

(2013) 04 CAL CK 0007

Calcutta High Court

Case No: A.P.O. No. 173 of 2012, P and A. Suit No. 1736 of 1959, A.P.O. No. 354 of 2012, P and A. Suit No. 1736 of 1959 and EOS No. 7 of 2005

Radha Bagree

APPELLANT

Vs

Ghanshyam Bagree
 In Re:
A Will of Gopal Das Bagree
(Deceased) and Krishna Kumar
Kothari

RESPONDENT

Date of Decision: April 12, 2013**Citation:** (2013) 4 CHN 463**Hon'ble Judges:** Mrinal Kanti Chaudhuri, J; Ashim Kumar Banerjee, J**Bench:** Division Bench

Advocate: Amitava Das and Tapan Kumar Seal, Gour Ray Choudhuri, Mainak Bose, Sourav Kumar Mukherjee, Aruna Dutta and Arindam Lahiri for Radha Bagree and Varun Raj Bagree in APO No. 173 of 2012, Sailendra Nath Dutta, Samrat Sen, Puma Chandra Pal Chowdhury, As Administrator of the estate of Gopal Das, Indranath Mukherjee, D.K. Bhattacharjee, Bagree and Party in Person in APO No. 354/12 for Executor, for the Appellant;

Judgement

Ashim Kumar Banerjee, J.

BACKDROP:

1. One Ghanshyam Das Bagree and others filed a partition suit in 1959 inter-alia praying for partition of the family properties belonging to Bagree family. The learned single Judge passed a preliminary decree on May 7, 1965. Some of the parties died during pendency of the suit thus changing the share ratio of the surviving parties. Ultimately the properties would belong to seven groups being four sons and three daughters of late Sugan Chand Bagree. The joint receivers appointed in the suit were authorized to sell the family properties that were agreed to be sold. The present appeal would principally relate to a controversy with regard to 170 shares belonging to Krishna Kumar Bagree, the son of Girdhar Das Bagree

belonging to Narsing Das group. Krishna Kumar died on November 15, 2009 leaving behind his widow and only son Varun Raj. The Appeal No. 173 of 2012 was filed by Radha Bagree the widow and Varun Raj the only son of Krishna Kumar against the judgement and order dated November 18, 2011 appearing at page 130-141 of the paper book. The second appeal would relate to Gopal Das branch, another son of Sugan Chand who also died leaving a Will that is awaiting adjudication. Gopal Das died on May 31, 2003 leaving behind his widow Goura Devi who also died on July 29, 2012. An application was made by one Nikhil Nischal Bagree claiming to be the adopted son of Gopal Das that was under challenge. The learned Single Judge appointed. Mr. Samrat Sen as administrator over the estate of Gopal Das Bagree. The second appeal being APO No. 354 of 2012 was pursued by Mr. Sen as Administrator that would relate to the same judgment and order dated November 18, 2011 initially appealed by the executor to the Will of Gopal Das. We heard both the appeals on the above mentioned dates. Since both the appeals would relate to a common judgment and order dated November 18, 2011, we intend to dispose of the same by this common judgment.

CONTENTIONS:

Mr. Sourav Mukherjee learned Counsel advanced his argument on behalf of the appellants in APO No. 173 of 2012. Mr. Mukherjee would contend, Krishna Kumar admittedly owned 170 shares that could not be disposed of by the Joint Receivers. At best, the Joint Receivers could make a money claim for the said shares at the rate of Rs. 1500 per share as agreed by between the parties so recorded in the Terms of Settlement. Pertinent to note, the parties entered into settlement in 1974 when a proceeding initiated u/s 397 and 398 of the Companies Act, 1956 relating to Bagree Estate Private Limited was settled. Clause 4 and 6 being relevant herein are quoted below:

The Company shall pay corporation rates and taxes of the premises No. 54, Ezra Street, Calcutta both owners" and occupiers" shares thereof including the arrears thereof upto March 31, 1974 and the petitioners shall have no liability whatsoever for the same, the company shall also hand over all papers, documents and briefs relating to any suits and proceedings in respect of the said premises No. 54, Ezra Street, Calcutta to be petitioners forthwith and shall take appropriate steps for substitution of the petitioners in its place in any pending proceedings either in any Court of Law or elsewhere before any authority or authorities with prior intimation to the petitioners." "The petitioner shall also transferred and/or surrender and assign their respective right, title and interest which they will have in the shareholding or Sugan Chand Bagree, deceased in the company either in case of intestacy or under any will of Sugan Chand Bagree, deceased, if there be any to Kishandas Bagree and Gridhar Das Bagree upon receipt of the price of those shares calculated at the rate of Rs. 1,500/- (Rupees One Thousand Five Hundred only)per share.

2. As per Clause 6 quoted (supra) the shareholding of Sughan Chand would automatically go to Kishan Das Bagree and Girdhar Das Bagree at the price calculated at the rate of Rs. 1,500 per share. Radha and Varun Raj thus became 50% owner of the said shares belonging to Girdhar Das branch. Sri Gour Ray Choudhuri learned Counsel appearing for Mohanlal Bagree belonging to the other group Kishan Das Bagree supported his claim. According to Mr. Ray Choudhuri, the articles and association of the Bagree Estate Private Limited would not permit any stranger to be a shareholder of the company. Mr. Mukherjee further contended, the Terms of Settlement as agreed upon particularly Clause 4 would relate to 54, Ezra Street, Calcutta that went in favour of the other group being the petitioners in the section 397 proceeding, belonging to Gordhan Das Bagree group. In terms of Clause 4, Gordhan Das Bagree became the owner of 54, Ezra Street, whereas the share which the Gordhan Das group got from Sughan Chand as his heir, should be transferred to Kishan Das group and Girdhar Das group. Hence 170 shares belonging to Bagree Estate Private Limited should not be sold and in any event, the female branch being the daughters and their heirs could not have any say in the matter. Mr. Ray Choudhuri adopted the argument by Mr. Mukherjee on this issue.

