Shiv Lal Vs. Jootha

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Court : Rajasthan

Decided On : Mar-17-1952

Reported in : AIR1952Raj167

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : Evidence Act, 1872 - Sections 32, 32(6) and 50; Succession Act, 1925 - Sections 370

Appeal No. : Misc. First Appeal No. 6 of 1951

Appellant : Shiv Lal

Respondent : Jootha

Advocate for Def. : Hastimal, Adv.

Advocate for Pet/Ap. : Amrit Raj, Adv.

Disposition : Appeal allowed

Judgement :

Bapna, J.

1. This is an appeal under Section 384 of the Indian Succession Act (No. 39 of 1925).

2. The respondent Jootha applied for grant of succession certificate in respect of the estate of the deceased Punamchand who died on Second Srawan Sudi 15, Smt. 2004 (31st of Aug. 1947). The respondent claimed to be the nearest heir of the deceased and alleged that one Chunilal, who had made a separate application for grant of such certificate was not the nearest heir. The appellant Shivlal objected to the grant of certificate to Jootha alleging that the nearest heir of the deceased Punamchand was Chunilal, who later on died bequeathing all the property to the objector. It was mentioned that Chunilal had filed a petition for grant of succession certificate in respect of the estate of Punamchand out that petition became infructuous owing to Chunilal's death. The relevant portion of the pedigree relied upon by the respondent is as under :

HARING

_____|_____

| | |

Inda Chena Sarup

| | |

Kumpa Male Tulcha

| | |

Sobha Maga Jootha

| | (Applicant)

Chunilal Punamchand

(through whom the (deceased)

objector claimed)

The appellant did not admit that Samp was the son of Haring, but it was alleged, on his behalf that Sarup was the son of Rancher, a brother of Haring. The learned District Judge held that Sarup was the son of Haring and consequently Jootha was nearer in degree to the deceased Punamchand than Chunilal. He also observed that the proceedings for grant of succession certificate being of a summary nature, a legatee from an alleged heir had no 'locus standi' to contest the proceedings. He further observed that the objector was not entitled to a certificate since he claimed under a will for which he could obtain Letters of Administration or Probate. The learned District Judge accordingly directed that a succession certificate be issued to Jootha respondent in respect of the assets of the deceased Punamchand mentioned in the schedule accompanying the petition.

3. It is urged on behalf of the appellant that the lower Court has grossly erred in relying on the evidence of the witnesses for the respondent, and that the observations of the learned Judge, that the witnesses were residents of the village of the deceased and withstood the test of cross-examination, are not correct.

4. We have gone through the evidence and are of opinion that the evidence led by the respondent is wholly unreliable and entirely Insufficient for a finding that Sarup, the grandfather of the respondent, was the son of Haring. The entire evidence led by the respondent consists of four witnesses, viz., Jhutmal s/o Peera, Chunilal, Ranmal, and the respondent Jhoota himself. The first three witnesses did not belong to the family to which the deceased Punamchand belonged, and they did not state their source of knowledge as regards the pedigree of the family of the deceased. Their parrot-like statements to prove the pedigree relied upon by the respondent, are inadmissible in evidence, Jhutmal s/o Peera admitted that he did not belong to the family of Punamchand and was unable to state the pedigree of his own maternal uncle. Chunilal, the second witness, also did not state how he was connected with Punamchand and what was the source of his knowledge. Ranmal also admitted that he did not belong to the family of the deceased and was not related to him in any way.

5. As pointed out by their Lordships of the Privy Council in 'LAXMI REDDI v. VENKATA REDDI', AIR 1937 PC 201, the Indian Evidence Act does not contain

any express provision making evidence of general reputation admissible as proof of relationship. Their Lordships further pointed out the necessity of putting forward evidence of the kind described in Section 32, Clauses (5), (6) and (7), and Section 50, Evidence Act, to prove the existence of relationship between persons deceased whenever the question is in issue. In the case before their Lordships a number of witnesses were allowed simply to enunciate from the witness box the proposition which they desired to prove without stating the basis which could give that evidence the value or admissibility and their Lordships observed that

'time, trouble and expense would have been saved had Clause 5, Section 32, Evidence Act, been properly applied and witnesses required to prove the statements relied upon with proper particularity and with due attention to the requirement that the person making the evidence had special means of knowledge.'

Their Lordships further observed that

'this matter could not rightly be left to time or chance or cross-examination to disclose whether a statement had any basis which could give it value or admissibility.'

