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SooperKanoon Citation : sooperkanoon.com/480532

Court : Allahabad

Decided On : Dec-18-1934

Reported in : AIR1935All390; 157Ind.Cas.51; 159Ind.Cas.683

Appellant : Sumeshar Bind and ors.

Respondent : Baldeo Sahu and ors.

Judgement :

ORDER

Rachhpal Singh, J.

1. This is a revision application by the defendants arising out of a suit instituted by the plaintiff to recover a sum of money. One Ram Sunder had executed a pronote in favour of the plaintiff. He died. The defendants are the brothers of Ram Sunder, deceased. The plaintiff instituted a suit against them to recover the amount due on foot of the pro-note. Several pleas were taken in defence, but it is not necessary to refer to them. The learned Judge of the Court below found that the execution of the pronote was proved. He held that Ram Sunder and his brothers constituted a joint family and therefore the brothers were legal representatives of the deceased. The suit was decreed against them to the extent of the assets of the deceased which might be proved to have come into their hands. Three of the defendants have preferred this revision application against the decree made by the Court below. The only question for the de-termination in this case is as to whether or not

the brothers of the deceased can be said to be his legal representatives against whom a decree could be passed in respect of the amount borrowed by him.

2. I have considered this question. It appears that there are conflicting decisions on this point. Some High Courts have held that the members of the joint family, who succeed to the family, estate by survivorship are not legal representatives of the deceased inasmuch as they take the holder's estate by survivorship and not by succession. On the other hand some High Courts have held that they are the legal representatives of the deceased coparcener within the meaning of Section 2, Sub-clause 11, Civil P.C. It may be necessary some day to have a Full Bench decision on this point. But I am not inclined at present to refer this matter to a larger Bench in view of the opinion expressed in a ruling of this Court *Tamiz Bano v. Nand Kishore* 1927 All. 459. In that case it was held that:

A decree could be had against the legal representatives of a deceased debtor whether they had any assets of the deceased in their hands or not. How the decree when obtained was to be executed was a matter to be ascertained thereafter.

3. The principal question which is to be considered is whether the brothers of a deceased person in a joint family can be said to be his legal representatives. In the Civil Procedure Code in Section 2, Sub-section 11 'legal representative' has been defined thus:

Legal representative means a person who 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 representative character the person on whom the estate devolves on the death of the party so suing or sued.

4. This definition means that a person on whom the estate of the deceased devolves, would be the legal representative. If the deceased had left an estate then the surviving members of joint family would certainly be his legal representatives. In the case before me the deceased and his brothers were joint in an estate and therefore on the death of the deceased his surviving brothers would be his legal representatives in law. It was contended on behalf of the applicants

that in this case there was no proof that the deceased had left any estate, and therefore it could not be said that his brothers are his legal representatives. It however appears to me that this question would have to be decided later on. The plaintiff is not under any duty to prove, before he can get a decree, that the persons named by him as the legal representatives got any estate of the deceased. All that he has to show, in order to get a decree, is that the person whom he is suing would have got the estate of the deceased, if he had left any. Now if the deceased had left any estate then his brothers would have been his legal representatives. The plaintiff was therefore entitled to maintain a suit against them without giving any proof that they were in possession of any property of the deceased. My view is that a person who would have got the estate of the deceased will be deemed to be his legal representative. A creditor of the deceased coparcener is entitled to a decree against the surviving brother of the deceased without giving any proof that he has got possession over any property belonging to the deceased. When he applies for the execution of his decree then the question will come up for consideration, whether the deceased has left any assets. If the decree-holder can prove that the surviving coparcener got any assets then he would be entitled to execute his decree against surviving coparcener or coparceners.

5. It is perfectly correct that the surviving coparceners in a joint family estate take the estate on the death of one of the coparceners by right of survivorship and not by succession. That proposition cannot be disputed. The plaintiff in the case before me does not and cannot contend that in respect of the joint family estate the defendants can be treated as legal representatives of the deceased. The plaintiff desires a decree against the estate which the deceased might have held separately. In respect of the separate estate of the deceased his brothers who constituted a joint family along with him would be his legal representatives within the meaning of Section 2, Sub-clause 11, Civil P.C. For the reasons given above I hold that the judgment, of the learned Judge of the Court below must be confirmed. I dismiss the revision application with costs.