3. Per contra, Mr. Mainak Bose the learned Counsel representing the Gordhan Das group contended, the Terms of Settlement so recorded in the Section 397 proceeding was performed in part and the parties subsequently deviated from the same and agreed to have all shares sold by the Joint Receivers and the proceeds distributed amongst the parties according to their respective share. He referred to the minutes of the meeting held by the Joint Receivers to show Krishna Kumar during his life time agreed to have the 170 shares sold. Subsequently Jamini Devi, the widow died and her 50 shares would also come to the hotchpot. No step was taken to sell the shares. Hence, direction was necessary to dispose of the same at the earliest. The learned Judge was right in giving such direction. He referred to the affidavit of Krishna Kumar filed in the proceeding during his life time particularly paragraph 6(q) which is quoted below:

I respectfully submit that the shares in Bagree Estate Private Limited registered in the name of late Sughan Chand Bagree and late Jamini Devi Bagree be kindly distributed among the parties according to the shares they are entitled to.

4. We also find in the said affidavit, Krishna Kumar alleged, no step was taken by the Joint Receivers to sell the shares. He would contend, by not selling the shares at the best available prices the parties have suffered considerable loss. According to him, the distribution of the shares was not possible in view of the huge number of claimants and sale was the effective remedy so that the parties would get the value of the shares according to their entitlement.

5. Mr. Samrat Sen learned administrator representing Gopal Das group would restrict his argument on stamp duty and jewellery. By the judgement and order impugned a sum of Rs. 28 lacs was set apart by the Joint Receivers out of which 9

lacs was on account of stamp duty in relation to a conveyance made in favour of Gopal Das. The said sum of Rs. 28 lacs accrued interest and the amount as of date would go to Rs. 46 lacs approximately. Hence, the learned Judge should have increased the amount of retention for the purpose of stamp duty instead of 9 lacs so directed to be set apart. With regard to jewellery Mr. Sen would contend, the jewellery Box was to be opened by the Joint Receivers. The Joint Receivers should open it and distribute the jewellery. We called Mr. Dipak Deb, one of the Joint Receivers who came and informed us, the jewellery box was opened and there could be hardly anything found except few coins that could not be of much value.

6. Mr. Amitava Das learned Counsel appeared for Nikhil Nischal Bagree claiming to be the adopted son of Goura Devi and Gopal Das. He would contend, since the adoption was under challenge and his entitlement was not decided, his right shall be preserved and he should also be permitted to take part in the auction sale in case we would permit sale of 170 shares.

7. Mr. Indranath Mukherjee, learned Counsel strenuously disputed the contention of Mr. Das. He would contend, the so-called adopted son could not have any say so long his claim was not established in the Court of Law.

8. Mr. Mukherjee in reply would contend, the female branch could not have any say in the matter. Hence the contentions raised by Mr. Mainak Bose should not be given any credence.

OUR VIEW:

9. We have carefully perused the judgment and order of the learned Single Judge. The issue in the first appeal would principally relate to 170 shares in Bagree Estate Private Limited. It is a private company limited by shares. It was closely held by the members of the Bagree family. Even if we ignore the submission of Mr. Ray Choudhuri that the outsiders were not entitled to be member, we do not feel it prudent to permit an open sale that would disturb the balance as well as the nature of the shareholding. At the same time we do not feel it proper to direct sale of shares to the other three groups being Kishan Das, Gopal Das and Girdhar Das at the rate of Rs. 1,500 per share that was agreed upon in 1974. The price so agreed upon in 1974 could not be the price in 2013. Mr. Mukherjee would blame the Girdhar Das group in delaying the transfer. We do not have any records hence, it would not be proper to accept such contention. We are in agreement with Mr. Mainak Bose that considering the numbers of the claimants, it would be difficult to direct 170 or 220 shares (taking 50 share of Jamini Devi) to be distributed amongst the parties. We thus feel, interest of justice would sub-serve if we direct the Joint Receivers to sell the shares by holding an auction amongst the parties to get the best possible price. However, the Joint Receivers after getting the best possible price in the auction, would give one more opportunity to the members of Kishan Das, Gopal Das and Girdhar Das group to purchase the said shares at the price so

achieved through private auction. We make it clear if more than one member would exercise such right of preemption the Joint Receivers would distribute the shares amongst them in equal share. The sale proceeds would, however, be distributed amongst the parties in the ratio as agreed upon and/or directed earlier that would dispose of the first appeal.

10. With regard to the second appeal, we modify the judgement and order impugned to the extent, Joint Receivers would set apart a sum of Rs. 12 lacs on account of stamp duty before making any disbursement. With regard to jewellery box, we do not find any scope to issue any direction in view of the submission made by Mr. Deb as recorded herein before.

11. The judgment and order impugned stands modified as above.

12. The appeals are disposed of accordingly without any order as to costs. Urgent certified copy of this judgment, if applied for, be given to the parties on their usual undertaking.

Mrinal Kanti Chaudhuri, J.

I agree.