

ITEM NO.103

COURT NO.11

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S).8129/2009

SYED MOHAMMED ABBAS ALI MEERZA

Appellant(s)

VERSUS

STATE OF WEST BENGAL & ORS.

Respondent(s)

(WITH APPLN. (S) FOR EXEMPTION FROM FILING O.T. AND DIRECTIONS AND PERMISSION TO FILE REJOINDER AFFIDAVIT AND INJUNCTION AND PERMISSION TO FILE ADDITIONAL AFFIDAVIT AND OFFICE REPORT)

WITH

C.A. NO. 8130/2009

(WITH OFFICE REPORT)

Date : 13/08/2014 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Appellant(s)

CA 8129/09

Mr. Jaideep Gupta, Sr. Adv.
Mr. G. S. Chatterjee, Adv.
Mr. Raja Chatterjee, Adv.
Ms. Runa Bhuyan, Adv.

CA 8130/09 & rr in

CA 8129/09

Mr. Subhodh Kumar Pathak, Adv.
Mr. Abhijeet Chatterjee, Adv.
Mr. Adil Alki, Adv.
Mr. Shashi Ranjan, Adv.
Mr. Dharmendra Kumar Sinha ,Adv.

For Respondent(s)

Mr. Anip Sachthey, Adv.
Mr. Shagun Matta, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal NO.8129 of 2009 is allowed and Civil Appeal No.8130 of 2009 is dismissed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[TAPAN KUMAR CHAKRABORTY]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.8129 OF 2009

SYED MOHAMMED ABBAS
ALI MEERZA . . . APPELLANT

VERSUS

STATE OF WEST BENGAL
& ORS. . . RESPONDENTS

WITH
CIVIL APPEAL NO.8130 OF 2009

AFSAN MEERZA & ORS. . . APPELLANTS

VERSUS

UNION OF INDIA & ORS. . . RESPONDENTS

ORDER

Both these appeals arise out of the judgment and order dated 30th June, 2006 passed by the High Court of Calcutta in F.M.A. No.2051 of 2003. A recital of the facts in Civil Appeal No.8129 of 2009 would suffice for the purpose of adjudication of both the appeals.

The impugned order passed by the High Court was on the basis of a remand made by this Court by its order dated 22nd February, 2000 in Civil Appeal No.1680 of 1994. As the case has a long and chequered history, the relevant facts can be conveniently recapitulated from the aforesaid order of this Court, the relevant part of which is extracted below:

"The great grandfather of Syed Fatyeb Ali Meerza (hereinafter referred to as ('the Writ Petitioner')) was the independent ruler of Bengal, Bihar and Orissa in the year 1891. With the advent of the British Rule he entered into an agreement on 12th March, 1891. According to the writ Petitioner as per his indenture the properties mentioned therein were to be enjoyed by the Nawab Bahadur and his heirs and successors in perpetuity. One change which was made was that instead being regarded as the Nawab Nazam of Bengal, Bihar and

Orissa he was to have the title of Nawab Nizam of Murshidabad. The first Nawab died in the year 1908 and he was succeeded by his elder son Wasif Ali Meerza.

In 1933 the management of the Estate of the Nawab of Murshidabad was taken over under the Murshidabad Estate Administration Act, 1933. According to the writ petitioner this management was assumed for and on behalf of the Nawab and for the benefit of the Murshidabad family.

The Second Nawab Wasif Ali Meerza died in the year 1959 and his eldest son Waris Ali Meerza succeeded him as the third Nawab of Murshidabad. This Nawab died in the year 1969. According to the writ petitioner the third Nawab did not leave any male heir who could legitimately succeed Waris Ali Meerza (the second Nawab of Murshidabad), he was therefore entitled to succeed and be recognized as Nawab Bahadur.

... ..

In the meantime Murshidabad Estate Trust Act, 1963 was enacted for the purpose of creation of a trust in respect of the properties enjoyed by the second Nawab of Murshidabad. This trust was created for the

benefit of his sons and daughters including the writ petitioner. For the purposes of this appeal we may only note that apart from right of residence in at least one of the properties of the second Nawab the writ petitioner was also entitled to receive a monthly sum from the income of the trust. This Act clearly stated that the allowances which were payable were heritable and one of the persons to whom this allowance was to be paid was Muzafar Jah Syed Sajid Ali Meerza. He was stated to be the son of the second Nawab by his wife by muta marriage.

Further difficulties for the Murshidabad family arose with the enactment of the Murshidabad Estate (Management of Properties) and Miscellaneous Provisions Act, 1980. Through the preamble of the act stated that it was to provide for the management of the properties of the Murshidabad Estate, what in fact it did was that by virtue of Section 3 of the said Act the properties of the Murshidabad Estate were transferred to the Government. Sub-section (2) of Section 3 provided that with the transfer of the said properties the State Government could take such steps as it considered necessary for securing the possession thereof.

