

**(2025) 01 CAL CK 0091**

**Calcutta High Court (Appellate Side)**

**Case No:** F.A. No.248 of 2008 With CAN 2 of 2011

Smt. Dipali Rani Sett and Another

APPELLANT

Vs

Uma Rani Sett and Others

RESPONDENT

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**Date of Decision:** Jan. 30, 2025

**Hon'ble Judges:** Sabyasachi Bhattacharyya, J; Uday Kumar, J

**Bench:** Division Bench

**Advocate:** Dyutiman Banerjee, Pinaki Brata Ghosh, Abhinaba Roy, H. Banerjee, A. B. Raut, C. B. Biswas

**Final Decision:** Disposed Of

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### **Judgement**

Sabyasachi Bhattacharyya, J

1. The present appeal has been preferred against a judgment declaring the shares of the parties in the estate of one Sushil Kumar Sett, since deceased, primarily comprised of the shares in different companies standing in the name of the said Sushil Kumar Sett.

2. The brief background of the case is that initially the present appellants had filed an application for obtaining a succession certificate, dividing the subject property of the said proceeding into five schedules, namely Schedules A, B, C, D and E. Insofar as the Schedules C, D and E are concerned, the plaintiffs/respondents herein conceded to the exclusive title of the present appellants to the said properties.

3. However, insofar as the property (primarily shares of Sushil Kumar Sett in different companies) covered by Schedules A and B of the succession certificate application is concerned, it was an admitted position that the present defendants/appellants were entitled only to 1/6th share therein whereas the plaintiffs had 5/6th share.

4. The succession certificate was granted accordingly, granting exclusive interest/title of the defendants/appellants in Schedules C, D and E whereas only 1/6th interest of the defendants/appellants was granted in respect of the Schedules A and B properties.
5. However, after the said chapter was closed, about two decades later, the defendants/appellants reopened the issue by applying for grant of an extended succession certificate. Without notice to or any hearing being given to the present plaintiffs/respondents, such extended succession certificate was granted, now in respect of Schedules A and B properties also.
6. Naturally, the plaintiffs/respondents sought a revocation of the same which failed on technical grounds, since revocation of a succession certificate is not specifically provided for in the Indian Succession Act and also as in the opinion of the court, questions relating to title cannot be gone into in a proceeding for revocation of a succession certificate.
7. The plaintiffs then filed a suit seeking declaration of their title to the extent of 5/6th share in the properties (primarily shares standing in the name of Sushil) comprised of the subject matter of the extended succession certificate, which corresponds to the Schedules A and B of the original succession certificate application.
8. The said suit was dismissed on contest. An appeal was preferred by the plaintiffs/respondents herein, which culminated in a judgment and order of remand being passed.
9. The present chapter of the dispute starts thereafter.
10. The learned Trial Judge, in consonance with the remand order, permitted the parties to lead evidence. However, it is the plaintiffs/respondents alone, and not the defendants/appellants, who led further evidence. Several documents were exhibited by the plaintiffs/respondents after remand. The learned Trial Judge, after going through those and hearing the parties, adjudicated the suit after remand, thereby declaring 5/6th share of the plaintiffs in respect of the suit property which was the subject matter of the extended succession certificate and 1/6th share of the defendants.
11. Learned Counsel appearing for the appellants contends that the learned Trial Judge did not adhere to the points on which the matter was remanded and rather acted without jurisdiction in going contrary to the same by re-deciding certain issues which were already decided finally by the appellate court and taking into consideration certain extraneous factors which were not a part of the remand order.
12. In support of his submission that it is beyond the power of the trial court on remand to go beyond the remand order, learned Counsel cites Shivshankara and Anr. Vs. H. P. Vedavyasa Char reported at (2023) 13 SCC 1. Particularly placing reliance on Paragraph 13 of the said judgment, learned Counsel argues that the court to which the case is remanded has to comply with the order of remand and acting contrary to the order of remand is contrary to law. In other words, it was held, an order of remand has to be followed in its true spirit.

