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(2001) 01 DEL CK 0073

In the Delhi High Court

Case No : Regular Second Appeal No. 30 of 1999 and CM 1135 of 1999

Union of India APPELLANT

Vs

Sheila Rani @ Sita Devi RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2001) 01 DEL CK 0073

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Shankar Divate, for the Appellant; R.K. Ahuja, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mahajan, J.—On 1st November, 1999 while admitting the appeal, the Court had framed the following substantial question of law that arose for consideration in the present case:

"Whether a legal heir can claim transfer of vending contract as of right on the basis of some policy of the Government when the agreement of vending contract contains a specific clause of determination of contract on the death of the licensee?"

2. A few facts relevant for deciding this appeal are:

That w.e.f. 1st July, 1991 one Smt. Jamna Devi was granted the license to supply and vend the tea and sweet met articles through two stalls and one trolley to the traveling public in the waiting halls and on the platform of Delhi-Shahdara Railway Station. Formal agreement was entered into between the parties on 21st September, 1992 and it was specifically stated therein that the license was for a period of 5 years commencing from 1st July, 1991. The licensee expired on 13th June, 1993 and on her death the appellant took possession of the stalls and the trolley on the ground that the legal heirs of the licensee were not entitled to continue selling tea and other articles by virtue of the license granted in favor of the deceased Smt. Jamna Devi.

3. The plaintiff who is the daughter of the deceased alleging herself to be the legal heir of the deceased applied for transfer of the license in her name on the ground that as per circular dated 6th January, 1992 issued by the Northern Railway, after the death of the licensee, the license could be transferred in the name of the legal heirs for he unexpired period of the agreement. Since the appellant did not agree to the request of the plaintiff-respondent and had sealed the tea stall at the platform of the railway, station, the present suit was filed for a decree of declaration,, mandatory injunction directing the defendant/appellant to remove the seal from the tea-stall and the trolley at the Shahdara Railway Station and also to transfer possession of the same to the plaintiff respondent for the unexpired period of the license.

4. The suit was contested by the appellant. One of the objections taken by the appellant was that under the agreement the license came to an end on the death of the licensee and the same could not be transferred to anyone else. It is also stated in the written statement that the policy dated 6th January, 1992 reliance upon which had been placed by the respondent/plaintiff was not applicable to her and under the old policy, the license could not be transferred to the plaintiff. It was also the case of the appellant that under the old policy certain eligibility conditions were provided for transfer of license to the legal heirs of the deceased and the plaintiff being not one of those persons to whom the eligibility conditions applied she was not entitled to the transfer of license in her favor for the unexpired period of the contract. On these pleas being taken, the Court framed the following issues:

(1) Whether the plaintiff is entitled to the relief of declaration and the relief of injunction as prayed? OPP

(2) Whether the suit is hit by Section 80 CPC?

(3) Whether the plaintiff is sound to file the present suit?

(4) Whether the suit is maintainable in its present form or not, in view of objection No. 3 and 4 of the WS?

(5) Whether this Court has jurisdiction or not? OPD

(6) Whether the plaintiff has suppressed the facts and has become hereby disentitled to relief? OPD

5. The learned Trial Court after recording evidence and hearing the parties was of the view that the plaintiff was not entitled to any relief claimed in the suit. As she was Not covered by the policy of the Northern Railway, suit of the plaintiff was, Therefore, dismissed by the learned Trial Court.

6. Being aggrieved by the judgment and decree of the learned Trial Court the plaintiff-respondent filed an appeal before the Senior Civil Judge. The learned Senior Civil Judge allowed the appeal after holding that in the policy of 6th

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January, 1992 it was specifically provided that in the event of the death of the licensee, the license can be transferred in the name of the legal heirs of the deceased for the unexpired period of the agreement. It was Therefore held by the Trial Court that since this policy was subsequent to the policy of 1982, which had been superseded, it would prevail over the 1982 policy and the plaintiff was entitled to the transfer of license for the unexpired period of the contract. The Appellant Court, Therefore set aside the judgment and decree of the Trial Court and passed a decree in favor of the plaintiff directing the appellant to transfer the license in her favor and to hand over possession of the stalls and trolleys at the Shahdara Railway Station to her. The present appeal thereafter filed by the defendants for setting aside the judgment and decree of the first Appellate Court.