The writ petitioner then filed a Petition under Article 226 of the Constitution of India before the Calcutta High Court, inter alia, challenging the validity of the 1980 Act.....

The Single Judge of the Calcutta High Court came to the conclusion, repelling the contention raised on behalf of the respondent, that the writ petitioner has a locus standi to file writ petition. Three sections, namely, Sections 10 and 12 were struck down and the writ petition was disposed of.

Both the writ petitioner as well as the State of West Bengal filed appeals before the Division Bench. By the impugned judgment dated 22nd December, 1992 the Division Bench has come to the conclusion that the writ petitioner had no locus standi to file the writ petition. It, therefore, did not go into the other contentions which had been raised in the appeal.

Syed Fateyab Ali Meerza then filed the present appeal before this Court by Special Leave. During the pendency of this appeal Syed Fateyab Ali Meerza died on 3rd January, 1998. Two applications have

been filed; one IA No.4 of 1998 by Sajid Ali Mirza and the other being IA No.5 of 1998 by Syed Mohammed Abbas Ali Meerza claiming the same relief of being substituted as the legal representative of Syed Fateyab Ali Meerza. Sajid Ali Meerza, the applicant in IA No.4 of 1998 is claiming to be the legal representative on the basis of being the son by muta marriage of the second Nawab, Wasif Ali Meerza. The applicant in IA No.5 of 1998, namely, Syed Mohammed Abbas Ali Meerza is claiming to be the legal representative on the basis of his being the son of the daughter of the second Nawab Wasif Ali Meerza.

As there is dispute between the two applicants as to who is entitled to become the legal representative of Syed Fateyab Ali Meerza, for the purposes of this appeal only we bring both of them on record as the legal representative of Syed Fateyab Ali Meerza, but this is subject to the outcome of any other proceedings including the decision by the High Court with regard to their status qua Syed Fateyab Ali Meerza. As far as this appeal is concerned their interest is not in conflict because both of them contend that

Syed Fateyab Ali Meerza had the locus standi to file the writ petition in the Calcutta High Court and the view of the Division Bench to the effect that Syed Fateyab Ali Meerza had no locus standi is not correct.

We have heard the learned counsel for the parties at length and it appears to us, without going into the contentions of merits raised in the writ petition, that Syed Fateyab Ali Meerza did have the locus standi to file the writ petition. It cannot be disputed that under the 1963 Act Syed Fateyab Ali Meerza was entitled to some benefit in his own right..... In as much as the 1980 Act affected the benefits which Syed Fateyab Ali Meerza was entitled to under the 1963 Act, he certainly had the locus standi to file the Writ Petition. The decision of the Calcutta High Court to the contrary in this regard is fallacious.

For the aforesaid reasons this Appeal is allowed, impugned judgment of the Calcutta High Court in F.M.A.T. No.484 of 1991 is set aside. The said appeal is restored to the file of the High Court. The High Court will now decide the said

Appeal afresh and will also decide as to who can be substituted as the legal representative in place of Syed Fateyab Ali Meerza.

There will be no order as to costs."

It would, thus, appear from the aforesaid order dated 22nd February, 2000 that what was required to be decided by the High Court in terms of the aforesaid order was whether the appellant in Civil Appeal No.8129 of 2009 - Syed Mohammed Abbas Ali Meerza or the legal heirs of the second claimant Sajid Ali Meerza (died in the meantime) who are appellants in Civil Appeal No.8130 of 2009 are the legal representatives of Syed Fateyab Ali Meerza, the original writ petitioner, who had challenged the validity of the Murshidabad Estate (Management of Properties) and Miscellaneous Premises Act, 1980 (West Bengal Act XV of 1980)

(for short "1980 Act") before the High Court. On the basis of the decision on the said question, the High Court thereafter was required to decide on the merits of the challenge as regards the validity of the aforesaid Act of 1980.

The High Court by the impugned judgment and order dated 30th June, 2006 took the view that both sets of claimants are not entitled to pursue the proceedings pending before the High Court insofar as the challenge to the 1980 Act is concerned and, therefore, the said proceeding had abated. In view of the aforesaid conclusion, the High Court had no occasion to go into the merits of the challenge as regards the validity of the 1980 Act. Aggrieved, the claimant - Syed Mohammed Abbas Ali Meerza and the legal heirs of the second claimant Sajid Ali Meerza have filed the two appeals that are before us.

