

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5732 OF 2001

GRACE SHANTHAPPA

.....

APPELLANT(S)

:VERSUS:

VIJAY SHROFF &amp; ORS.

.....

RESPONDENT(S)

## O R D E R

This appeal arises out of the Judgment and Order dated 3.12.1999 passed by the Karnataka High Court in Regular First Appeal No.278/1992, preferred by the appellant against the decision of the XIX Addl. City Civil Judge at Bangalore City.

The short question involved in this appeal relates to a part of the bequest made by deceased D.S. Suraiya, besides others, in favour of the appellant. It is about category of 1500 shares of Food Specialities India Ltd., now known as Nestle. Shorn of details, it may straightway be indicated that the appellant filed a suit in 1980, at City Civil Court, Bangalore, inter alia, for declaration that the 1500 shares of Food Specialities India Ltd. bequeathed to him by the deceased D.S. Suraiya, constitute "specific legacies". The trial court however held that they constitute "demonstrative legacies". The appellant went up in appeal before the Karnataka High Court.

It appears that on 20th July, 1983, the executors filed an Originating Summons under Chapter X III of the Original Side Rules of the Calcutta High Court. The answer to the five questions were summoned in those proceedings and one of the questions being-

"(a) Whether bequest of the shares in Food Specialities India Ltd. made under the will of Dhar am Singh Suraiya - deceased above-mentioned in favour of the defendants (except the defendant No.16) is: (i) a specific legacy, (ii) a general legacy, or (III) a demonstrative legacy in the facts and circumstances of the case."

It appears that by Judgment and order dated 7.8.1984, the learned Single Judge of the Calcutta High Court held that they were "demonstrative legacies" and not "specific legacies". An appeal was preferred before the Division Bench of the Calcutta High Court against the aforesaid order of the learned Single Judge. The Division Bench on 11.10.1999 set aside the order of the learned Single Judge in Originating Summons holding, inter alia, that the question of fact could not be decided in an Originating Summons proceedings which were summary in nature. No appeal was preferred against the Judgment and Order of the Division Bench of the Calcutta High Court, hence it became final.

The Karnataka High Court decided the appeal (Regular First Appeal No.278/1992) on 3.12.1999. It took the view that the matter would be guided by whatever decision is taken in the proceedings pending in the Calcutta High Court. The Appellate Court did not go into the merits of the matter. It appears that this fact was brought to the notice of the Division Bench of the Karnataka High Court that the proceedings in Calcutta High Court were over. However, taking note of the fact that the same was denied by the other side, it was observed that once the decree is passed it would be subject to the result of those proceedings, whereas, as indicated above, on the date when the appeal was decided by the Karnataka High Court i.e. on 3.12.1999, no proceedings were pending at Calcutta High Court. The earlier proceedings pending in Originating Summons came to an end with the order of the Division Bench holding that the learned Single Judge could not decide the question of fact in those proceedings and had set aside the order of the Single Judge.

In these circumstances, in our view, it will only be appropriate that the Karnataka High Court decides the appeal on merits, considering the case of the respective parties.

An application for intervention has been moved on behalf of the applicants - Mr. Sudhir Asher and Smt. Usha Sampat. The intervenors were allowed to make submissions. It is informed on the ir behalf that in the year 2000 they have filed regular suit in the Calcutta High Court in res pect of the same matter, which is pending. We refrain from making any observation about any o f the proceedings which may have been, in the meantime, initiated by any party. It is open fo r the parties to take recourse to any remedy, whatever they may be advised to take for any new development. It disposes of the intervention application.

In view of the discussion held above, we allow the appeal and set aside the Judgment and Order passed by the Karnataka High Court and remand the appeal for fresh hearing and decision in ac cordance with law and in the light of the observations made above.

Costs easy.

.....J  
( BRIJESH KUMAR )

.....J  
( ARUN KUMAR )  
NEW DELHI;  
NOVEMBER 18, 2003.

ITEM NO.105COURT NO.11SECTION-IVA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.5732 OF 2001

GRACE SHANTHAPPA  
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APPELLANT(S)

:VERSUS:

VIJAY SHROFF & ORS.  
.....  
RESPONDENT(S)

(With Appln.(s) for intervention and with prayer for interim relief and Office Report)

Date : 18/11/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR  
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)Mr. Kavin Gulati,Adv.  
Ms. Ruby Singh Ahuja,Adv.

For Respondent (s)Mr. Bhaskar Gupta, Sr.Adv.  
Mr. P. Bhaskaran,Adv.  
Mr. Sachin Das,Adv.  
Mr. G.S. Chatterjee,Adv.

For the IntervenorsMr. Rana Mukherjee,Adv.  
Mr. Anghendu Mouli Prasad,Adv.  
Mr. Goodwill Indeevar,Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. Kavin Gulati, learned counsel for the appellant commenced arguments at 3.00 p.m. and concluded at 3.30 p.m. Thereafter, Mr. Bhaskar Gupta, learned senior counsel for the respondents argued the matter for about 20 minutes. Mr. Rana Mukherjee, learned counsel for the intervenors also argued for about 10 minutes.

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The appeal is allowed and the intervention application is disposed of in terms of the signed order.

(A.S. BISHT)(KANWAL SINGH)  
COURT MASTER

COURT MASTER

[Signed order is placed on the file]