

(2013) 08 DEL CK 0094

In the Delhi High Court

Case No : Regular First Appeal 164 of 2010 and CM No. 4991 of 2010

Prabha Kaul (Deceased)

APPELLANT

Vs

Chandra Kaul Muthoo and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Succession Act, 1925 — Section 302

Citation : (2013) 08 DEL CK 0094

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ravi Mohan Kaul, for the Appellant; Ateev K. Mathur, B. Bansal and Ms. Richa Oberoi for R-3, for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sahai Endlaw, J.—The appeal impugns the judgment and decree dated 30th November, 2009 of the Court of the Additional District Judge (ADJ), Delhi of dismissal of Suit No. 68/08/97 filed by the appellant since deceased and now represented though her legal representative. Though the appeal came up first before this Court on 18th March, 2010 but notice thereof was issued only on 26th April, 2010. The appeal was not accompanied with any application for interim relief but CM No. 8956/2010 for interim relief was filed thereafter and which came up before the Court on 14th May, 2010 when notice thereof was also issued. Vide subsequent order dated 6th July, 2010, the respondents No. 1 & 2 were restrained from appropriating the sum of Rs. 30.68 lakhs which stood released to them by the respondent No. 3 Standard Chartered Bank Ltd. The said interim order was made absolute on 6th February, 2012 and the appeal admitted for hearing. Thereafter, application for substitution of the legal heirs of the appellant was filed and which was allowed on 10th May, 2013.

2. None has been appearing for the respondents No. 1 & 2 since 19th October, 2010. Mr. Ravi Mohan Kaul, one of the legal representatives of the deceased appellant appearing in person and the counsel for the respondent No. 3 Bank

have been heard.

3. The suit from which this appeal arises was filed pleading, (i) that Sh. Prithvi Nath Kaul (P.N. Kaul), husband of the deceased appellant was the holder of certain bank accounts and fixed deposit receipts (FDRs) with the respondent No. 3 Bank; (ii) that the deceased appellant and her husband had three children namely two sons Mr. Heera Kaul and Mr. Ravi Mohan Kaul and one daughter i.e. respondent No. 1 herein; (iii) that the respondent No. 2 Dr. Jawahar Lal Kaul Muthoo is the husband of the respondent No. 1; (iv) that the relations of the deceased appellant and her husband with the daughter and son-in-law i.e. respondents No. 1 & 2 were strained and even police complaints had been filed by the husband of the deceased appellant against the daughter and son-in-law; (v) that when the husband of the deceased appellant was ill and was in delirious state, the respondents No. 1 & 2 illegally and fraudulently took him to the respondent No. 3 Bank and the respondent No. 3 Bank in collusion with the respondents No. 1 & 2 in spite of such state of health of the husband of the deceased appellant converted as many as 35 FDRs earlier in the sole name of the husband of the deceased appellant to in the joint name of the husband of the deceased appellant and the respondent No. 1. The suit was thus filed, (a) for declaration that all the said FDRs with the respondent No. 3 Bank in the joint names of the husband of the deceased appellant and the respondent No. 1 were individual deposits of the husband of the deceased appellant and the name of the respondent No. 1 as joint holder thereof had been added fraudulently; and (b) for permanent injunction to restrain the respondents No. 1 & 2 from withdrawing monies subject matter of the said FDRs and to restrain the respondent No. 3 Bank from permitting such withdrawal.

4. Though Mr. Ravi Mohan Kaul appearing in person and the counsel for the respondent No. 3 Bank state that there was no interim order in the suit but a perusal of the suit records shows that on 3 October, 1997 while issuing summons of the suit, the respondent No. 3 Bank was restrained from encashing any FDR taken by late Sh. P.N. Kaul out of his Savings Bank Account No. 12927. The record further reveals that the said interim order was continued from time to time; though there is no order disposing of the application for interim relief but it can safely be assumed that the said interim order continued during the pendency of the suit.

5. Written statements were filed by the respondents No. 1 & 2 as well as by the respondent No. 3 Bank contesting the suit. Need is however not felt to discuss the contents thereof and suffice it to state that there is no plea of the respondents No. 1 & 2 in their written statement, of the monies of the said FDRs belonging to respondent No. 1 she has rather admitted that the said monies belonged to her father Sh. P.N. Kaul and has pleaded that the father had willingly and of his own volition made her the joint name holder in the said FDRs.

6. The deceased appellant appeared as the sole witness in support of her suit. The respondents No. 1 & 2 also examined themselves as witnesses in support of

their defence. It is informed that a witness was examined by the respondent No. 3 Bank also.

7. On the pleadings of the parties, the following issues were framed in the suit:

(i) Whether the defendant Nos. 1 and 2 under coercion and duress got all the fixed deposit accounts of late Sh. P.N. Kaul converted into joint accounts with defendant no. 1? OPP.

