

Dukharam Bharti Vs. Luchmun Bharti

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Court : Kolkata

Decided On : Feb-24-1879

Reported in : (1879)ILR4Cal954

Judge : Ainslie and ;Broughton, JJ.

Appellant : Dukharam Bharti

Respondent : Luchmun Bharti

Judgement :

Ainslie, J.

1. One Rambuksh Bharti died on the 17th of Aughran 1284 (1st December 1877). It is stated that he and Luchmun Bharti were fellow disciples of one Moharuck Bharti, who died some time before that, and who is alleged to have left a will.
2. Luchmun Bharti claims a certificate under Act XXVII of 1860 as being the person entitled to succeed to the guddee of the Mut. There is another claimant for a certificate, namely, Dukharam Bharti, who is admitted to have been a chela of Rambuksh.
3. The question before us has nothing to do with the question of the extent of the estate of the deceased Rambuksh, nor with the right of succession to the Mut. The one question which we have to consider is, which of these two persons, the

spiritual brother, or the spiritual son, is entitled as representative of the deceased to collect the debts, outstanding due to the personal estate of the deceased Rambuksh, if there are any.

4. There is on the record a bond by Girdhari and Bheekum Aheer, of the 5th of Assin 1283 (20th September 1876), for the sum of Rs. 51 bearing interest, given to Rambuksh Mohunt of the Mut Muttya. This expression 'Mohunt of the Mut Muttya' may have been used simply for the purpose of identifying the individual to whom the bond was given. There is nothing in the bond from which we can conclude that the money was advanced by Rambuksh out of the funds of the Mut, and not out of his own private funds. For the purpose of the present application, we must take it that the bond is on its face a debt due to Rambuksh in person. That being so, the person who is entitled to represent him for the purpose of collecting that debt is his spiritual son Dukharam and not his guru bhai Luchmun.

5. The Judge has rejected the applications of both parties, and in support of his order he has cited a decision of this Court, *In re Bhyrub Bharuttee Mohunt* (21 W.R., 340). But it appears to us that this case is clearly distinguishable from that, because the Judges there say,--'It is not for a moment contended that these debts were due to the mohunt personally; they were due to the endowment, and are not debts of a deceased person at all.' It is not our business now to criticize that decision, though it may be observed in passing that the result of it seems to be, that in a case such as the one which the Court was then dealing with, an estate would be left without anybody capable of realizing outstanding debts, and that while litigation was going on for the purpose of determining the person rightfully entitled to the estate, debts due might become incapable of realization.

6. In the present case we must take it that there is *prima facie* evidence that the debt was a personal one, and therefore a certificate to collect it should be given to Dukharam Bharti, but under the circumstances we think that he ought to be required to furnish security at the time of taking out the certificate to the extent of the debts scheduled by him, and that such schedule should then be annexed to the certificate issued.

7. The result is that Luchmun's appeal, No. 284, will be dismissed without costs, and Dukharam's appeal, No. 286, allowed with costs.

Broughton, J.

8. I concur. This case is quite distinguishable from the case of Bhyrub Bharuttee Mohunt (21 W.R. 340), because there it is distinctly said by the learned Judges that the debt was not a personal one. Here it is a personal debt.

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