

**In the Goods of Sew Prasad Saraf**

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**Court :** Kolkata

**Decided On :** Mar-17-1954

**Reported in :** AIR1954Cal444

**Judge :** G.N. Das and ;S.R. Das Gupta, JJ.

**Acts :** [Succession Act, 1925](#) - Sections 211(2) and 212(2); ;[Companies Act, 1913](#); ;Hindu Law; ;Court-fees Act, 1870 - Section 191

**Appellant :** In the Goods of Sew Prasad Saraf

**Advocate for Pet/Ap. :** H.N. Sanyal and ;P.K. Sen, Advs.

**Disposition :** Application succeeds

**Judgement :**

**G.N. Das, J.**

1. This is an application by Ram Prasad Saraf for the grant of Letters of Administration to the estate of Sew Prasad (deceased).

2. The deceased Sew Prasad Saraf was the karta of a Hindu Joint Family governed by the Mitakshara School of Hindu Law. As karta of the family, he purchased 150 ordinary shares of Union. Jute Co., Ltd. and 100 ordinary shares in Standard Jute Co., Ltd. The shares were registered in his name. Sew Prasad Saraf died intestate on 24-2-1942. At the time of his death, the joint family

consisted of himself, his brothers Ram Prasad Saraf, Ganga Prasad Saraf and his mother Mussammat-Jadi Bai and the minor children of himself and his brothers. The deceased had no personal assets or separate property.

3. The Articles of Association of the above two-companies provide that the executors or administrators of a deceased member shall be the only persons recognised by the company as having title to the shares registered in the name of such member.

4. After the death of Sew Prasad Saraf the applicant Ram Prasad Saraf became the Karta of the said joint family. The said companies refused to entertain the claim of the applicant to be registered as a member or to pay dividends to him unless Letters of Administration were obtained by him.

5. On 28-8-1952 the applicant made the present application for the grant of Letters of Administration to the estate of the deceased, viz., the shares above mentioned. The application was verified by the applicant Ram Prasad Saraf and subscribed also by the said Ganga Prasad Saraf and Mt. Judi Bai.

6. The petition was accompanied by a certificate of the Taxing Officer dated 4-6-1952 that the ad valorem fee prescribed by Schedule I, Clause 11 of the Court Fees Act, 1870, was not payable and a further certificate of the Registrar, Original Side that no intimation had been received from any other court in the Indian Union of any Grant of Probate of any will or Letters of Administration or a Succession Certificate with effect throughout the Union of India.

7. The application, which was non-contentious, came up before Mitter J. By an order dated 28-8-1952, the learned Judge referred the application under Rule 2, Chapter 5 of the Original Side Rules, to be heard by a Bench of 2 or more judges to be constituted by the learned Chief Justice.

8. By a determination made by the learned Chief Justice the application has come up before this Bench.

9. Two questions arise for consideration on this application, viz.,

(1) Whether in the case of a joint Mitakshara Hindu family, where shares in a joint stock company are held by the Karta of the family in his name, Letters of Administration limited to the said shares can be granted to the next Karta of the family;

(2) whether in the present case, the plaintiff is entitled to the grant of letters of administration without payment of court fees.

10. The application was heard as a non-contentious cause, all other persons interested in the shares in question having recorded their consent to the grant of letters of administration.

11. I shall now take up the first question. A decision on this question requires consideration of certain points.

12. In the first place, the application for the grant of letters of administration having been made with respect to a part of the joint estate of which the deceased was a Karta, we have to consider whether such a limited grant can be made.

It is true, as pointed out by Pontifex J. in the case of 'In the Goods of Ramchand Seal', 5 Cal 2 (A)', that ordinarily an applicant must take out general letters of administration. But under special circumstances, the court can make a limited grant. 'In the Goods of Cowar Suttya Krishna Ghosaul', 10 Cal 554 (B).

In Tristram and Coote's Probate Practice such limited grants are called grants 'save and except' and are said to be permissible where the nature of the case requires it: such grants are envisaged in Section 256, Succession Act, 39 of 1925.

13. We have next to consider whether the Succession Act, 39 of 1925 contemplates the grant of Letters of Administration in cases like the present.

14. Sections 211, 212 and 213 of the Succession Act, 39 of 1925 make it abundantly clear that in case of a member of a joint Mitakshara Hindu family who dies intestate, no grant of letters of administration can clothe the administrator with representative title to any property of the deceased person which would otherwise have passed by survivorship to some other person or persons.