6. The respondent Jootha started by saying that he did not know his family pedigree but later on gave the pedigree relied upon by him, but in the very first question in cross-examination stated that the pedigree table had been given to him by his Kul-Guru Rajmal. This then was the source of his knowledge. He however did not produce that pedigree and, as would be mentioned later on, Rajmal as witness for the appellant supported the appellant's version that Sarup was the son of Ranchor, a brother of Haring. A perusal of the statement of the respondent shows that he was unable to state anything beyond the direct ascendant of Chunilal, Punamchand and Jootha. He was unable to state, for Instance, how many sons had Inda or Kumpa, or who were the brothers of Haring.

7. It may be pointed out that the observation of the learned District Judge that all the witnesseswere residents of the village of the deceased was conceded by learned counsel for the respondent to be an error. They were, as a matter of fact,

all residents of Bhaloi on Ka Bara, Paragna Siwa-na while the deceased was a resident of the village Bala, Paragna Jaloe.

8. The evidence led by the respondent is thus entirely insufficient for a finding that the respondent's father Sarup was the son of Haring.

9. On behalf of the appellant, five witnesses were produced including the appellant himself, but except Rajmal, the rest of the witnesses have suffered from the same defect as witnesses for the respondent. As regards Rajmal, he was admitted to be the Kul-Guru of Punamchand, and he produced a pedigree Ex. P/A from a book of pedigrees kept by him. This table supported the appellant. Learned counsel for the respondent, however, challenges the admissibility and authenticity of this table on several grounds. In the first place, he contended that the record kept by the Kul-Guru was not a bound book, but was in loose sheets, and that there were blank spaces on those sheets' and manipulation could easily be made. It was next contended that the witness was unable to say in whose handwriting the record kept by him existed, and that there being no signatures appended to the contents in the record it could not be said whose statements they were, which were being sought to be admitted. The witness gave some explanation as to loose leaves by saying that the book having become old, some papers had got out. He was, however, unable to say in whose handwriting were the entries from which the pedigree was made out.

Learned counsel for the appellant relied upon 'JAHANGIR v. SHEORAJ SINGH', 37 All 600 for the proposition that it was not necessary to show who had made the statements contained in the pedigree. In the case relied upon, the pedigree was produced by a member of the family as having been handed over to the witness by his grand father as the family pedigree and the Court held it to be genuine. It was contended for the opposite party that it was necessary to show who was the author of the statements on the basis whereof the pedigree came to be prepared and their Lordships repelled that contention. In that case the pedigree was held to be admissible in evidence on the presumption that the grandfather of the witness had adopted it and it became his statement even though the writer or the person who dictated it remained unknown.

All that this case therefore lays down is that a pedigree would become admissible under Section 32(6) of the Indian Evidence Act, even though the writer or the person who dictated it is not known, if it has been adopted by a person who had special means of knowledge. The same view has been taken in 'ABDUL GHAFUR v. MT. HUSSAIN BIBI', AIR 1931 P. C. 45. In the present case Rajmal was however unable to show who had written the disputed entries or at whose instance they were written or even whether they had been adopted by any person having special means of knowledge who was dead. The document and the statement of Rajmal based thereon are, therefore, in our opinion, valueless. But even on the finding that the objector failed to prove that Sarup was the son of Ranchor, the respondent is not benefited. Unless it was proved that the respondent was in the line of Haring, the Objector would succeed as Chunilal was admittedly in the line of Haring a common ancestor of Chunilal and Punamchand.

10. The learned Judge's observation, that the objector had no 'locus standi' in view of his claimbeing based on a will by Chunilal, is not correct. It has been held in 'GULSHAN ALI v. ZABIR ALI', 42 All 549 and 'VIRAVAN v. SRINIVASA CHA-RIAR', 44 Mad 499 that an assignee from an heir is entitled to claim the grant of succession certificate. A person claiming under a will by an heir is in the same position and he can, therefore object to the grant of certificate to a stranger. The ruling relied upon by the lower Court, MT. KABO v. DAMKI LAL', AIR, 1935 Pat 478 is entirely irrelevant. In that case, the question related to the ownership of the property. The several contesting parties alleged three different persons to be the owners of the prepared (sic) and what the Court decided was that the owner was the person in whose name property stood, and accordingly granted a certificate to the person who was admittedly his heir. The observation of the learned District Judge that the appellant had no 'locus standi' before obtaining the Letters of Administra-tion or Probate in respect of the estate of Punam Chand is also incorrect, since the appellant did not set up any will by Punam Chand and the appellant had already obtained the Letters of Administration with a will annexed, from the Court of the District Judge in respect of Chunilal's will during the course of the proceedings.

11. The appeal as, therefore, accepted, the direction as to grant of succession certificate to therespondent is set aside, and the petition is dismissed. The non-petitioner having not made anyapplication for the grant of a succession certificate, no grant of certificate can be made to himat this stage.