

(2005) 01 CAL CK 0046
In the Calcutta High Court

Case No : A.P.O. No. 112 of 2004 with W.P. No. 980 of 2003

State of West Bengal

APPELLANT

Vs

Kabita Agarwal

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 123

Citation : (2005) 2 CHN 366

Hon'ble Judges : Altamas Kabir, Acting C.J.;Asit Kumar Bisi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Altamas Kabir, A.C.J.

1. The writ petitioner-respondent No. 1 filed a writ application, being W.P. No. 980 of 2003, inter alia, praying for a direction upon the respondents to mutate her name in respect of plot No. 76, Block "DL" in Sector-II, Bidhan Nagar, Kolkata, upon quashing the letters dated 15th October, 2001 and 9th July, 2002, being Annexures P-12 and P-14 to the writ petition.

2. The case as made out in the writ petition is that the writ petitioner is a beneficiary of the Will of one Satya Narayan Khowala, along with her two sisters-in-law, in respect of the aforesaid plot. According to the writ petitioner, by a letter dated 10th December, 1986, the State Government granted and demised the aforesaid plot measuring 4.20 cottahs in favour of Satya Narayan Khowala, said to be the uncle of the writ petitioner, and his two sons, Khem Chand Khowala and Mahesh Kumar Khowala, each having a 1/3rd undivided interest in the demised land. According to the writ petitioner, by a family arrangement made on 1.2.1996 between Satya Narayan Khowala and his two sons, it was agreed that the leasehold land would stand transferred and allotted to Satya Narayan Khowala exclusively and his two sons thereby relinquished their right, title and interest in the said land. It was also agreed that the family arrangement would

be irrevocable and binding on the legal heirs of Khem Chand Khowala and Mahesh Kumar Khowala.

3. Subsequent to the family arrangement, by a Will dated 21.1.1997 Satya Narayan Khowala bequeathed his right, title and interest in the entire plot to the writ petitioner and her two sisters-in-law, Indira Agarwal and Manju Agarwal. The legatees thereupon applied to the concerned authority of the State Government for transfer and assignment of right and title in the said plot in their favour along with the copy of death certificate of Satya Narayan Khowala who had died in the meantime. At this juncture it may also be mentioned that upon the demise of Satya Narayan Khowala his Will was probated on the application of the legatees on 19th August, 1999.

4. It is the further case of the writ petitioners that their prayer for mutation was refused by the letter of 15th October, 2001 issued by the Officer on Special Duty and Ex-Officio Deputy Secretary to the Government of West Bengal. The said letter was also followed by another letter dated 9th July, 2002 by the same authority rejecting another representation made by the writ petitioner for mutation.

5. In the writ petition it was claimed that by virtue of Clause 9 of the Registered Lease Deed executed in favour of Satya Narayan Khowala and his two sons, power had been reserved to the joint lessees to transfer their respective shares to the other co-sharer or co-sharers and that the two sons of Satya Narayan Khowala had by virtue of the said provision agreed mutually in the circumstances indicated in the Deed of Family Arrangement that their interest in the lease hold plot would vest in Satya Narayan Khowala in order to settle the dispute which had arisen with regard to repayment of the loan taken for construction of a building on the said plot.

6. It was also the case of the writ petitioner that the Deed of Family Arrangement did not pass any title as such to Satya Narayan Khowala from his two sons but merely recorded what had been agreed to earlier and as such the same was not hit by the provisions of Section 17 of the Registration Act. It was also urged that the Deed of Family Arrangement was not also a gift so as to attract the provision of Section 123 of the Transfer of Property Act.

7. The writ petition was heard and allowed by the learned Single Judge by his judgment dated 23rd September, 2003 which is the subject-matter of the instant appeal.

8. Appearing in support of appeal, Mr. Bikash Ranjan Bhattacharjee, learned Sr. Counsel, Mr. S. Chakraborty, appearing with him, submitted that the learned Single Judge had erred in law in holding that the joint lessees could transfer their interest amongst each other even by exchange of letters and without executing and registering a deed of transfer for the said purpose. It was urged that the learned Single Judge had erred in holding that the intra-party transfer between the joint leaseholders could not be ignored on the ground of non-execution of

any registered document at all and that apparently the law did not prescribe for the same.

9. It was submitted that the learned Single Judge had proceeded on such erroneous understanding of Clause 9 of the lease deed in ultimately holding that the refusal to grant mutation in favour of the writ petitioner and the two others was wrongful in nature and such refusal was liable to be struck down by the Court. It was urged that the direction given by the learned Single Judge to proceed with the mutation was liable to be set aside.

10. It was also urged that erroneous reliance had been placed by the learned Single Judge on the decision of the Madras High Court in the case of Thirumathi Ramayammal and Others Vs. Thirumathi Mathummam and Others, , wherein it was held that a family arrangement, arrived at earlier but reduced into writing, merely recognized such agreement having been made and did not pass any title as such which required the document to be registered in order to be valid. It was urged from the Deed of Family Arrangement itself that the parties intended the right, title and interest of Khem Chand Khowala and Mahesh Kumar Khowala to pass to Satya Narayan Khowala by virtue of the said deed. It was submitted that the entire story as set out in the Deed of Family Arrangement had been carefully prepared in order to avoid the restrictions imposed by Clauses 7 & 8 of the registered deed of lease dated 10th December, 1986. It was submitted that in the absence of any valid transfer of interest from Khem Chand Khowala and Mahesh Kumar Khowala to Satya Narayan Khowala, the latter had no right to bequeath the interest in the entire plot to the writ petitioner and her two sisters-in-law and that the authorities had rightly refused to mutate the names of the legatees under the Will of Satya Narayan Khowala in respect of the entire plot.

