

CASE NO.:
Appeal (civil) 398 of 2008

PETITIONER:
GAUDIYA MISSION

RESPONDENT:
SHOBHA BOSE & ANR.

DATE OF JUDGMENT: 15/01/2008

BENCH:
C.K. THAKKER & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 12465 OF 2006

C.K. THAKKER, J.

1. Leave granted.
2. The present appeal is directed against summary dismissal of Special Appeal No. 527 of 2006 by a Division Bench of the High Court of Judicature at Allahabad on May 24, 2006. By the said order, the Division Bench of the High Court confirmed the judgment and order dated March 28, 2006 passed by a Single Judge of that Court in Testamentary Case No. 8 of 2000 on the Original Side of Testamentary and Intestate Jurisdiction.
3. Brief facts of the case are that one Narendra Nath Bose, resident of Allahabad and working as Lecturer, Government Girls' Inter College, Gonda (U.P.) was having his family consisting of his wife Radha Rani Bose and three daughters, (i) Asha Bose, (ii) Uma Bose and (iii) Shobha Bose (respondent herein). All the three sisters (daughters of deceased Narendra Nath) decided not to marry. Kum. Asha Bose died on June 9, 1990.
4. Kum. Uma Bose was serving as a Lecturer in Government Girls College, Gonda, U.P. and was a disciple of 'Gaudia Mission' (hereinafter referred to as 'the Mission') a Society, registered under the Societies' Registration Act, 1860 (appellant herein). She was closely associated with the activities of the Mission and also got printed various religious books and literature for the Mission by spending considerable amount. It is the case of the appellant that after her retirement from the College, she was living in Vrindaban and not with her sister Kum. Shobha Bose-respondent at Allahabad. She continued to take interest in the activities of the Mission. Because of her attachment and dedication towards work of the Mission, she executed a Will on December 28, 1994 bequeathing her properties in favour of the Mission. The Will was duly registered. On September 09, 1996, said Kum. Uma Bose executed a Codicil in favour of the appellant Mission in relation to certain further sums and movable properties which had come to her share and also

her share in immovable properties at Vrindaban. The Codicil was also registered on September 19, 1996. On November 18, 1996, Kum. Uma Bose died in Vrindaban.

5. According to the appellant Mission, Kum. Shobha Bose-respondent No.1 herein-real sister of late Uma Bose, never kept any relation with her and never looked after her and continued to stay at Allahabad only. It is the case of the appellant that in 1997, respondent No. 1 Kum. Shobha Bose applied for a Letter of Administration to the estate of deceased Kum. Uma Bose concealing real facts of Will and Codicil in favour of appellant-Mission. The Letter of Administration was granted to her on September 26, 1997 but on application at the instance of the appellant Mission, the certificate was cancelled. The appellant-Mission applied for Probate for the Will executed by deceased Kum. Uma Bose by filing Probate Case No. 174 of 1997 before the Division Bench of Allahabad High Court. The application was, however, withdrawn by the appellant with liberty to file fresh proceedings. Respondent No. 1-Kum. Shobha Bose filed Testamentary Suit for the estate of deceased Kum. Uma Bose. The appellant-Mission filed its objections to the said suit and claimed that it was the appellant who was entitled to the property of deceased Uma Bose and Kum. Shobha Bose had no right, title or interest in the estate of late Kum. Uma Bose. Issues were framed by the Court and witnesses were examined. Respondent No.1-Kum. Shobha Bose produced a sale deed said to have been executed by Kum. Uma Bose long back and contended that signature on the sale deed and that in the Will did not tally. The appellant-Mission applied to the High Court that the signatures be examined by hand-writing expert. But the prayer was not granted by the Court.

6. The matter was then heard by a Single Judge of the High Court and by judgment and order dated March 28, 2006, the learned Judge himself compared the hand-writing of deceased Kum. Uma Bose in sale deed and in the Will and held that the Will was surrounded by suspicious circumstances. He also observed that the deceased was not living in Vrindaban and was not being looked after by the Mission as claimed by the Mission. He held that Kum. Shobha Bose was the real sister of deceased Kum. Uma Bose. In that capacity, she was entitled to a Letter of Administration of the estate and credits of late Kum. Uma Bose. The Court consequently ordered payment of amount received from the Bank by the deceased to Kum. Shobha Bose holding that she was entitled to the said amount. She was also held to be the owner of the house. The learned Judge also imposed cost of Rs.25,000/- on the Mission-appellant herein.

7. Being aggrieved by the order passed by the trial Court (Single Judge), Special Appeal was filed by the appellant herein before the

Division Bench of the High Court which, as stated above, was dismissed in limine by the Division Bench holding that the view taken by the Single Judge was correct and appeal did not require admission. Hence, the present appeal has been preferred by the appellant-Mission 8.