13. It is submitted by learned Counsel for the appellants that no evidence was led by the parties by summoning the concerned companies whose shares were the subject matter of the dispute for the purpose of showing the strength of the disputed shares and which of the shares stand transferred in the name of Swarup Bikash Sett, the predecessor-in-interest of the defendants, and which of them still stand in the name of the original owner Sushil Kumar Sett.

14. As such, it is submitted that the impugned judgment and decree does not stipulate the exact ownership of the shares for which it is bad in law and contrary to the remand order. Accordingly, it is submitted that the appeal may be allowed and the impugned judgment and decree be set aside.

15. Learned Senior Counsel appearing for the plaintiffs/respondents takes the court through several documents which were exhibited by the plaintiffs/respondents before the learned Trial Judge after the order of remand. Learned Senior Counsel contends that from such elaborate evidence, regarding which no counter suggestions were put in cross-examination by the defendants/appellants, it is amply clear that the money derived from the estate of Late Sushil Kumar Sett was usurped and appropriated by Swarup Bikash Sett by purchasing shares and other properties.

16. It is pointed out that bank statements, cheque counterparts, slip books, passbooks and counterfoils of dividend confirmation letters of various companies have been produced after remand on the part of plaintiffs/respondents to show that Swarup Bikash Sett has paid estate duty showing that his estate comprises also of the shares which stood originally in the name of Sushil Kumar Sett, thereby indicating that the shares have for all practical purposes being transferred in the name of Swarup Bikash Sett.

17. It is thus submitted that the defendants/appellants did not adduce any evidence and cannot now be heard on the issue that the remand order was not complied with by the learned Trial Judge; rather, it is the plaintiffs who satisfied the remand order by leading substantive evidence, on the basis of which the impugned judgment and decree were passed.

18. Upon hearing learned Counsel, we find that a glance at the salient points of remand in the judgment of remand of this court dated December 9, 2005, which is the crux of the present consideration, are required to be looked into.

19. Before going into such endeavour, we are to observe that the shares of the parties in the subject matter of the dispute was clearly and finally decided by the learned appellate court in its remand order itself and cannot now be reopened. In the said judgment of remand, the Division Bench held that the plaintiffs are entitled to get 5/6th share of money already realized by Swarup Bikash Sett by virtue of the succession certificate granted in his favour as nothing has been paid to them.

20. The Division Bench further found that the finding of the learned Trial Judge that the 5/6th share of the plaintiffs realized by Swarup Bikash Sett was paid after granting a receipt is a perverse finding of fact and no reasonable man could come to such conclusion from the materials on record. The Division Bench further held that it is now settled law that mere grant of succession certificate in favour of a co-sharer does not vest such co-sharer with the title of the property and it is the duty of the certificate holder to distribute the assets to the heirs in accordance with their shares. In furtherance of such ratio, the Division Bench, in the remand order, also concluded that it had decided the issue as regards the share of the plaintiffs in Sushil Kumar Sett's property to the extent of 5/6th

share and further held that neither Swarup Bikash Sett nor his heirs have paid anything to the plaintiffs after realization of the amount, if any, on the basis of the succession certificate granted in his favour and the court will proceed on the basis of such findings.

21. Thus, the entitlement of the plaintiffs to 5/6th share not only in the shares which are the subject matter of the suit but also in the amount of money already realized by Swarup Bikash Sett, the predecessor-in-interest of the defendants/appellants, by virtue of succession certificate was declared by the appellate court and it was held that so long such amount is not paid to the plaintiffs, the said amount will remain charged over the assets of Swarup Bikash Sett.

22. The limited framework of remand as reflected in the remand order itself is whether the original shares held in companies by Sushil Kumar Sett were really transferred in the name of Swarup Bikash Sett. The other aspect was that the actual amount of money realized by Swarup Bikash Sett by virtue of succession certificate was not brought to the notice of the court.

23. It was observed by the appellate court while remanding the matter that it found from the record that sufficient evidence had not been adduced at the time of hearing as to the exact number of shares and securities held either in the name of Sushil Kumar Sett or Swarup Bikash Sett and the learned Trial Judge did not come to a definite conclusion whether those shares were really transferred in the name of Swarup Bikash Sett or were still appearing in the name of Sushil Kumar Sett.

