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Sohan Lal and anr. Vs. Smt. Bindeshwari Devi and ors.

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Court : Allahabad

Decided On : Dec-23-1958

Reported in : AIR1959All419

Judge : Nasirullah Beg, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 2(11) and 115 - Order 22, Rule 3

Appeal No. : Civil Revn. No. 283 of 1958

Appellant : Sohan Lal and anr.

Respondent : Smt. Bindeshwari Devi and ors.

Advocate for Def. : P.N. Bakshi, Adv.

Advocate for Pet/Ap. : H.N. Seth, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Nasirullah Beg, J.

1. This is an application in revision. It arises out of a suit filed by one Smt. Poona Devi, widow of one Chhabha Lal, for the recovery of Rs. 600/-; and, in the

alternative, for the return of a gun. The gun in question is said to have been sold off by defendant No. 1 Sohan Lal, the pairokar of Chhabha Lal, to defendant No. 2 Madan Singh. Smt. Poona Devi died during the pendency of the suit. An application was made by six persons to be impleaded as legal representatives of the deceased. The first four applicants claimed to be the daughters of Chhabha Lal deceased by his previous wife, the fifth applicant claimed to be the daughter's daughter and the sixth applicant claimed to be the daughter's son of Chhabha Lal deceased. All the applicants alleged themselves to be the children or descendants of Chhabha Lal deceased by his previous wife. They also claimed to be the legal representatives in their capacity as legatees, as they alleged that Chhabha Lal had executed a will in their favour.

2. The trial court found that they were not the children or descendants of Chhabha Lal from his previous wife. They would not, therefore, be the heirs of Chhabha Lal, and, as such, could not be held to be the legal representatives in that capacity. It further found that they had failed to prove the genuineness of the will set up by them in their favour. They also, therefore could not claim to be the legal representatives of the deceased as legatee of Chhabha Lal. The trial court, however, relied on the admission made on behalf of the defendants to the effect that the applicants were residing in the house of Chhabha Lal, and were in possession of a part of the house of Chhabha Lal. It, therefore, treated them as intermeddlers and impleaded them as the legal representatives of the deceased.

3. Dissatisfied with said order, this revision has been filed by Sohan Lal and Madan Singh, defendants Nos. 1 and 2 in the case.

4. Having heard the learned counsel for the applicants, I am of opinion that this application should be allowed.

5. The term 'legal representative' has been defined in Section 2, Sub-clause (11) of the Code of Civil Procedure as follows:

' 'legal representative' means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and where a party sues or is sued in a representative character, the

person on whom the estate devolves on the death of the party so suing or sued.'

In the present case, the opposite parties have no doubt been intermeddling with the estate of the deceased. They should, therefore be considered to be intermeddlers. A person intermeddling with the estate of a deceased, however, should not be considered to represent the entire estate. The sphere of the representation of the estate of the deceased should be circumscribed by the sphere of the act of intermeddling done by him. In this case, it is admitted that they had intermeddled with the house of Chhabba Lal. It is, therefore, conceded that qua the house they should be deemed to be the representatives of the estate of the deceased Chhabba Lal.

If, therefore, there was a dispute in respect of the house with which they had intermeddled, they could be brought on record as legal representatives in respect of that part of the estate. If, however, the dispute relates to a property in which they had not intermeddled, they cannot be considered to be his legal representatives in respect of that item of property. This view of law would find; support from the observations made in *Lalsa Rai v. Udit Rai* AIR 1924 All 717 and *Firm Balkishan v. Jatnabai* AIR 1938 Nag 298.

