

Basanta Lal Vs. Parbati Koer

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Court : Kolkata

Decided On : Jul-03-1903

Reported in : (1904)ILR31Cal133

Judge : Ghose and; Pratt, JJ.

Appellant : Basanta Lal

Respondent : Parbati Koer

Judgement :

Ghose and Pratt, JJ.

1. This appeal arises out of an application under the Succession Certificate Act, VI of 1889. The applicant was one Musammat Parbati Koer, the daughter of the deceased Fakir Chand Sahu. The application was opposed Fakir Chand, who put forward an objection saying that Fakir Chand, who put forward an objection an objection saying that Fakir Chand was a member of joint Hindu family, and that therefore, he (Basanta Lal) was the person entitled to a certificate. The learned District Judge states in the first portion of his order: 'It appears that the documents and accounts are in Basanta Lal's possession, and he has filed documentary evidence which, at first sight seems to go a good way to establish that he was join with the deceased.' He further observes: 'But it has been ruled in Raghu Nath Misser v. Pate Koer (1901) 6 C.W.N. 345, that the natural heir is entitled to a certificate under this Act on the mere allegation that the debts were the separate

property of the deceased; the Court should not go into the question of jointness, and need not decide whether the debts were deceased's separate property or whether he left any separate property at all. On this ground I think the petitioner is entitled to a certificate in respect of the debts for which a certificate is necessary.' And then dealing with the debts mentioned in the application of the petitioner Parbati Koer, he has held that she is entitled to a certificate with respect to two out of the seven debts.

2. The case of *Raghu Nath Misser v. Pate Koer* (1901) 6 C.W.N. 345 quoted by the District Judge is not a case under the Succession Certificate Act, but one under the Probate and Administration Act. It was no doubt there held that a Hindu widow governed by the Mitakshara law is entitled to obtain letters of administration of her husband's estate out the mere allegation that he left separate property; and that the Court cannot go into the question whether the property left was joint or separate. We do not however understand how this case can be regarded as a precedent upon the question which the District Judge was called upon to decide in this case; and it will be observed that the language of Section 7 of the Succession Certificate Act is different from the language of the section in the Probate and Administration Act, which refers to the grant of letters of administration. Section 7 of the Succession Certificate Act provides that upon the day fixed for hearing the application, or as soon thereafter as may be practicable, the Court shall proceed to decide in a summary manner the right to the certificate from the language of the section in the Probate and Administration Act, which refers to the grant of letters of administration. Section 7 of the Succession Certificate Act provides that upon the day fixed for hearing the application, or as soon thereafter as may be practicable, the Court shall proceed to decide in a summary manner the right to the certificate. And when the Court decides the right to such certificate, it shall make an order for the grant of certificate to the person who is; so entitled. This indicates that the Court is bound to decide, though in a summary manner, the question as to the right to the certificate, especially when there is-a. conflict between, two parties. Clause (3) of the same section provides that 'If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary, proceeding, it may nevertheless grant a certificate to the applicant, if he appears to be the person

having prima facie the best title thereto.' This clause also indicates that the Court has to determine the question of title to the certificate asked for. Clause (4) however provides that 'when there are more applicants than one for a certificate and it appears to the Court that more than one of such, applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.'

3. The question raised in this appeal was very fully discussed in the case of *Hurri Krishna Panda v. Balabhadra Panda* (1896) I.L.R. 23 Cal. 431. The learned judges, while dealing with the question raised, made, among others, the following observation and which we think are most pertinent to the present case: 'These provisions in our opinion indicate the necessity of some inquiry into the right to the certificate. The inquiry is expressly directed to be summary, but it is to be an inquiry into the right to the certificate. Now, though the right to the certificate may not be the same thing as the right to the estate of the deceased proprietor, yet, on the other hand, we must take it that it is not to be altogether unconnected with that right. It would be unreasonable to hold that the right to the certificate may belong to a stranger who has no connection with the estate, and the provisions of Sub-sections (3) and (4) of Section 7 go to indicate that the right to the certificate must have 'some' connection with the right. It would be unreasonable to hold that the right to the certificate may belong to a stranger who has no connection with the right to the estate though it may not be identically the same thing as the right to the estate of the deceased. Thus Sub-section (3) merely authorises the Court, where the termination of the right to the certificate involves an inquiry into question of law or fact which seem to the Court to be too, intricate and difficult in a summary proceeding to grant a certificate to the applicant if he appears to be the person having prima facie the best title to the certificate, but it does not authorise the Court to grant a certificate to any other person who may be best entitled to it,'--and so on.

4. We think that the learned Judge of the Court below ought not to have disposed of the questions raised before him in the way that he has done. We accordingly set aside his order and send back the record to him so that the question of the right to

the certificate may be dealt with in accordance with law.

5. Costs will abide the result.

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