11. It was submitted that the learned Single Judge had erred in giving a direction to the respondents to effect such mutation and the judgment and order of the learned Single Judge was liable to be set aside.

12. Appearing for the writ petition-respondent No. 1 Mr. Sakti Nath Mukherjee tried to convince us that the entire transaction had been undertaken within legal bounds and the judgment and order of the learned Single Judge did not, therefore, call for any interference. It was urged by Mr. Mukherjee that since Clause 9 of the deed of lease permitted intra-party transfer, no separate permission was required to be taken from the authorities of the State Government, before the two sons of Satya Narayan Khowala agreed that their shares in the leasehold property would stand vested in their father on account of the arrangement arrived at between them in respect of repayment of loan taken to construct building on the plot in question. Mr. Mukherjee submitted that once such a position was accepted, the non-registration of the Deed of Family Arrangement could not and/or did not stand in the way of the right, title and interest of Khem Chand Khowala, and Mahesh Kumar Khowala from vesting in Satya Narayan Khowala, so as to enable him to bequeath the interest in the entire plot in favour of the writ petitioner and her two sisters-in-law. Mr.

Mukherjee urged that since the Will did not require any registration and had, in fact, been presented for probate and had also been probated, by virtue of the acceptance of the Will as genuine the interest in the plot had passed fully to the writ petitioner and her two sisters-in-law. According to Mr. Mukherjee, the only person who could have objected to the execution and subsequent probate of the Will was Khem Chand Khowala who was, on the other hand, an attesting witness to the Will and had also been cited in the application for grant of probate. Since no objection had been raised by Khem Chand Khowala and Mahesh Kumar Khowala having died in the meantime on 21st October, 1996, there could really be no objection to the grant of mutation in favour of the legatees to the Will.

13. Looking at the matter from another angle, Mr. Sakti Nath Mukherjee urged that even if it was to be held that perfection of the title in favour of Satya Narayan Khowala to the entire plot remained inchoate, he was competent to transfer by way of a Will his share in the leasehold plot and since the other joint lessees did not object to the bequest under the Will, it must be deemed that they had nominated the writ petitioner and her two sisters-in-law to become the lessees in respect of the entire leasehold plot.

14. Mr. Mukherjee submitted that the judgment of the learned Single Judge had taken note of all the above factors and did not, therefore, require any interference in the instant appeal.

15. We have carefully considered the submissions made on behalf of the respective parties. On behalf of the appellant several decisions have been cited with which there can be no disagreement and they are not required to be dealt with separately. The ratios of the decisions cited on behalf of the appellant have not been disputed on behalf of the writ petitioner-respondent, but it has merely been submitted that the same have no application in the facts of the instant case.

16. We are merely required to consider whether by virtue of the Deed of Family Arrangement the right, title and interest of the two sons of Satya Narayan Khowala had, in fact, vested in Satya Narayan Khowala or whether the same was merely a document recording the arrangements arrived at earlier between the parties. From the document itself it appears to us that it was intended that the interests of Khem Chand Khowala and Mahesh Kumar Khowala were to pass to their father, Satya Narayan Khowala, on the basis of the said Deed of Family Arrangement and the same would be evident from the case made out in the writ petition in paragraph 4 wherein it has been stated that by a Deed of Family Arrangement, made on 1st February, 1996 between late Satya Narayan Khowala and his two sons, it was agreed that the leasehold land with the building constructed thereupon would stand transferred and allotted to late Satya Narayan Khowala exclusively. In fact, mention has been made in the said paragraph that the sons had thereby relinquished their right, title and interest in the said land. Such document, in our view, did require registration as per the provisions of Section 17 of the Indian Registration Act and since the same had not been registered, the same could not be a valid Deed of Transfer to vest the

interests of the two sons of Satya Narayan Khowala in the said plot in their father.

17. In the absence of any registered Deed of Transfer of their interests in favour of Satya Narayan Khowala, the right, title and interest of the two sons continued in the said plot and, in our view, Satya Narayan Khowala did not, therefore, have the right to bequeath the interest in the entire plot in favour of the writ petitioner and her two sisters-in-law. We are also of the view that the learned Single Judge erred in law in holding that the intra-party transfer between the joint lessees could be effected only by exchange of letters, since, in our view, the same would be hit by the provisions of Section 17 of the aforesaid Act. We are also not in a position to accept the second limb of the argument advanced by Mr. Sakti Nath Mukherjee, since, in our view, nomination could only be made in terms of the provisions of the lease deed by the heirs of one of the joint lessees, so that the interest of the said joint lessee could be confined to one of his heirs only.

18. Having regard to the above, the appeal succeeds and the judgment and order of the learned Single Judge dated 23rd September, 2003 is set aside.

19. There will, however, be no order as to costs.

20. Let xeroxed certified copies of this judgment and order be made available to the parties on urgent basis, if applied for, upon payment of usual charges.

21. All parties concerned, including the concerned department, are to act on a xeroxed signed copy of the operative portion of this judgment and order on the usual undertaking.

Asit Kumar Bisi, J.

22. I agree.