15. The above rule is founded on the true notion of an undivided Mitakshara Hindu family, because in such a family no individual member has a particular or defined share in the coparcenary; and on the death of such a member his undefined, interest lapses in the coparcenary. 'Appuvier v. Rama Subba Aiyar', 11 Moo Ind App 75 (PC) (C). The consequence of the above rule is that a deceased member of an undivided Mitakshara Hindu family cannot have any estate of his own in respect of which a grant of Letters of Administration can be made.

The position is somewhat different where the Karta of such a family holds a joint property in his own name, in such a case the ostensible title is in the karta, though he holds the property for the benefit of all the members of the coparcenary. In Mulla's Hindu Law, 10th Ed., paragraph. 375 page 457 it has been stated that where the karta dies the legal title which was vested in him does not pass by survivorship to the other coparceners and letters of administration can be granted in respect of such property to the remaining coparceners. In the present case, it is not necessary to express any opinion on the correctness or otherwise of the above view.

We are concerned in the present case with the question whether Letters of Administration can be granted in respect of shares in joint stock companies which stand in the name of the Karta of a joint Mitakshara Hindu family. In case of such shares, the Companies Act and the Articles of Association of the company, in the present case, make it abundantly clear that vis a vis the company, the legal title in the shares is in the holder of the shares viz., the karta of the joint family. On his death, the executors or administrators of the deceased holder of the shares 'shall be the only person recognised by the company as having any title to the shares', vide Regulation 21, Table A of the First Schedule of the [Companies Act, 1913](#) and the Articles of Association of the companies in question, viz., articles 54 and 48. The position, therefore, is that on the death of the karta who was the registered holder of the shares, the title to the shares vis a vis the company, did not on his death pass by survivorship to the surviving members of the coparcenary of which the deceased was the karta. The exceptions in cases of a Hindu dying intestate occurring in Section 211(2), 212(2) of the Succession Act 39 of 1925 do not therefore apply in such cases. Accordingly in my opinion, neither the principles of

Hindu Law nor the provisions contained in the Succession Act, 39 of 1925 stand in the way of grant of Letters of Administration limited to the shares held by the karta of a joint Mitakshara Hindu family in the event of his dying intestate.

16. I shall now deal with the cases bearing on this question.

17. In the case of 'In the goods of Bhubaneswar Trigunait' : AIR1925 Cal1201 , it was assumed by C. C. Ghose J. and on appeal by the Bench (Sanderson C. J. and Rankin, J.) that Letters of Administration could be granted to the surviving members of a Mitakshara Hindu joint family in respect of an account in the Bank standing in the name of the karta of the family when the latter dies intestate.

18. In the case of 'In the goods of Ganashyam-das Somani', ILR (1946) 1 Gal 92 (E), Gentle J. however held that an application for the grant of Letters of Administration by the sons in respect of certain shares held by their father in Krishna Behary Tea Company, on the death of their father without leaving a will, the family being joint and governed by the Mitakshara School of Hindu Law, was not competent, the remedy of the applicants being to apply for the grant of a Succession Certificate under Section 370 of the Indian Succession Act, 39 of 1925.

The learned Judge distinguished the case of : AIR1925 Cal1201 ', on the ground that the point was not considered by the learned Judges in that case. Gentle J. followed the decisions of the Allahabad High Court in the case of Bal-mukund Dubey; 'In the Goods of Balmukund Dube' : AIR1930 All82 and of the Patna High Court in the case of -- 'Kali Kumar v. Mt. Nuna-bati Kumari', AIR 1923 Pat 96 (1) (G) and dissented from the view of the Bombay High Court in the case of -- 'Vithaldas Gobindram v. Vadilal Chhaganlal', AIR 1936 Bom 191 (H), and the opinion of Mulla in Principles of Hindu Law (9th Ed.) paragraph 375, page 441 which was said by the learned Judge to be based on some decisions of the Bombay High Court and the Punjab High Court.

The learned Judge did not consider the special incidents of shares when they are held by the karta of a joint Mitakshara Hindu family, to which I have made a reference. With respect, we dissent from the view taken by the learned Judge.

19. I may point out that in the case of 'In the Goods of Lal Madho Prosad' : AIR1935 All449 ', a Bench of that Court (Sulaiman C. J. and Gunga Nath J.) held that Letters of Administration could be granted to the applicant who was a son of the deceased Lala Madho Prosad in respect of certain shares of the Imperial Bank held by the latter in his own name, provided the applicant paid full court fees, the applicant and his father being members of a joint Mitakshara Hindu family.