7. To appreciate the rival contention of the parties, it will be useful to refer to the policies of 1982 and 1992 as well as the agreement entered into between the parties on 21st September, 1992. The 1982 policy provided that if the licensee died during the continuation of the license, the license shall cease and determined and the legal representatives of the deceased licensee shall have no interest therein. By a letter dated 18th July, 1982 the appellant issued a clarification that in certain cases the license may be transferred to the legal heirs. It was stated in that letter that the basic objective under lying the policy of transfer of the license to the legal heirs of the deceased licensee ws to save the bereaved family of the contractor from being thrown into a state sudan financial difficulties and as such the main criteria for such transfer should be decided on the basis of time circumstances of the bereaved family. Apart from the eligibility conditions for transfer, an order of preference for such transfer, according to the policy was, (i) to the widow/widower; (ii) sons including adopted sons; and then (iii) to unmarried or widow daughters and finally to the (iv) widow daughter- in-law who was dependent on the deceased. Married daughters and daughters-in-law of the deceased contractors, with their husband alive and employed, were specifically made not eligible for transfer of license in their favor. It is thus clear from a reading of 1982 policy that the plaintiff who was not only married but was also not dependent upon the deceased was not eligible for transfer of the license in her favor.

8. Under the 1992 policy, a policy decision was taken by the Government for management of the entire catering/vending service on the Indian Railways by the private sector and in supersession of all the previous instructions on the subject, it was decided that catering/vending licenses should be awarded by inviting applications only from the professional and reputed caterers through press advertisements. It was further decided that while awarding the vending contract/licensee to the vendors, the factors regarding their reputation/business standing of the applicant his turn over, if any, catering experience, financial standing, size of the establishment, location of the Unit and any other factor considered relevant by the screening Committee will be taken into consideration. The emphasise of the Government, Therefore, was upon the fact that persons who had catering experience should only be granted license so as to provided

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quality service to the general public. It was also provided in this policy that in the event of the death of the licensee the license can be transferred in the name of the legal heirs in the unexpired period of the agreement. It is on the basis of this policy that the plaintiff was staking her claim for awarding the license in her favor.

9. As already stated under the agreement it was specifically provided that in case the licensee died during the continuation of the agreement, the agreement shall absolutely cease and determined and the heirs, executors or administrators of the licensee shall have no interest under the agreement. From a reading of the agreement as well as of the 1982 policy, it is clear that plaintiff who was married and living with her husband was not entitled to the transfer of license in her favor. Even assuming that the license could be transferred, the same could be transferred only in favor of an unmarried/widow daughter. Under the old policy, Therefore, the plaintiff was not entitled to any relief in the suit. Since the license was granted at a time when 1982 policy was in existence, in my opinion, the plaintiff cannot take advantage of the policy of 1992.

10. Even assuming that the plaintiff could take advantage of the 1992 policy, the plaintiff was still not entitled to the transfer of license n her favor for the unexpired period of the license. Under the 1992 policy a policy decision had been taken by the Government to grant catering/vending contract to persons who had catering experience. The object was to induct persons of repute or expertise to ensure improved quality of catering to the passengers. Admittedly the plaintiff did not have any catering experience. Therefore, even assuming that the petitioner could take benefit of policy of the 6th January, 1992, the license could still not awarded for the unexpired period of license as she had no experience of catering. In any case the license was valid up to 30th June, 1996. The period having already expired, in my view no, directions could be given by the Courts to the appellant to grant license to the plaintiff for the period for which even the deceased was not entitled to license. Looking from any angle in my view, the plaintiff was not entitled to any relief in the suit. The learned first Appellate Court has, Therefore erred in interpreting the 1992 policy and has wrongly passed a decree in favor of the plaintiff.

11. For the foregoing reasons, the appellant succeeds in this appeal. The appeal is accordingly allowed and the suit of the plaintiff is consequently dismissed with no order as to costs.

12. Appeal allowed.

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