(ii) Whether the said conversion of fixed deposit accounts of late Sh. P.N. Kaul, as aforesaid, is null and void? OPP

(iii) Whether the plaintiff is entitled to the declaration and injunction sought? OPP

(iv) Relief.

8. The learned ADJ has vide the impugned judgment dismissed the suit of the deceased appellant finding/observing/holding:

(i) that though the deceased appellant had set up a case of strained relationship with the respondent No. 1 but in her cross-examination admitted to sharing a close mother-daughter relationship with the respondent No. 1 and further admitted to writing letters to the respondent No. 1 almost every week;

(ii) that several letters of the deceased appellant proved as Ex. D-1 to D-16 did not show any stained relationship; rather the deceased appellant had therein sent her blessings and love for the family of the respondents No. 1 & 2 and had also extended all help to the family of the respondents No. 1 & 2;

(iii) that the said letters disproved the claim set up in the suit of strained relations and the said claim appeared to be an afterthought;

(iv) that though the deceased appellant had set up a case of the respondents No. 1 & 2 having sent their daughter to the residence of the appellant and her husband by exerting emotional pressure but in her cross-examination admitted that the daughter of the respondents No. 1 & 2 was staying with them with their consent;

(v) that of the two sons of the deceased appellant and her husband Sh. P.N. Kaul, the elder one Mr. Heera Kaul had settled in America since 1973 and the younger son Mr. Ravi Mohan Kaul has been residing separately in Alaknanda since 1984;

(vi) that since the deceased appellant and her husband were living alone, that appeared to be the reason that they wanted to have the daughter of the respondents No. 1 & 2 stay with them;

(vii) that the deceased appellant in her cross-examination admitted that her husband Sh. P.N. Kaul was in a sound state of mind;

(viii) that the witness of the respondent No. 3 Bank had produced documents to

prove that the FDRs were converted from the single name of Sh. P.N. Kaul to the joint names of Sh. P.N. Kaul and the respondent No. 1 as per the mandate and will of Sh. P.N. Kaul by P.N. Kaul writing a letter dated 30th May, 1997 in his own handwriting to the Manager of the respondent No. 3 Bank in this regard;

(ix) that the case of the deceased appellant that her deceased husband Sh. P.N. Kaul was taken to the respondent No. 3 Bank under intoxication could not be believed as Sh. P.N. Kaul was claimed to have been so taken to three other banks also and no action had been taken with respect to the bank accounts in those banks;

(x) that the allegation of collusion between the respondents No. 1 & 2 on the one hand and the respondent No. 3 on the other hand had not been established;

(xi) that Sh. P.N. Kaul had retired as a Government official of a high rank and was well to do and it could not be believed that he had been duped as was being alleged;

(xii) that the fact that the husband of the deceased appellant i.e. Sh. P.N. Kaul had given a flat at Rajouri Garden, New Delhi to the respondents No. 1 & 2 also showed the affection he had for them;

(xiii) that the action of Sh. P.N. Kaul who was aging, of securing his accounts by making them joint with his daughter i.e. respondent No. 1, was understandable and in normal course of human conduct.

The learned ADJ accordingly held that Sh. P.N. Kaul had not converted the FDRs from his sole name to joint name with the respondent No. 1 under any coercion or duress and accordingly all the issues were decided against the deceased appellant and the suit dismissed.

9. Mr. Ravi Mohan Kaul arguing in person has contended that the respondent No. 3 Bank made payment of the FDR amounts to the respondent No. 1 on 29th April, 2010 i.e. after the notice of the appeal was issued on 26th April, 2010. He also invites attention to CM No. 4989/2010 for stay filed with the appeal to contend that it is not as if the deceased appellant had not applied for stay along with the appeal.

10. The fact however remains that only the notice of the said application for stay was issued while issuing notice of the appeal on 26th April, 2010 and no interim stay was granted by this Court. The only stay in operation as aforesaid is vide the order dated 6th July, 2010 restraining the respondents No. 1 & 2 from appropriating the sum of Rs. 30.68 lakhs released to them by the respondent No. 3 Bank.

11. Mr. Ravi Mohan Kaul has further informed that his father Sh. P.N. Kaul has also left a registered Will bequeathing his entire estate to the deceased appellant and to his two sons namely Mr. Heera Kaul and Mr. Ravi Mohan Kaul; he further informs that the bequeath to the deceased appellant was of a life estate only. On

enquiry, whether the deceased appellant has also left any Will, he states that he is not aware of the same though has heard that there is a Will.

