

**Bindo Vs. Radhe Lal**

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**SooperKanoon Citation :** [sooperkanoon.com/453250](http://sooperkanoon.com/453250)

**Court :** Allahabad

**Decided On :** Apr-14-1920

**Reported in :** (1920)ILR42All512

**Judge :** Piggott and ;Walsh, JJ.

**Appellant :** Bindo

**Respondent :** Radhe Lal

**Judgement :**

**Piggott and Walsh, JJ.**

1. On the death of one Matra Mal, his widow Musammat Bindo applied for a succession certificate for the collection of certain debts. She named two persons, Radhe Lal and Bhikari Das, as brothers of the deceased; but we note that Radhe Lal is described as son of Hulas. Rai and Bhikari Das as son of Durga Das. She also named one Thakur Das, as paternal uncle of the deceased. Notices issued to Radhe Lal and Bhikari Das went to Bombay for service and eventually the court recorded an order expressing its opinion that the service effected was sufficient and proceeded to deal with the case ex parte. The application was not opposed and a certificate was granted as prayed. Radhe Lal now comes to this Court in appeal, He says he has a defence on the merits, the fact being that Matra Mal was his brother and died as a member of a joint undivided. Hindu family with himself. He says moreover that, while his residence is at Hathras in the Aligarh district, he

carries on business in Bombay, and was, at the time when attempts were made to serve him with notice in Bombay, travelling about the country on his business. He denies that any notice ever reached him at Bombay. There is really no evidence that he was properly served. The Court of Small Causes at Bombay, to which notice was twice sent for service, twice returned the notice with an affidavit by the serving officer to the effect that he could not find Radhe Lal at the address given. Another notice was sent by registered cover and this came back with the word 'refused' endorsed on the said cover. There is really no evidence as to who wrote this word 'refused,' and we cannot agree with the court below that it raises any definite presumption that this registered cover was tendered to Radhe Lal and was refused by him. We do not think that he had any possible motive for refusing it, if it had really reached him. We think that in view of the question raised by Radhe Lal's objection this case ought to go back for inquiry. With reference to an objection that has been raised by the respondent we are content to say that we are satisfied that an appeal lies under Section 19 of Act No. VII of 1889, and it was not absolutely incumbent upon Radhe Lal to make an application to the court below to revoke the certificate itself. We set aside the order under appeal and send the case back to the court below for disposal on the merits after Radhe Lal has been given an opportunity of supporting his objection. Incidentally we note that Radhe Lal now gives his address as 'in the town of Hathras,' but that Mr. Gulzari Lal, who has represented him in this Court, undertakes to accept service on his behalf of any notice that may be issued.