In AIR 1924 All 717, it was held that when a person intermeddles with the estate of the deceased he is a legal representative of the deceased for the purpose of procedure to the extent of the property with which he had intermeddled, but there is no principle of law which makes him the representative of the deceased so far as succession to the property of the deceased is concerned. In AIR 1938 Nag, 298, it was laid down that an executor de son tort is not entitled to recover debts due to the estate of the deceased of which he had wrongfully taken possession, and that a mere intermeddler with the estate of the deceased would not be entitled to maintain every action in respect of the estate merely by virtue of the fact that he was an intermeddler,

6. On behalf of the opposite party, reliance has been placed on a case reported in *Prosunno Chunder Bhattacharjee v. Kristochytunoo Pal*, ILR 4 Cal 342. In this case it was held that a person taking possession of the estate of a deceased Hindu must be treated for some purposes as his representative until some other

claimant came forward. I am of opinion that this case read as a whole does not support the contention advanced by the opposite party. On the other hand, it impliedly recognises the principle that an intermeddler represents the estate of the deceased only for some purposes and not for all purposes.

7. An intermeddler might be brought on record for the purpose of fastening him with liabilities relating to the property of which he is in possession, and also of enforcing rights in respect of the same property. This, however, should mark the limit of his sphere of representation. To allow him to go further, and to collect all the assets of the deceased might result in creating multifarious difficulties. It is possible to contemplate instances in which the acceptance of the contention advanced on behalf of the opposite party might lead to insuperable difficulties.

Thus, for instance, if one hundred persons happen to be in separate possession of different portions of the estate of the deceased, should all of them be brought on record in a case relating to one small portion of the estate? If so, persons even not in possession will have to be brought on record. Moreover, can all of them be allowed to treat themselves as legal representatives for the purpose of collection of the entire assets or of the possession of the entire estate. If so, what would be the share that each of them would be entitled to claim in the distribution of properties inter se, and how would their rights and liabilities be adjusted qua third parties. These and innumerable other difficulties might arise and give rise to conflicts difficult to reconcile.

8. Learned counsel for the opposite party has relied on two other cases. They are reported in *Kusum Bandhu v. Ramdayal* : AIR1924 Cal362 and *Baliram v. Mukinda* AIR 1951 Nag 145. Both the cases indicate that a person in possession of the property of the deceased should be considered to be his representative qua the property of which he was in possession. None of the cases, therefore, goes to the extent of laying down that an intermeddler in possession of a part of the estate should be held to be the legal representative even in respect of that part of the estate of which he never came into possession. An inter-meddler has obviously no title to the property. He is by fiction of law considered to be the representative of the deceased, only because he happens to get possession of the estate and he

purports to hold possession on behalf of the deceased.

The principle of law, therefore, that confines his capacity of representation to the area of his possession appears to be a practical and a sound one. If that principle is applied to the present case, it is evident that the opposite parties cannot be held to be the legal representatives of the deceased. In the present case, it is admitted that they never got possession of the gun. In fact, they could never have got possession of it because it was removed and disposed of by defendant No. 1 before the death of Smt. Poonna Devi. So far as the present case, therefore, is concerned, I am of opinion that they cannot, in the circumstances of the case, be considered to be the legal representatives of the deceased within the meaning of Section 2(11), C. P. C.

9. Learned counsel for the opposite party also argued that no question of jurisdiction was involved in the present case, nor was any error of procedure committed in the exercise of the jurisdiction of the trial court. I am, however, of opinion that this is a case of material irregularity in the exercise of jurisdiction by the trial court. The law relating to bringing of legal representatives on record is really a part of procedural law. If the applicants were not entitled to be brought on record, and, in spite of it, the trial court did bring them on record, it appears to me that in doing so, it must be considered to have committed a material irregularity in the exercise of its jurisdiction. That a revision would lie in a case of this nature is also borne out by the observations in a Full Bench case of the Allahabad High Court reported in *Ramzan Ali v. Mt. Satul Bibi* : AIR1948 All244 .

10. For the above reasons, I am of opinion that this revision should be allowed, I, accordingly, allow this revision application, set aside the order passed by the trial court and dismiss the application of the opposite parties for being impleaded as the legal representatives of the deceased. The applicants are entitled to their costs.

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