12. Mr. Ravi Mohan Kaul further informs that probate of the Will of Sh. P.N. Kaul has been applied for and is pending in the District Courts at Dwarka, Delhi. On enquiry, whether the respondent No. 1 has filed any objections in the said probate proceedings, he states that though the respondent No. 1 had filed objections in the probate proceedings but has not been appearing in that proceeding also now. The probate proceedings are stated to be however still pending.

13. The position which thus emerges is that, (A) there is no dispute that the money which the respondent No. 1 has withdrawn from the respondent No. 3 Bank belonged to the deceased Sh. P.N. Kaul; and, (B) the respondents No. 21 & 2 did not lay any claim to the said money as their own.

14. The suit was filed and pursued and thereafter this appeal has been filed and pursued, without addressing the question of the entitlement to monies in such joint accounts/joint deposits--whether the said monies, upon the demise of the person to whom they belong devolve upon the joint name holder or upon the heirs of the deceased to whom they belonged. That, according to me was the real question for adjudication and to which neither the appellant/plaintiff nor the respondents/defendants invited the attention of the Court and which has thus remained un-adjudicated.

15. I find, the Supreme Court in *Indranarayan Vs. Roop Narayan and Another*, faced with such a situation to have held, that from the conduct of the sole account/deposit holder, of joining the name of another in the said account, there can be no presumption of advancement i.e. of the sole account/deposit holder intending to gift the monies in his account/deposit to the person whose name is so joined and that it is for the person whose name is so joined in the account/deposit to establish by satisfactory evidence that the sole holder of the account/deposit by adding/joining his name to the same intended that the amounts in question, after his death should go to him exclusively; that only if it is so proved can the joint name holder claim the said monies as his own and else there is a resulting trust for disbursement of the said amount to the heirs in accordance with law of the owner of the said monies or who was earlier the sole account/deposit holder.

16. A detailed discussion in this regard is also to be found in the judgment of the Bombay High Court in *Krushanadas Nagindas Bhate Vs. Bhagwandas Ranchhoddas and Others*, ; though the earlier judgment of the Supreme Court in *Indranarayan supra* was not noticed but the law was held to be well settled that in respect of a joint account opened in the bank, on the death of one there is a resulting trust in favour of his heirs and legal representatives, unless there are special facts and circumstances to show a contrary intention. Reliance in this regard was placed on the judgments of the Privy Council in AIR 1928 172 (Privy

Council) and AIR 1945 10 (Privy Council) holding that even where money is kept in a bank account in joint name on the terms that it was payable to either or survivor, the same does not amount to a gift and there is no presumption of an intended advancement. The said rule was held to be not confined to assets in the joint names of a man and his wife but to be of universal application, whatever the property and whatever the relationship; only if the joint account holder establishes a contrary intention, does he keep the assets standing in the joint names of the deceased and himself and if not, the assets must be included in the partible property. The Bombay High Court further held that it will ordinarily depend upon the facts and circumstances of the case relating to the opening of the account showing the intention of the parties and if from the facts and circumstances, it can be held that the intention was to make the survivor the owner of the amount lying in the account then he and not the heirs would be entitled to recover the amount; if the facts and circumstances do not establish any such intention, although the holder of the joint account may be authorized to withdraw the amount, he would be bound to restore that amount to the heirs/legal representatives of the deceased joint holder. It was yet further held that though the bank may be discharged by payment to the survivor but the survivor would be accountable to the heirs of the joint account holder.

17. Justice P. Sathasivam speaking for the Madras High Court in *Khushaldas and others Vs. Mohanarangam*, relying on *Indranarayan supra* and in the absence of satisfactory proof with regard to the intention on the part of the deceased to give the amount of the fixed deposits exclusively to the joint account holder, held the joint account holder to be not entitled thereto.

18. The High Court of Himachal Pradesh also in *Amar Kaur Vs. Shri Ram Singh and Others*, held that deposit made by a person of his money in the joint name of himself or any other person on the terms that it is payable to either or survivor does not on his death constitute a gift by him to the other person; in such a case, without any declaration of trust, there is a resulting trust in favour of the depositor in the absence of any contrary intention or unless it can be proved that an actual gift of the amount was intended. It was again held that the burden of proving a contrary intention or gift is on the person who seeks to rebut the resulting trust in favour of the person who makes the deposit and this burden can be discharged either by proving that there was a specific gift or that the owner of the money had a general intention to benefit the claimant and that it was in pursuance to that intention that he made the deposit in the claimants name or transferred the deposit to the joint names of himself and the claimant; in the absence of such proof, the amount under the deposit on his death will form part of the owners estate and will be partible amongst his heirs.

19. To the same effect is the judgment of the Division Bench of the Orissa High Court in *Kinkar Santananda Sanyasi Vs. State Bank of India and Others*, laying down that merely because the deposit was made in the joint name with the monies thereunder being payable to either or survivor did not raise any

presumption that the amount would be released in favour of the depositor only and the natural heirs cannot be deprived of benefits accrued from the deposit.

