

Kanhaiya Vs. Kanhaiya Lal

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Court : Allahabad

Decided On : Feb-12-1924

Reported in : AIR1924All376; (1924)ILR46All372

Judge : Walsh and ;Ryves, JJ.

Appellant : Kanhaiya

Respondent : Kanhaiya Lal

Judgement :

Walsh and Ryves, JJ.

1. This is a very pretty legislative knot. A dispute has arisen between two alleged members of a family over an apparently substantial estate left by Musammat Basanti, the widow of Bansidhar deceased. Some portion of the property consists of uncollected rents, that is to say, arrears of rent, and also of rents accruing due from the occupiers of various tenancies held under the deceased. Musammat Basanti made a will, which, if it is a valid will, can, on proper proceedings being taken, be admitted to probate. The present applicant, in September, 1922, applied for a succession certificate under the Succession Certificate Act, claiming to be the legal representative of the deceased lady, and that he was desirous of collecting the rent from the tenants, who would be protected in paying their rents to him in the event of his obtaining a succession certificate from the court. Nor could he obtain a decree in any suit against the tenants for rents due to the deceased's

estate without producing a succession certificate in the trial court. Unfortunately, as is too often the case, this comparatively simple piece of machinery for obtaining the necessary certificate in a summary way, for which purpose the Succession Certificate Act of 1889 was elaborately devised, hung fire, and owing, either possibly to the court below having more work to do than it could get through, or to its failure to recognise the urgency of summary applications of this kind, the month of February, 1923, arrived, five months having elapsed during which nothing whatever was done. One can understand the applicant after such delay looking round to see how best he could secure that which he really wanted. He complains, in the application with which we now have to deal, that these rents, or some of them, are being improperly withheld and are becoming time-barred, or in danger of becoming time-barred. It is a fact that the provisions of the law enable a person in such a position to protect himself if he is properly advised. The applicant could have brought suits within the period allowed by limitation against all the debtors and could have either asked the court to postpone granting decrees, if he was entitled to decrees, until he had obtained the necessary certificate, or applied to the certificate court, as an urgent matter, to expedite the proceedings which had been already pending, as we have said, five months. Unfortunately he seems to have been badly advised, or at any rate advised to take the novel procedure which has been accepted by the lower court, and we have to deal with the matter as it stands. On the 23rd of February, 1923, he applied for the appointment of a receiver to the court in which the succession certificate matter was still pending. He made that application against the objector who was objecting to his obtaining a succession certificate, and each party filed a statement containing their views of the merits, and a perusal of these documents shows that the real dispute was between these two persons as to who was to collect the rent, and the applicant objected to the objector being allowed to collect rent unless he gave adequate security, he being a person in a Native State, and generally, according to the applicant's allegation, not to be trusted and impecunious. On that footing the applicant was desirous to have the appointment of a receiver, and the court has acceded to that view of the matter, and without actually appointing a receiver has given the objector the option of giving security. Nobody can doubt that if the application had been made in a pending suit, it was a reasonable application to

make, and that on the merits it was both plausible and attractive. But we have to decide whether it was an application which the court below had any right to entertain at all. The matter being novel and difficult, the objector has brought it before this Court both by way of appeal and by way of revision. With regard to the right of appeal, it seems to be established by a course of decisions in this Court that there is no such right where the order of the court below is either conditional or provisional, and does not eventuate in a final order. The substantial matter, therefore, which we have to decide is whether we have jurisdiction to entertain the revision which challenges the jurisdiction of the lower court to entertain this application. Taking for convenience sake the latter consideration first, it is argued by Mr. Piari Lal Banerji in defence of the order, that Order XL, Rule 1, of the Code of Civil Procedure which contains the whole of the law in India with reference to the appointment of receivers, is not now under the Code of 1908, whatever it was before, confined only to cases in which a suit is pending. He cites in justification of that view the case of *In re Bai Jamnabhai* (1911) 13 Bom. L.R. 487, in which it was held that 'a receiver might be appointed in an application made under Section 12 of the Guardians and Wards Act. Section 12 of the Guardians and Wards Act enables the court under that Act to make orders for the protection of the property, and Section 141 of the Code of Civil Procedure applies the provisions of the Code generally to all proceedings in any court of civil jurisdiction, so far as they can be made applicable. A similar view has been taken in the case of *Asadali Chowdhury v. Mahomed Hossain Chowdhury* (1916) I.L.R. 43 Calc. 986 with regard to an application under Section 93 of the Bengal Tenancy Act. These cases, however, do not cover the whole ground. It is necessary to consider the scope of the Succession Certificate Act in order to see whether the general provisions of the Code of Civil Procedure can be worked or introduced into the machinery under the Succession Certificate Act, or, in other words, whether Section 141 of the Code of Civil Procedure can be made applicable. The Succession Certificate Act is a provision within a very small compass enacted for a specific purpose. The title describes it as 'an Act to facilitate the collection of debts on successions, and afford protection to parties paying debts to the representatives of deceased persons' Section 1(4) provides that a certificate is not to be granted in respect of any debt in which a right can be established by probate under two Acts specifically

