

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2892/2009

GIRIJA PRASAD TIWARI (D) THR. LRS. Appellant(s)

VERSUS

RAMAPATI TIWARI (DEAD)
THR. LRS. & ORS. Respondent(s)

O R D E R

The inherited wealth and that too not in the direct line of succession is the bone of contention as the substratum of the dispute *inter se* the parties.

No doubt, insofar as the present proceedings are concerned, the issue arises from an endeavour to register a Will after the demise of the testator.

There are two Wills sought to be propounded by two nephews, the concerned husband and wife having passed away without children. One is the Will dated 20.02.1979 and the other is dated 11.03.1979 executed by Late Smt. Ram Lalli Devi -former in favour of Ramapati Tiwari and the latter by in favour of the appellants. The legal position which would emanate would be dependent on the respective parties

propounding the Wills being able to prove the Wills in accordance with law. If either of the Wills is not proved, the inheritance would go by the other Will. If both the Wills are proved, then the latter will prevail and if both Wills are not proved, then the property would go by succession. That is how apart from these two parties, the respondent No.4 who is *ex parte* in the present proceedings, also becomes a stake holder. On our query, the answer shows that the respective parties have taken out different proceedings. Thus, a suit No.186/2010 is pending before the Civil Judge, Fast Track Court, Allahabad filed by the contesting respondents before us where both the Wills have been placed and the parties would seek to establish the different Wills. There is stated to be also an application for succession certificate taken out by the third heir based on line of succession *de hors* the Wills. The last one is stated to have been dismissed post remand and we are informed that no further proceedings have been filed.

In view of the aforesaid facts and circumstances, we find that the present endeavour through the Civil Appeal is meaningless and, at best, of academic interest, as a Will is not a compulsorily registerable document. There are two contradictory Wills being propounded. No purpose would be served in seeking to examine the impugned order in Second Appeal of the learned Judge seeking to deal with the issue of the registration of a Will post demise of the testator.

We are thus, not inclined to interfere with the impugned order and the appeal is dismissed leaving all the questions of law open.

We, at this stage, put to learned counsel for the parties whether even after more than three decades of litigation, would they like to continue their endeavour to establish their respective rights with certainly no hope of carrying the assets after their life time with them! Other option is to go for mediation to work out a reasonably acceptable settlement.

Learned counsels have expressed the willingness of the parties to settle but then the parties which is *ex parte* before us would also be material to determine the issues and the mediation would be required *qua* more than one litigation pending.

We thus, consider appropriate to direct this order to be sent to the Mediation Centre annexed to the Allahabad High Court and invite the parties for mediation. All the pending cases will be disclosed by learned counsels for the parties before the Mediator and the Mediator will make an endeavour to resolve the disputes. The mediation can carry on even through virtual mode.

In order to find out whether a finality can be given to all the issues, we keep this appeal for directions only for the report of the Mediator.

The parties/counsels to appear before the Mediator, Mediation Centre initially through virtual mode on 13th

August, 2021 and the Mediator will endeavour to conclude the mediation within a period of two months from that date.

List for the report of the Mediator/directions on 28.10.2021.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[HRISHIKESH ROY]

NEW DELHI;
JULY 29, 2021.