24. The other aspect of the remand order was that it observed that the parties were free to summon the concerned companies where the shares are lying for the purpose of showing the strength of the disputed shares as it stood on that date and if it appeared to the court on the basis of such evidence that the original shares of Sushil Kumar Sett are still continuing in his name and that those were not transferred in the name of Swarup Bikash Sett pursuant to the succession certificate granted in his favour, the court would declare 5/6th share of the plaintiffs and 1/6th of the defendants in those shares. The appellate court further held that if it appeared that any new share was purchased in the name of Swarup Bikash Sett and the same was not in continuation of the original one standing in the name of Sushil nor is such share a bonus share or right issue arising out of the shares standing in the name of Sushil nor was such share even purchased at a premium on the basis of the benefit conferred on the share standing in the name of Sushil, the plaintiffs will not have right in those shares. However, the plaintiffs would be entitled to 5/6th share of the amount of money already realized by Swarup by virtue of succession certificate.

25. Thus, the conspectus of the remand order was to ascertain two aspects of the matter - first, whether the original shares standing in the name of Sushil Kumar Sett have been transferred in the name of Swarup Bikash Sett and, if so, to what extent; secondly, what was the amount of money actually realized by Swarup Bikash Sett by virtue of the succession certificate granted in his favour.

26. Before the trial court after the remand, the plaintiffs/respondents led substantive evidence to establish by bank accounts, dividend certificates and several other documents, to show that Swarup Bikash Sett had derived substantial income from the estate of Sushil Kumar Sett by dint of the extended succession certificate.

27. Although no specific transfer certificate was produced, nor were the respective companies, whose shares were the subject matter of the suit, summoned for the purpose of proving as to how much of the shares were transferred in the name of Swarup Bikash Sett, we find from the evidence adduced after the remand before the court below that Swarup Bikash Sett has been shown to pay estate duty by reflecting the subject shares as part of his estate.

28. The purpose of the remand was primarily to ascertain how many of the subject shares in the companies still stand in the name of Sushil Kumar Sett and how many of those have been transferred in the name of Swarup Bikash Sett. Regarding the former, the appellate court had already declared the 5/6th share of the plaintiffs/respondents and 1/6th share of the defendants/appellants. Regarding the latter, the shares of the parties would stand in the same ratio, unless it was proved that such new shares purchased in the name of Swarup are not in continuation of the original ones standing in the name of Sushil, nor are such shares bonus shares or right issue arising out of the shares standing in the name of Sushil, nor purchased at a premium on the basis of the benefit conferred on the shares standing in the name of Sushil, in which case the plaintiffs would not have any right in those shares.

29. Hence, by default, the plaintiffs would have 5/6th share in the shares standing in the name of Sushil as well as those standing in the name of Swarup and the onus lay on the defendants/appellants to show that such new shares purchased in the name of Swarup were not financed by the usufructs or benefits of the original shares standing in the name of Sushil in any manner. If the defendants/appellants were able to prove that such new purchases were from financial sources independent of the premium, income, or benefits derived from Sushil's shares, the plaintiffs would not have any right thereto.

30. However, after remand, the defendants/appellants chose not to adduce any evidence, either by summoning the respective companies or otherwise, for the purpose of showing the strength of the disputed shares as those stand currently and/or to prove that the purchase of new shares and properties in the name of Swarup Bikash Sett were not in continuation of the original ones standing in the name of Sushil, nor are such shares bonus shares or rights issue arising out of the shares standing in the name of Sushil, nor purchased at a premium on the basis of the benefits conferred on the shares standing in the name of Sushil.

31. Also, the defendants/appellants have not adduced evidence to establish that Swarup Bikash purchased new shares and properties from his independent income and not from the benefits conferred and income derived from the shares of Sushil. On the contrary, the plaintiffs/respondents have produced several documents and adduced evidence after remand to trace the monetary trail of Swarup's purchase/acquisition of new shares and/or properties to the income derived from Sushil's original shares.