20. The decision of the Patna High Court in -- 'AIR 1923 Pat 96 (1) (G)', is distinguishable, as it does not appear that the property in question in that case consisted of shares in joint stock companies.

In the case of -- 'Gopalaswamy Pillay v. Meenakshi Animal', AIR 1929 Rang 99 (J), the Bench (Rutledge C. J. and Brown J.) were of the opinion that in special circumstances Letters of Administration could be granted to the survivors of a joint Mitakshara Hindu family. It does not appear if the joint estate consisted of shares in joint stock companies.

In the case of 'In the matter of Dasu Manavala Chetty', 33 Mad 93 (K), the Bench (Benson C. J., Miller J. Sankaran Nair J.) proceeded on the footing that Letters of Administration could be granted in respect of joint property held by the karta of a Mitakshara Hindu family which consisted inter alia of shares in certain companies. Miller J. gave some reasons in support of the view that the applicant was entitled to Letters of Administration.

In the case of -- 'Sriram v. Collector of Lahore', AIR 1942 Lah 173 (PB) (L) certain shares in the Imperial Bank of India and the Reserve Bank of India stood in the name of Lala Balakram. The shares were owned by a joint Mitakshara Hindu family of which. Lala Balak Ram was the karta.

On Lala Balak Ram's death Sriram. became the karta of the family and made an application for the grant of letters of administration in respect of the said shares. The court held that letters of administration could be granted. Reliance was placed on the decision of the Bombay High Court in the case of -- 'Bank of Bombay v. Ambalal', 24 Bom 350 (M).

21. In the Bombay case just cited, the Bench (Jenkins C. J. and Candy J.) held that letters of administration could be granted in respect of shares in the Bank of Bombay held by the father of a joint Hindu family in his own name.....The reasons given by Jenkins C. J. are that 'the deceased alone was the registered holder of the shares; therefore it is clear that there was no survivorship under the Act and that the legal title which was vested in the registered holder of the shares did not survive; but it devolved on his legal representative.' I respectfully agree with the view so expressed.

22. The view taken in -- '24 Bom 350 (M)', has been followed in later Bombay cases see --'Birdibai Mohanlal v. Chunilal Chandmal', AIR 1946 Bom 163 (N).

23. The preponderance of judicial opinion is thus in favour of the view taken by me.

24. My conclusion therefore, is that where shares in a joint stock company belonging to an undivided family governed by the Mitakshara School of Hindu Law stand in the name of the karta of the family, letters of administration limited to the shares can be granted to the legal representatives in the event of the karta dying intestate, and in particular to the next karta of the family. The answer to the first question must, accordingly, be in the affirmative.

25. The second question raises the point as to the amount of Court Fees payable in case of such a limited grant. The cases bearing on the question do not speak with one voice.

26. In the case of in the Goods of Pokurmull Augurwallah<sup>1</sup>, 23 Cal 980 (O), Amir Ali and Sale JJ. held that in cases like the present no duty was payable.

27. The view taken in the above case was commented upon by Sanderson C. J. and Rankin J. in : AIR1925 Cal1201 ', but no opinion was expressed, as the decision proceeded on other grounds.

The view taken in -- '23 Cal 980 (O)' has also been taken by the Bombay High Court, the latest decision being that in -- 'AIR 1946 Bom 163 (N)', and by the Lahore High Court in -- 'AIR 1942 Lah 173 (FB) (L)'.

28. A somewhat contrary view was taken by ' the Madras High, Court in -- '33 Mad 93 (K)'. It was held that ad valorem Court Fees on the value of the share to which the deceased was entitled at the moment of his death, are payable.

29. In -- : AIR1935 All449 , it was held that full fees as required by Article 11 of the \_ Court Fees Act must be paid.

30. In the present case, we are relieved from the task of resolving the above conflict of opi-nion.

31. It appears that in the present case, the Taxing Officer has certified that no duty is payable.In --- : AIR1925 Cal1201 , it was held bySanderson C. J. and Rankin J. that the decisionof the Taxing Officer on this question was finaland that the court had no authority to review it.Relying on this decision, we hold that the decisionof the Taxing Officer that no duty is payable, mustbe accepted as final.

32. The second question must, accordingly, be answered in the affirmative.

33. The result is that the application must succeed. We accordingly direct that Letters of Administration to the estate of the deceased Sew Prasad Saraf alias Shew Prosad Sharaf viz., the properties and credits mentioned in Schedule A of the petition be granted to the petitioner Ram Prasad Saraf. The applicant will be entitled to retain his costs out of the joint family estate. Certified for two counsel.

**S.R. Das Gupta, J.**

34. I agree.

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