Notice was issued by this Court on August 11, 2006. Interim stay of recovery was also granted. Affidavit in reply and affidavit in rejoinder were thereafter filed. The matter was ordered to be posted for final hearing and that is how the matter has been placed before us.

9. We have heard learned counsel for the parties.

10. The learned counsel for the appellant Mission has raised several contentions. He submitted that an appeal filed before Division Bench of the High Court was a regular statutory appeal. It was in the nature of First Appeal and all questions of fact as well as of law could be agitated. It was, therefore, incumbent on the Division Bench of the High Court to admit the appeal and to decide it after appreciating the evidence on record by a detailed and reasoned judgment. Dismissal of appeal in limine by the Division Bench was improper and on that ground alone, the impugned order deserves to be set aside. It was also urged that even if the appeal is considered to be an intra-court appeal, all questions of fact and of law could be argued and the Division Bench cannot refuse to admit the appeal by dismissing it at the threshold observing that it agrees with the finding recorded by the trial Court. It was also urged that as many as thirteen issues were framed by the trial Court and all those issues were required to be considered by the Division Bench. They raised disputed questions of fact which necessitated appreciation of evidence, application of mind by the Division Bench and a reasoned judgment. The counsel argued that from the facts, it was clearly established that there was a Will executed by the deceased Kum. Uma Bose in 1994 which was duly registered. Similarly, there was a Codicil of 1996 which was also registered. They ought to have been considered but they were not considered by the Division Bench in their proper perspective. According to the counsel, if respondent No.1 challenged legality and validity of the Will, the proceedings initiated on the Original Side of the High Court were not maintainable and the only Court which had jurisdiction to decide such question was a competent Civil Court which had exclusive jurisdiction in such matters. Testamentary Suit instituted by the respondent No. 1 before the learned Single Judge on the Original Side of the High Court was, therefore, not maintainable. The counsel made serious grievance against the order passed by the learned Single Judge and confirmed by the Division Bench on the ground that they had committed grave error in comparing signatures

and hand-writings of deceased Kum. Uma Bose on sale deed and in the Will and in coming to the conclusion that the signatures and the hand-writings differed and they were not of one and the same person. The counsel urged that this Court has held in several cases that no comparison of hand-writing should be made by a Court as it is the function of an expert. It is dangerous, hazardous and risky to record a finding on comparison of hand-writings on different documents and it should be avoided. In the instant case, though the said objection was taken before the trial Court by the appellant and an application was also made to send the hand-writings to experts, the prayer was rejected and the Court proceeded to undertake the exercise which was not warranted. But, even otherwise, the appellant contended that the Court was in error in comparing handwritings of Kum. Uma Bose in the Will on the one hand and in the sale deed on the other hand. So far as sale deed is concerned, it was said to have been executed in 1987 whereas Will was executed in 1994. There was thus substantial time lag between the sale deed and the Will and the said important and vital fact had not been considered properly by the learned Single Judge. On all these grounds, it was submitted that the appeal deserves to be allowed by setting aside the orders passed by both the Courts or in any case by the Division Bench of the High Court by remitting the matter to the appellate Court and directing it to admit the appeal and to decide it by a reasoned judgment.

11. The learned counsel for the respondent, on the other hand, supported the order passed by the Division Bench of the High Court. According to him, the Division Bench did not think it fit to admit the appeal since it agreed with the reasons recorded and conclusions reached by the learned Single Judge who had considered all points and no fault can be found against such order. It was argued that on the basis of the evidence on record, the learned Single Judge held that as a sole surviving member of the family of Narendra Nath Bose, respondent No.1-Kum. Shoba Bose was entitled to the property of her elder sister late Kum. Uma Bose and no disputed questions of fact were involved in the suit. On the basis of evidence adduced by the parties, the learned Single Judge held that there was nothing to show that the appellant-Mission was entitled to any relief and the respondent No. 1 had right to apply for Letter of Administration who could get the said relief and the Division Bench agreed with the said conclusion. Regarding comparison of signature and hand-writings, it was submitted by the counsel that it is open to a Court of Law to compare hand-writings and reliance in this connection was placed on Section 73 of the Evidence Act, 1872. It was submitted that the law enables a Court to make comparison of hand-writings and if the

statutory power was exercised by the learned Single Judge, it cannot be contended that the Court was wrong. The appeal, hence, deserves to be dismissed.

