

Ram Pal Vs. Kalu Alias Ramdeo

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Court : Rajasthan

Decided On : Apr-07-1975

Reported in : 1975WLN(UC)182

Judge : V.P. Tyagi, J.

Appeal No. : S.B. Civil Misc. Appeal No. 48 of 1970

Appellant : Ram Pal

Respondent : Kalu Alias Ramdeo

Disposition : Appeal dismissed

Judgement :

V.P. Tyagi, J.

1. This appeal of Rampal is directed against the order of the District Judge, Ajmer, dated January 7, 1970 rejecting the application of the appellant for the grant of succession certificate under the provisions of the Indian Succession Act, 1955 (hereinafter called 'the Act').

2. The petitioner appellant filed a petition before the District Judge, Ajmer, claiming himself to be the successor of deceased Jeetmal who died issueless, his wife having predeceased. The petitioner was the son of a real brother of Jeetmal. He therefore prayed that a succession certificate be given to him in respect of the

debts mentioned in the schedule annexed to the petition. In the pedigree table given in the petition, one Anna Ram was also shown as the nephew of the deceased but Anns Rom did not object the claim of Rampal forgetting succession certificate. One Kalu alias Ramdeo however submitted an objection to the petition filed by the petitioner appellant on the ghround that deceased Jeetmal left a will Ex. A. 2 dated. February 21, 1945. Along with his objection, he also filed a document Ex. A. 1 which was executed by the deceased on October 6, 1964 wherein the deceased had admitted the objector Kalu as his adopted son. This document has been termed by the executor as an lkrarnama and it was written on a stamp paper of Re. 1.50 p. On the basis of the pleadings of the parties, the court below framed two issues and after recording the evidence produced by Rampal and Kalu it was held by the court that the two documents produced by Kalu were duly proved by him. The learned District Judge also held that Jeetmal died intestate leaving behind him a will dated Ft February 21, 1945 and therefore, sect on 370 of the Act was a bar for issuing any succession certificate in favour of the petitioner appellant. Having felt aggrieved by this order of the District Judge, the petitioner has preferred this appeal before this Court.

3. Learned Counsel appearing on behalf of the appellant urged that the court below has not correctly understood the scope of the provisions of Sections 370 of the Act and in support of his contention, placed reliance on Dr. Tirlochan Singh v. Smt. Mohinder Kaur and Mr. Hem Nalini Judah v. Mrs. Isolyne Sarojbashini Bose and Ors. : AIR 1962 SC1471 .

4. Mr. Chacha, appearing on behalf of the respondents on the other hand urged that Sub-section (2) of Section 213 of the Act is attracted to this case and therefore, relying on the decisions of this Court in Mst. Jadav v. Ram Swarup 1960 RLW 685, Sheo Nath Singh v. Madan Lal 1955 RLW 593 and Smt. Mooli Bai v. Smt. Dhapi Bai 1966 RLW 59, urged that the decision of the Court below does not suffer from any infirmity.

5. It is not clear from the order of the court below as to why the issue relating to the adoption of Kalu by Jaetmal was not framed by it. Kalu has taken a definite plea that he being the adopted son of Jeetmal, no succession certificate could be

given to the nephew of the deceased in preference to him. The document Ex. A. 1 clearly speaks of the adoption of Kalu by Jeetmal but inspite of the document and the pies raised by Kalu, no issue was framed relating to the status of Kalu vis-a-vis Jeetmal.

6. It is not disputed by learned Counsel for the parties that Ex. A. 2 dated February 21, 1945 was the will left by Jeetmal It is a registered document. But it appears that the court below took another document Ex. A. 1 dated October 6, 1984 as a subsequent will abrogating the first one. I carefully perused both these documents. A bare perusal of document Ex. A. 1, which has been termed by the executor himself as Ikratnama, cannot be considered by any stretch of imagination Asia will. The document Ex. A. 1 clearly reiterates that Jeetmal has adopeted Kalu. This document has been proved by the objector Kalu by producing three attesting witnesses viz. Kishchand DW 6 Mangslsingh DW 7 and Hajilal DW 8. The learned District Judge has accepted the testimony of these witnesses and on the strength of their evidence he has given a finding that the objector has succeeded in proving Ex. A. 1 Learned Counsel appearing on behalf of the appellant has not challenged the evidence of these three witnesses. The document has been produced before the court in original, and it speaks unequivocally that Jeetmal had adopted Kalu before exiting that document and as such he reiterated in the aforesaid document that Kalu will be the successor of Jeetmal after his death Apart from this documentary evidence in favour of Kalu to oust Ranapal petitioner in order of succession, there is a document Ex. A. 2 dated February 21, 1945 which is a registered will of the deceased and which entitles Kalu to inherit the properties left by Jeetmal after his death. This will has not been revoked. Even if the factum of adoption is not taken to have been proved on account of the face that the court below did not frame any issue on that point, the petitioner Rampal is not entitled to get a succession certificate issued in his favour. The document Ex. A. 1 having been proved by the objector Kalu, Rampal cannot claim to be successor of deceased Jeetmal unless it is established by some competent court that Kalu was not taken in adoption by Jeetmal In the face of the two documents, the judgment of the court below cannot be interfered with by this Court.

7. In view of this finding, I need not go into the question whether Section 370 of the Act is a bar for the issue of a succession certificate to the petitioner. The result is that the appeal fails and is dismissed with costs.

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