

(1922) 12 CAL CK 0027
In the Calcutta High Court

Shoshi Mukhi Debya and Others

APPELLANT

Vs

Keshab Lall Mukerjee

RESPONDENT

Date of Decision : 05-12-1922

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 9

Citation : AIR 1924 Cal 212

Hon'ble Judges : Greaves, J

Bench : Division Bench

Judgement

Greaves, J.—This is an application by Srimati Shoshi Mukhi Debya to restrain Keshab Lall Mukerjee from proceeding with Case No. 138 of 1922 now pending before the Calcutta Improvement Tribunal until the final determination of this suit, or in the alternative for the transfer of the case to this Court for determination with this suit or in the alternative for revision of the order of the Tribunal of the 14th August, 1922.

2. The facts are shortly as follows:

One Panchanon Bannerjee died on the 19th July 1878 leaving him surviving his widow, the Plaintiff Srimati Shoshi Mukhi, and three daughters. One daughter is dead and the surviving daughters are co-plaintiffs with her in the suit. Panchanon left a Will dated the 23rd June, 1878, whereby he appointed one Kenaram Bannerjee and one Tripura Sundari Debi executor and executrix. Probate was granted to Kenaram alone on the 4th December 1901 out of the Hughly Court. By Clause 8 of the Will it was provided that any of the executors should in case of death be able to appoint by will another executor to carry out the directions of the Will. Kenaram died on the 7th September 1921 having by his Will dated the 30th September 1905 appointed the Defendant executor of his Will and also executor and trustee of Panchanon's estate. The Defendant proved Kenaram's Will in this Court on the 21st February 1912; he has not I understand, applied for administration de bonis non of Panchanon's estate. Whether this was necessary or not it is not necessary for me to decide for the purposes of this application.

3. Srimati Shoshi Mukhi states that in February of this year she came to learn that a scheme had been framed (I suppose by the Improvement Trust) for the acquisition of 11, Sooterkin's Lane, one of the properties of the estate. On the 8th March, 1922, she filed a petition before the 2nd Land Acquisition Collector stating that the Defendant had no title to the property and that upon the true construction of Panchanon's Will she was entitled to the premises and to the rents, issues and profits thereof for her life, and asking that her name should be recorded as a person interested and that upon an award being made the matter should be referred to the Court of the Calcutta Improvement Tribunal for the determination of her rights.

4. On the 18th April of this year the Collector made his award awarding Rs. 57,500 and directing the money to be paid to the Defendant as executor and Shebait. I should state that by Clause 5 of Panchanon's Will on the happening of certain events the property was made debuttar.

5. On the 24th April Srimati Shoshi Mukhi was served with a notice, dated the 20th April, 1922, from the Land Acquisition Collector stating that she had been treated as a person interested in the premises, that an award had been made, and asking her to file her objections before him on or before the 25th April. She accordingly on the 25th April filed a petition asking (inter alia) that the matter should be referred to the Tribunal for the determination of her rights and the Collector made the following entry in the order-sheet:

Petition filed on behalf of Sm. Shoshi Mukhi Debi. Refer to the Tribunal if in order and in time.

6. The compensation money was deposited with the Tribunal on the 28th April and the suit was instituted on the 1st May. On the 3rd May the president of the Tribunal notes receipt of the cheque and adds "Await reference." On the 26th June a reference (No. 370) was made by the Collector.

7. On the 11th July the Plaintiff was given notice by the Tribunal to file her written statement on the reference. On the 3rd August the Plaintiff petitioned the Tribunal to stay the reference. On the 14th August the Tribunal refused to stay the reference as it was made prior to the suit, and the 4th September was fixed for settlement of issue.

8. I am asked to stay the proceedings before the Tribunal on the ground that the daughters are parties to the suit and not to the reference, and that they will not be bound thereby, and that accordingly there might be conflicting decisions of the Tribunal and of this Court. It is further said that the Tribunal was wrong in holding that the reference was prior to the suit, and it is urged that the suit is more comprehensive and that the Tribunal's proceedings will be useless as they will not operate between the parties as res judicata.

9. As against this it is said on behalf of the Defendant:

(1) That the Tribunal has exclusive jurisdiction and can alone determine the

matter,

(2) That the Plaintiff by her application u/s 18 of the Land Acquisition Act has chosen the forum and cannot now go back on this,

(3) That she has taken her chance before the Tribunal by applying for a stay and has failed and that she is bound by this decision.

(4) That she is in effect asking for a stay order on the Tribunal.

(5) That this Court has no jurisdiction to review the Tribunal's decision.

(6) That in any case there is an appeal from the Tribunal to the High Court and ultimately to the Judicial Committee.

10. And reliance was placed on a recent decision of this Court in its Appellate jurisdiction, Saibesh Chander Sarkar v. Sir Bejoy Chand Mahatap Bahadur AIR 1922 Cal. 4. In that case after the compensation moneys had been apportioned by the Collector, and neither party served with notice u/s 9 of the Land Acquisition Act had applied for a reference u/s 18 of the Act, a civil suit was instituted by one of the parties served with notice to recover part of the compensation money awarded by the Collector, and it was held that the suit was not maintainable as the Land Acquisition Act created a special jurisdiction and provided a special remedy, and that Section 31 of the Act applied only to cases where a person was under a disability or was not served with notice before the Collector. As against this I was referred to Bhandi Singh v. Ramadhin Roy (1905) 10 C.W.N. 991. In that case a reference u/s 18 had been struck off for non-appearance, and it was held that those who were parties to the reference could not litigate the matter anew in a Civil Court, but Mookerjee, J., states at p. 998 that having regard to the 3rd proviso to Section 31 read with Section 18 where the dispute is as to the persons amongst whom the compensation moneys are apportionable or as to the extent of their interest the matter could be litigated either on reference u/s 18 or in a Civil Court.

11. For the purposes of the present application it is not necessary for me to express my own opinion on the divergence of judicial opinion which appears in the two cases cited as above, for in the application before me the Plaintiff has chosen her forum by applying for a reference u/s 18 and I think she must abide by it, and on that ground I dismiss the Plaintiff's application with costs.

12. Learned Counsel for the Plaintiff stated towards the conclusion of the argument that although the application was in form by the Plaintiff alone, this was an error and he asked me to treat it as if the co-plaintiffs (the daughters) had also joined in the, application. I regret that I cannot do so as I have not the facts before me with regard to the daughters. I do not know whether or not they were served with notice u/s 9; presumably they were not, but the Defendant has had no opportunity of dealing with this. If they were not served, presumably u/s 31 their rights are preserved, but I am not deciding this question. All that I decide is that the Plaintiff having made her election u/s 18 and applied to the

Tribunal for a stay which being refused, cannot, even assuming that a civil suit was open to her, succeed on this application. This result may be unfortunate, as, if the suit continues so far as the daughters are concerned two Tribunals may be dealing with the same question and different decisions may result, but I regret that in the view I hold on the present application I cannot help this.