mentioned. -It so happens that neither of these cases applies to the will of Musammat Basanti, which is a will governed by the Probate and Administration Act, but undoubtedly Letters of Administration with a copy of the will annexed could be obtained of her will within the meaning of the latter part of Section 1(4). It is, therefore, doubtful whether it is a case in which the court had any right to grant a certificate at all. The procedure appears to us to be very carefully prescribed and restricted. Where assistance from the Code is required, it is introduced by an express enactment, for example, in Section 6 governing the verification of the application. The provision for service and so on is contained in Section 7, and there is no further reference to the Code except in Section 19(3), which applies Section 141 (old Section 647) only so far as it relates to the provisions for reference and review contained in old chapters 46 and 47 of the Code. We, therefore, come to the conclusion that we cannot treat this Act as analogous to the other Acts, like the Guardians and Wards Act and the Bengal Tenancy Act, to which the general provisions of the Code of Civil Procedure have been held to apply, and that' we are unable to see that Section 141 can be made applicable to the Succession Certificate Act except in so far as it is expressly introduced by Section 19(3), and also as a corollary by Section 26(3). The result is that, in our view, it is not competent for a court sitting as a Succession Certificate Court, working the provisions of the Succession Certificate Act, to entertain an application for the appointment of a receiver, and that in doing so the court below acted without jurisdiction.

2. Mr. Piari Lal Banerji, however, as a last resort, contended that if this was so, the logical result was that none of the provisions of the Code of Civil Procedure would be applicable at all, including Section 115, known as the revision section, and that, therefore, we are prohibited by our own interpretation of the Succession Certificate Act from applying the machinery provided in Section 115. The answer to this ingenious suggestion is, in our opinion, as follows:--We hold that the general provisions of the Code of Civil Procedure do not apply to the court below sitting as a court) administering the Succession Certificate Act. But, in our opinion, they do apply to the High Court sitting as such which is vested with jurisdiction to send for the record in any case decided by an inferior court, and, if it has acted without jurisdiction, to set aside its order. Finally Mr. Piari Lal Banerji contended that there

was no decision, although the court granted in substance what he asked. We do not think it is necessary to go so far as to examine the ultimate decision of the lower court in these proceedings. The difficulty arose at an earlier stage. The court had no business to entertain this application at all. It ought to have thrown it out on the ground of absence of jurisdiction. It could not have entertained it without first deciding that it had jurisdiction to do so. It has so decided, and, in our view, it has decided wrongly, and, therefore, has exercised a jurisdiction which did not belong to it. On these grounds the revision must be allowed and the order quashed. Under the circumstances, both parties will pay their own costs. Let the record be sent back to the lower court with a copy of this judgment and a direction to that court to proceed without delay to dispose of the application for a succession certificate. We are now in the year 1924, and this application, which was started in September, 1922, is still pending. We would impress upon the lower court and all lower courts the importance of dealing with summary and urgent matters as expeditiously as possible. These continual delays, particularly in what may be called interlocutory machinery, are largely responsible for the complaints which are made about the general delay of litigation in this province.

3. The appeal of course will be formally dismissed with costs.