32. As such, an adverse inference has to be drawn against the defendants/appellants to the effect that the new shares and properties purchased/acquired in the name of Swarup were all derived from the income and benefits conferred by Sushil's original shares.

33. Swarup paid estate duty by showing the original shares standing in the name of Sushil as part of his estate, which is borne out by documentary evidence produced by the plaintiffs/respondents post-remand.

34. Substantial documentary evidence has also been led by the plaintiffs/respondents to present sufficient materials before the learned Trial Judge regarding the amount of money actually realized by Swarup Bikash Sett by virtue of the succession certificate granted in his favour.

35. The appellate court, in its remand order, had directed the amount of money so realized by Swarup by virtue of the succession certificate (obviously referring to the extended succession certificate, which was the subject-matter of dispute in the suit) to be paid to the plaintiffs/respondents and that so long such amount is not paid to the plaintiffs, the said amount will remain charged over the assets of Swarup Bikash Sett.

36. However, the learned Trial Judge fell short in quantifying the amount of money realized by Swarup by virtue of the extended succession certificate and to direct payment of the same to the plaintiffs/respondents. Instead, the trial court merely reiterated the declaration of the respective shares of the parties, which was already conclusively decided by the appellate court in the remand order itself.

37. In fact, what this court fails to understand is how the defendants/appellants were aggrieved by such failure on the part of the trial court to give full effect to the remand order; rather, it should have been the plaintiffs/respondents who ought to have preferred an appeal, since the money realized by Swarup by virtue of the extended succession certificate was not quantified and directed to be paid to the plaintiffs, in the process rendering toothless the appellate court's direction that the said amount should be charged on the assets of Swarup Bikash, till paid to the plaintiffs.

38. Although no independent appeal or cross-objection has been preferred by the plaintiffs/respondents against the impugned judgment and decree of the trial court, this Court, under exercise of its powers under Order XLI Rule 33 of the Code of Civil Procedure, may pass such further or other decree as the case may require, which power may be exercised in favour of all or any of the respondents, although such respondents may not have filed any appeal or objection.

39. Hence, in the facts and circumstances of the case, we are of the considered opinion that in order to give full effect to the remand order, the learned Trial Judge was required to quantify the amount of money realized by Swarup by virtue of the extended succession certificate, to direct the same to be paid to the plaintiffs/respondents, and till then direct the said amount to be set apart or charged on the assets of Swarup.

40. In view of the above observations, F.A. No.248 of 2008 is disposed of by modifying the impugned judgment and decree dated April 5, 2008 passed by the learned Judge, Third Bench, City Civil Court at Calcutta in Title Suit No. 2369 of 1997 to the extent that the learned Trial Judge shall, in addition to the reliefs granted by it, quantify the amount of money realized by Swarup Bikash Sett by virtue of the extended succession certificate on the basis of the evidence already on record and direct it to be paid to the plaintiffs/respondents. Till such payment is made, the learned Trial Judge shall pass appropriate directions for the said amount to be set apart and/or for charging the assets of Swarup Bikash to the extent of such sum. If necessary, in the event the money available in the estate of Swarup is not sufficient to meet such payment to the plaintiffs/respondents, the learned Trial Judge shall pass appropriate directions of attachment and sale of the assets of Swarup Bikash Sett to the extent necessary for meeting the shortfall amount and direct the said amount to be paid to the plaintiffs/respondents.

41. Accordingly, the matter is remanded to the learned Trial Judge for the limited purpose as indicated in the above paragraph, however, without interfering in any manner with the reliefs already granted in the impugned judgment and decree.

42. In view of the inordinate span of time already elapsed in litigation between the parties, the learned Trial Judge is requested to complete such exercise as expeditiously as the business of the court permits, preferably within six months from the date of communication of this order to the trial court.

43. Interim orders, if any, stand hereby vacated.

44. There will be no order as to costs.

45. CAN 2 of 2011 (Old No: CAN 4564 of 2011) also stands disposed of.