

Nepusi Bewa Vs. Nasiruddin

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Court : Kolkata

Decided On : Aug-30-1917

Reported in : 45Ind.Cas.730

Judge : Asutosh Mookerjee and ;Beachcroft, JJ.

Appellant : Nepusi Bewa

Respondent : Nasiruddin

Judgement :

1. This is a reference under Rule 1 of Order XLVI of the Code of Civil Procedure, 1908. The question referred has been framed by the Court below in these terms: 'Whether Section 4 of the Succession Certificate Act would apply at all to the case of a person who has been substituted as plaintiff for one who has died pending the suit.' The reference, however, must be limited to the true scope of Clause (a) of Sub-section (1) of Section 4, as we are concerned with a suit and not with an execution proceeding which is governed by Section 4(1)(6).

2. One Dalimullah Mandal instituted this suit on the 28th August 1916 for recovery of money due on a bond. The plaint was registered, and the case was fixed for disposal on the 21st September 1916. On that date it was reported that the plaintiff was dead, and the case was adjourned. On the 15th December 1916, the widow of the deceased plaintiff applied, for herself and on behalf of her infant sons and daughters, for leave to prosecute the suit and an order for substitution was

accordingly made. The trial Court has now made this reference for the determination of the question, whether the substituted plaintiffs can obtain a decree against the defendant without the production of one of the certificates mentioned in Section 4 of the Succession Certificate Act. We are of opinion that a decree cannot be passed in favour of the substituted plaintiffs without the production of such a certificate.

3. The question raised is really concluded by authority. In the case of *Sahadev Sukul v. Sakhawat Hossain* 7 C.L.J. 658 : 12 C.W.N. 145. a suit had been instituted on a mortgage for recovery of the dues of the mortgagee, first by sale of the mortgaged properties, and then by the sale of other properties of the mortgagor. The Court made the usual decree for sale; the mortgaged premises were sold and the sale-proceeds proved insufficient to satisfy the judgment debt. Meanwhile, the mortgagee had died, and his legal representative applied to the Court to pass a personal decree against the mortgagor under Section 90 of the Transfer of Property Act. Objection was taken on behalf of the mortgagor that a decree could not be made in favour of the applicant except on production of one of the certificates mentioned in Section 4 of the Succession Certificate Act. The Court of first instance overruled this objection and passed a decree under Section 90. Upon appeal this decision was reversed. On second appeal to this Court, it was argued that as the succession had opened out during the pendency of proceedings in Court, a succession certificate was not necessary. This contention was overruled, and the view taken by the District Judge was affirmed, notwithstanding the doubt expressed in the case of *Baid Nath Das v. Shamanand Das* 22 C. 143 : 11 Ind. Dec. (N.S.) 97. where this particular point did not arise for decision. Precisely the same view was independently adopted by Maclean, C.J., and Coxe, J., in *Abdul Sattar v. Satya Bhushan Das* 35 C. 767, which was decided before the case last mentioned had been reported.

4. Maclean, C.J., held that having regard to Section 4 of the Succession Certificate Act, the Court could not pass a decree under Section 90 in favour of the personal representative of the mortgagee, till a certificate had been granted to him under any of the Acts mentioned in that section and that the fact that a certificate had been subsequently granted was not sufficient to get rid of the difficulty in his path

created by the clear language of Section 4. The view taken in these two cases is in accord with that of Farran, J., in *Torregrosa Vasquez v. Pragji Hurji* 16 B. 519 : 8 Ind. Deo. (N.S.) 825, where he held that upon the death of the plaintiff pendente lite, though the suit may be continued by his representative, a certificate in proof of his representative title must be produced before a decree can be passed in his favour. The comprehensive language used in Section 4(1)(a), namely, that 'No Court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or any part thereof' is undoubtedly capable of the interpretation adopted in these cases. The claim contemplated by Section 4(1)(a) is a claim made by a person in the capacity of and as a personal representative of a deceased person, and from the point of view of the purpose of the Statute as set out in the preamble, it is clearly immaterial whether the decree has to be made in favour of a personal representative who has himself instituted the suit or in favour of one who has taken the conduct of the suit in hand after its institution by the original creditor. The essence of the matter is that, in both the cases, when the decree is passed, it is passed in favour of a person who claims to be entitled to the effects of the deceased person and who must consequently produce proof of the representative title. Whether the same principle does or does not apply to execution cases, does not arise for consideration on the present reference, but it may be observed that there appears to be a substantial difference in phraseology between Clauses (a) and (6); the former contemplates the point of time when the decree is passed, the latter refers to the point of time when the Court is called upon to proceed on the basis of the application for execution: *Mahomed Yusuf v. Abdur Rahim Bepari* 26 C. 839 : 4 C.W.N. 558, 13 Ind. Deo. (N.S.) 1138. We hold accordingly that Section 4(1)(a) of the Succession Certificate Act applies to the case of a person who has been substituted as plaintiff upon the death of the original plaintiff during the pendency of the suit.

5. The records will be returned to the Court below; if the trial Judge holds that the plaintiffs are entitled to a decree, a reasonable opportunity must be afforded to them to produce the requisite certificate.