Insofar as Civil Appeal No.8130 of 2009 filed by the legal heirs of second claimant Sajid Ali Meerza are concerned, the High Court came to the conclusion that the said heir had in the meantime died and was survived by his widow and two daughters. The question referred to the High Court for its decision did not call for an answer inasmuch as the right of succession as the Nawab of the Murshidabad Estate was required to be determined by the Law of Primogeniture, the eldest male of the eldest branch being preferred. This was in terms of the Deed of Indenture dated 12th March, 1891 which was affirmed by the Murshidabad Act of 1891. The said provision was not replaced or altered by any of the subsequent enactments made from time to time.

The High Court in the impugned order had also embarked upon an elaborate discussion on the meaning of the expression "Primogeniture" and concluded that "we are of the view that Primogeniture law of Succession as indicated in the Indenture in questions means exclusion of female and restricting the inheritance to the senior-most male member". In this regard, reliance was also placed on a decision of this Court in Dattatraya alias Prakash and others vs. Krishna Rao alia Lala Saheb Baxi Through Lrs and others [(1993) Suppl. (1) SCC 32]. Having considered the reasoning of the High Court, we are of the view that no error can be found either with regard to the meaning of the expression 'Primogeniture - Law of Succession' or with regard to the conclusions regarding the claim of the

legal heirs of Sajid Ali Meerza as made in Civil Appeal No.8130 of 2009. To buttress the contentions advanced in the aforesaid Civil Appeal, a feeble attempt has been made by the learned counsels to contend that the Law of Primogeniture will not govern the succession which has to be determined as per the Muslim Personal Law (Shia Law). In this regard, we have already noticed the terms of the original Deed of Indenture of 1891 and the position under the Statutory enactments that followed. Succession was required to be governed by the Law of Primogeniture and not by the Shia Muslim Law.

Coming to the claim of Syed Mohammed Abbas Ali Meerza who is the appellant in Civil Appeal No.8129 of 2009, we have noticed that the High Court understood the

said claim to have been made through the predeceased sister of the original writ petitioner i.e. Syed Fateyab Ali Meerza i.e. daughter of the second Nawab Syed Wasif Ali Meerza. This also appears to be basis of the claim earlier raised by the appellant before this Court in Civil Appeal No.1680 of 1994. Considering the claim of the appellant Syed Mohammed Abbas Ali Meerza on the said basis, the High Court took the view that the appellant Syed Mohammed Abbas Ali Meerza cannot claim inheritance as the Law of Primogeniture excludes the right of a female or any claim through a female heir. While no fault can be found with the said understanding, what cannot be ignored is the fact that the appellant Syed Mohammed Abbas Ali Meerza also had a claim as the

son of Syed Md. Sadeque Ali Meerza who
married the only daughter of the second
Nawab Syed Wasif Ali Meerza, the sister of
the original writ petitioner Syed Fateyab
Ali Meerza. This is evident from the
genealogical table, which forms part of
the order of the High Court. As the said
genealogical table was before the High
Court while considering the claim of the
appellant Syed Mohammed Abbas Ali Meerza,
and, in fact, the said table was
considered by the High Court, the totality
of the picture emanating from the
genealogical table, in our considered
view, ought to have been taken into
account by the High Court. The order of
this Court in Civil Appeal No.1680 of 1994
though records the basis of the claim made
before it by the appellant Syed Mohammed

Abbas Ali Meerza was certainly not conclusive of the issue which, in fact, was left for determination by the High Court. The order of the High Court, unfortunately, takes into account a part of the claim ignoring the other part which is evident from the admitted records of the case. If that be so, the order of the High Court has to be understood to be vitiated by non consideration of an essential and relevant part of the genealogy of the parties making the said order legally fragile.

As the genealogical table which forms a part of the order of the High Court was not disputed before the High Court, the same can provide a safe and accurate basis for final determination of the right of the appellant Syed Mohammed Abbas Ali Meerza to pursue the proceedings before

the High court following the death of the original petitioner Syed Fateyab Ali Meerza.

In view of the fact that the appellant Syed Mohammed Abbas Ali Meerza is the son of Syed Md. Sadeque Ali Meerza, who is a lineal descent from the second son of the original Nawab, we hold that the appellant Syed Mohammed Abbas Ali Meerza is entitled to step into the shoes of the deceased petitioner Syed Fateyab Ali Meerza as his lawful legal heir so as to pursue the proceedings presently pending before the High Court. Consequently, we allow Civil Appeal No.8129 of 2009 while dismissing Civil Appeal No.8130 of 2009.

Consequent to our order as above,
the High Court will now adjudicate
F.M.A.T. No.484 of 1991 or 2051 of 2003,
as may have been renumbered, on merits
after hearing all the contesting parties.

.....,J.
(RANJAN GOGOI)

.....,J.
(R.K. AGRAWAL)

NEW DELHI
AUGUST 13, 2014