20. Paget's Law of Banking (12th Edition) also in Chapter-II titled "Types of Account" and under "Joint Accounts" has cited the judgment of the High Court of Australia in Russell & Scott (1936) 55 CLR 440 holding to the same effect.

21. Notice at this stage may however be taken of State of Maharashtra Vs. Pollonji Darabshaw Daruwalla, a case under the Prevention of Corruption Act, 1947, holding the assessment made by the High Court in that case that in all joint deposits, the depositor first named alone is the beneficial owner and the depositor named second has no such beneficial interest, to be erroneous. It was held that the matter is principally guided by the terms of the agreement inter se between joint depositors. It was however further held that if the terms of acceptance of the deposit stipulate that the name of the beneficial owner alone shall be entered first, then the presumptive beneficial interest in favour of the first depositor might be assumed. The same is the view of this Court in Jastinder Singh Vs. State, also under the Prevention of Corruption Act, 1988.

22. I find the CIT(A), in judgment of the Arijit Ghosh vs. Asstt. Commissioner of Income Tax to have held that as per the banking norms, the first holder is the real owner of the account for all practical purposes with all correspondences, monthly statements etc. being sent at the address of the first holder and the position to be the same under the Income Tax also in the absence of proof otherwise, and the ITAT to have not disturbed the said finding. I have been unable to find any view, neither in any judgment nor in Tannan's Banking Law and Practice in India, 21st Edition or in Paget's Law of Banking, 12th Edition to the contrary. The position thus appears to be that in the absence of any instruction to contrary, as far as the Banks are concerned, the first name holder is treated as beneficial owner of monies deposited in joint names.

23. In the present case as aforesaid, it is the admitted position that the monies in the FDRs belonged to the deceased Sh. P.N. Kaul and the respondent No. 1 whose name was added in the said FDRs had not taken any plea of advancement or gift of the said monies in her favour. The monies subject matter of the FDRs thus have to be held to be belonging to the estate of the deceased Sh. P.N. Kaul with the appellant Ravi Mohan Kaul and respondent No. 4 Heera Kaul being entitled thereto if prove the Will of Sh. P.N. Kaul in their favour and with the respondent No. 1 Mrs. Chandra Kaul Muthoo also having share therein, if the said Will is not proved.

24. Mr. Ravi Mohan Kaul states that after the Will of Sh. P.N. Kaul is probated, he will file a suit for recovery of the monies from the respondents No. 1 & 2.

25. I am also of the view that till the appellants Mr. Ravi Mohan Kaul and his brother Mr. Heera Kaul are held entitled to the estate of Sh. P.N. Kaul to the exclusion of respondent No. 1, they have no right to recover the said monies from respondent No. 1 they can only seek partition thereof on the premise of Sh.

P.N. Kaul having died intestate.

26. In view of the aforesaid, no error is found in the action of the respondent No. 3 Bank of releasing the monies in favour of respondent No. 1 who was admittedly the joint name holder.

27. In the aforesaid circumstances, it is felt that no purpose would be served in the appellant proceeding with this appeal from the judgment and decree in the suit the only relief claimed wherein was of declaration and injunction. The relief, insofar as of injunction is concerned, has become infructuous. Though Mr. Ravi Mohan Kaul contends that the respondent No. 3 Bank notwithstanding the notice of the pendency of the appeal, released the monies to the respondents No. 1 & 2, but the fact remains that till 29 April, 2010 when the monies were so released by the respondent No. 3 Bank to the respondent No. 1, the respondent No. 3 Bank had neither been served with the notice of the appeal nor was there any stay against it. The decision on the question, whether the name of the respondent No. 1 as the joint name holder in the said FDRs was added with the volition of Sh. P.N. Kaul or owing to the fraudulent actions of the respondents thus loses any significance.

28. As far as the interim order in force in this appeal, restraining respondents No. 1 & 2 from appropriating the monies withdrawn from respondent No. 3 Bank is concerned, I may notice that Section 302 of the Indian Succession Act, 1925 authorises the Probate Court to also issue interim directions. The appropriate remedy for the appellants, till the probate petition is not decided, is to move the Probate Court under the said section and which if so moved, shall decide the said application in accordance with its own merits. All that can be done is to extend the interim order in this appeal restraining the respondents No. 1 & 2 from appropriating the sum of Rs. 30.68 lakhs withdrawn by them for a period of three months from today, to enable the appellants to in the meanwhile approach the Probate Court for extension of the said order. The appeal is disposed of with the aforesaid observations. The interim order in force in this appeal is extended for three months from today whereafter, unless extended by the Probate Court on application by the appellants, the same shall lapse. No order as to costs.

Decree sheet be drawn up.