

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3425/2020  
(SPECIAL LEAVE PETITION (CIVIL) NO. 12223/2020 ARISING OUT OF  
SPECIAL LEAVE PETITION (CIVIL) DIARY NO(S). 4423/2018)

KAMALENDU BISWAS (D) THR. LRS. & OTHERS APPELLANT(S)

VERSUS

SRI SRI RADHA GOBINDA JEW & OTHERS RESPONDENT(S)

O R D E R

Permission to file Special Leave Petition and leave is granted.

The respondent before us, Uttamananda Matri Ashram has filed a suit for declaration and possession claiming itself to be the rightful owner of the property, mentioned in Schedule A of the plaint, namely, Holding No. 9, P-15, Motijheel Avenue, Previously 7C, Motijheel Avenue, Bagjola, Police Station Dum Dum. The respondents have also prayed that the appellants in the present appeal should be injuncted from alienating, encumbering the property or from changing or affecting the nature and character of the property.

It is an accepted and admitted position that one Ushangini Basak wife of Srish Chandra Basak had purchased the property by way of deed of conveyance on 14<sup>th</sup> June 1933.

The appellants claim and assert that Ushangini Basak had executed a Will dated 11<sup>th</sup> June 1973 in their favour and after her death, the appellants had obtained probate of the Will in 1995. The appellants, therefore, assert ownership by inheritance and the right to possession. As per the appellants, they have been residing in the property for the last 50 years and have been paying municipal taxes etc.

The respondent while not denying that the appellants are in possession of the property, rely on Arpan nama, which it is stated was purportedly executed by Ushangini Basak on 01<sup>st</sup> December 1956 in favour of Deity Shree Shree Rada Gobinda Jew, and registered in the office of Sub-Registrar, Cossipore, Dum Dum. To establish their right to ownership, they rely upon another Arpan nama dated 7<sup>th</sup> February 2000, which is an unregistered document purportedly executed by Bishnupriya Basak, by which she had relinquished and

transferred the rights of Shebaitship to the respondent.

By way of amendment application, the appellants specifically wanted to challenge the first purported Arpan nama on the ground that Ushangini Basak had not executed and signed the document, it being a forged document procured by false personification.

The trial court had allowed the amendment application stating this would help to decide the real question in controversy. Trial court while doing so, had exercised its discretion after referring to the controversy and questions involved including the pleadings in the plaint and the written statement and additional written statement.

The High Court by the impugned order, however, accepted the revision petition filed by the respondent holding that there was long hiatus and delay in challenging validity and authenticity of 1956 Arpan nama, as the appellant was made aware of the relevant document in 2006, whereas the challenge to validity was made in 2016.

Litigation in question has a chequered history and the matter has been remanded by the High Court to the trial court for fresh decision. Noticeably, the appellants are not parties to the Arpan nama of 1956, which is not signed or witnessed by the appellants. We have also examined the written statement including the additional written statement filed by the appellants on 08.02.2005. Our attention was drawn to the cross-examination of witnesses in the first round. Keeping in view the nature of the controversy, the issues involved and the respective stand of the parties, we are of the opinion that the trial court was justified in exercising its discretion in allowing the amendment application, which should not have been interfered by the High Court.

In view of the above, we allow the present appeal and set aside the impugned order passed by the High Court on dated 27.11.2017 and restore the order dated 07.11.2016 passed by the trial court allowing the amendment application subject to cost of Rs. 1,000/-. We would clarify that this order would not be treated as an expression of opinion on the question of authenticity and genuineness of

the 1956 Arpan nama and also on the merits of the case. Further, parties would be entitled to rely upon all contentions and presumption(s), if any, available to them in law.

Counsel for the parties have made a joint request that the trial court should be requested to expedite the matter. The trial court shall try and expedite the matter. The parties will also ensure that they do not take adjournments. All pending applications are disposed of in terms of the above order.

....., J.  
(S. ABDUL NAZEER)

....., J.  
(SANJIV KHANNA)

NEW DELHI  
OCTOBER 12, 2020.

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

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 4423/2018

(Arising out of impugned final judgment and order dated 27-11-2017  
in CO No. 179/2017 passed by the High Court At Calcutta)

KAMALENDU BISWAS (D) THR. LRS. & ORS. Petitioner(s)

VERSUS

SRI SRI RADHA GOBINDA JEW & ORS. Respondent(s)

IA No. 34656/2018 - PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 12-10-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER  
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s)

Mr. Sanjay Hegde, Sr. Advocate  
Mr. Dibaydyuti Banerjee, Adv.  
Mr. Abhijit Sengupta, AOR

For Respondent(s)

Mrs. Anjani Aiyagari, AOR

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

Permission to file the Special Leave Petition is granted.

Leave granted.

The Appeal is allowed in terms of the signed order.

All pending applications are disposed of.

(MANISH ISSRANI)  
Sr. PERSONAL ASSISTANT

(KAMLESH RAWAT)  
COURT MASTER (NSH)

(Signed Order is placed on the file)