12. Having heard learned counsel for the parties, in our opinion, on a short ground, the appeal deserves to be allowed. From the facts, it is clear that great many questions were involved in the Testamentary Suit instituted by the respondent No. 1. Several issues were framed by the trial Court and the suit was decided by a detailed judgment entering into merits of the matter. In our opinion, therefore, the learned counsel for the appellants is right in submitting that the Division Bench of the High Court ought to have admitted the appeal. It was not right in dismissing statutory appeal in limine. No doubt, an order dismissing the appeal is a speaking order containing few pages. But, in our opinion, the appeal instituted by the appellant before the Division Bench was a statutory appeal under Section 384 of the Indian Succession Act, 1925.

13. Section 384 reads thus:

384. Appeal.-(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District Judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908. (5 of 1908).

(3) Subject to the provisions of sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908, (5 of 1908) as applied by section 141 of that Code, an order of a District Judge under this Part shall be final.

14. Bare reading of the aforesaid provision leaves no room for doubt that it is a regular appeal and all questions i.e. questions of fact and of law are open to urge before the appellate Court. In the circumstances, it was expected of the Division Bench to consider all submissions and contentions of the parties. We are also of the view that the argument of the learned counsel for the appellants that the Will as well as Codicil were executed in 1994 and 1996 and both were duly registered, was one of the relevant factors which ought to have been kept in mind by the Division Bench.

Again, even if it is held that a Court of law has power, authority and jurisdiction to compare hand-writings under Section 73 of the Evidence Act, the point raised as to whether on the facts and in the circumstances of the case and in the light of an application made by the appellant-Mission that they may be sent to hand-writing expert, the Court should have undertaken the exercise of comparison of hand-writings was a relevant issue. This is coupled with the fact that the sale deed said to have been executed by deceased Kum. Uma Bose was of 1987 and Will and Codicil were of 1994 and 1996 respectively.

15. We are not prepared to agree with the learned counsel for the respondent that the scope of appeal before the Division Bench was very much limited. Even in an appeal from a decision of a Single Judge of the High Court in First Appeal, a Division Bench of the High Court has power to consider all questions, whether of facts or of law, which could be raised before a Single Judge. In other words, the party aggrieved before the Division Bench in Intra-Court/Letters Patent Appeal can raise all those questions which could be raised before a Single Judge of the High Court in First Appeal.

16. In *Asha Devo v. Dukhi Sao*, (1975) 1 SCR 611: AIR 1974 SC 2048, a similar question came up for consideration before this Court. There, a First Appeal came up for hearing before a Single Judge of the High Court and was disposed of. Against the said order, a Letters Patent Appeal was filed. A preliminary objection was raised on behalf of the respondents that since it was an appeal from an order passed by a Single Judge of the High Court in First Appeal, the appeal before the Division Bench was really in the nature of Second Appeal and questions of law only could be agitated in such Letters Patent Appeal.

17. Negating the contention and holding that the scope of appeal before the Division Bench was similar to one before a Single Judge, this Court stated:

\023There is no dispute that an appeal lies to a Division Bench of the High Court from the judgment of a Single Judge of that Court in appeal from a judgment and decree of a court subject to the superintendence of the High Court. The only question is whether the power of a Division Bench hearing a Letters Patent appeal under Clause 10 of the Letters Patent of Patna High Court or under the analogous provisions in the Letters Patent of other High Courts is limited only to a question of law under Section 100 of the CPC or has it the same power which the Single Judge has as a first Appellate Court in respect of both questions of fact and of law. The limitations on the

power of the Court imposed by Sections 100 and 101 of the CPC cannot be made applicable to an Appellate Court hearing a Letters Patent appeal from the judgment of a Single Judge of that High Court in a first appeal from the judgment and decree of the court subordinate to the High Court, for the simple reason that a Single Judge to the High Court is not a Court subordinate, to the High Court\024.

18. From what has been observed by this Court in Asha Devi and considering the fact that an appeal under Section 384 of the Indian Succession Act is a regular appeal, we are of the view that arguable points had been raised by the appellant-Mission in the appeal which ought to have been admitted by the Division Bench.

19. On overall considerations, in our judgment, the appeal deserves to be allowed by setting aside the order passed by the Division Bench and by ordering admission of appeal remitting it to the Division Bench of the High Court to be decided in accordance with law after recording reasons.

20. For the foregoing reasons, the appeal is allowed. The order passed by the Division Bench in Gaudiya Mission v. Km. Shobha Bose & Anr. is set aside. The appeal will stand admitted. The Division Bench will now hear the parties on merits and decide the case in accordance with law by a reasoned judgment. On the facts and in the circumstances of the case, however, there shall be no order as to costs.

21. Before parting with the matter, we may clarify that we have not expressed any opinion on merits of the matter one way or the other. All the observations made by us hereinabove have been made only for the purpose of deciding the present appeal and as and when the matter will be placed for hearing before the Division Bench, the same will be decided strictly on its own merits without being influenced by the above observations.

22. The appeal is accordingly allowed.