mehta, Rewa Dutt, Ajal Dutt, Krishna Dutt. Defendants along with their counsel Mr. Ashok Bhatnagar for Plaintiffs and Mr. B.R. Tripathi, Mr. R.K. Saxena aid Mr. K.K. Tripathi, Advocate on behalf of the respective Defendants.

2. In keeping with the spirit of Order XXXII-A and (Suits Relating to Matters Concerning the Family) and finding that the litigation is all within the family including brothers and sisters, the court indleated in no uncertain terms to the parties present that the original jurisdiction of the High Court will not be lent for dragging litigation but only for a salutation to litigation in keeping with the original intent of Its Chapter of 1866 on the basis of justice, equity and good conscience. These concepts have not changed.

3. Between so many litigations, noticed in yesterday"s order between the brothers and sisters, today the court is told that there are yet more litigations. There is no reason why parties all brothers and sisters between them, will not reach a settlement. On the other side the alternate is litigation which will envelope them to such an extent that it is unlikely that even their progenies will

escape it.

4. It was the suggestion of the court, to the parties, that between the brothers and sisters present and those who have not been able to come, sit down in their disagreement and sort out these family disputes. Initially the parties agreed but later submitted that the relations were such that they are not even on talking terms. They suggested to court that senior lawyers from Kanpur may be appointed to arbitrate between them. The court is not inclined to bring any further persons, alien to them Already between them such confusion has arisen that an outsider may create more confusion and controversies between them. There are too many issues and too many people involved already. The court suggested to them that between the counsel for the Defendants and Plaintiffs one from amongst each side may sit down initially and perceive the depth of the issues and help parties reach a settlement. The court explained to the parties that under the law, Order XXX-II-A of the Code, there is a duty on the court to assist the family in litigation to arrive at a settlement on matters on which they are at issues. Thus, the effort of the court to appeal to the brothers and sisters in litigation to settle their family disputes This much is agreed between them that between the counsel for Plaintiffs Mr. Ashok Bhatnagar and on behalf of the many Defendants, one counsel among them, Mr. B.R. Tripathi, will sit down and try to evolve a workable settlement/agreement for all. Both counsel, when they are sitting together may call any of the parties to enquire into facts so far as they reasonable can so that it can become an award by the court. This may be done within six weeks.

5. It is the suggestion of the learned Counsel Messrs Ashok Bhatnagar and B.R. Tripathi, Advocates that the meetings between them may begin on May 31, 1992. Let this happen. Thereafter ,counsel between them may make out a schedule of their next meetings or when they will meet parties for further meetings.

6. There is one aspect on which parties present have agreed. It has not been disputed by any of the parties and is accepted between Plaintiffs and Defendants that the will on which they are at issues has left a beneficial interest to two minor children of Rewa Dutt. She is the widow of Vinod Kumar Dutt. The two children are aged 9 years and 10 years. The boy Amit Dutt is 9 years and the girl Nita Dutt is 10 years. Between the brothers and sisters, the parties, at issues they accept that it was their mother's desire that each of the children receive Rs. 10000/-. This declaration in the testamentary disposition the court told them implies the creation of a trust. On this there is no dispute and parties are not at issue, on this point. But the assets have not been gathered, thus, neither children can receive the beneficial interest. Between the Plaintiffs and Defendants they are agreed that according to their mother's desire they will, between them, contribute the amounts which has been left for the children so that the children may receive the legacy now. Let this be done.

7. But the court has to indicate to parties how the trust will be created and

parties have requested to the court that this may be so indicated. Their mother's will desired a reasonable expectation that upon the testatrix's death after a reasonable time the will will take effect. The court will thus allow for a reasonable time to pass from the date of the death of the mother and directs parties who intend to pay and contribute on the creation of a trust for the children, to dictate their intention to offer payment to the two learned Counsel on or before May 31, 1992. The two counsel will calculate simple interest on the amount reckoning it from one year after the death of the testatrix until May 31, 1992 and require such of those who intend to pay to deliver a cheque in equal amounts in the name of the Registrar, High Court. The cheques will be delivered to learned Counsel on or before June 30, 1992.

8. Between counsel present and parties present it is agreed that this matter will come up on July 20, 1992 on which date learned Counsel who are assisting parties in reaching a settlement will be submitting their report,

9. Parties will be present on that date.