CIVIL RULE.

Before B. B. Ghose and Panton JJ.

BENODE BEHARI SAHA

v.

RAI SUNDARI DASSYA.*

1926

Jan. 29.

Curator—Shebait, if entitled to proceed under the Curators Act—"Succession" in the Curators Act, if confined to intestate succession—Six months, calculation of—Who is entitled to apply under section 3 of the Curators Act—Curators Act (XIX of 1841), ss. 3, 14.

The *shebait* of a deity is entitled to present an application under the Curators Act.

The expression "succession" in the Curators Act is not confined to intestate succession.

It is not necessary to bring the operation of the Curators Act into play that the succession should be claimed from the last deceased proprietor. All that is necessary to be decided under s. 14 of that Act is who should be put into possession of the property in succession to the last deceased holder.

Bhimappa v. *Khanappa* (1) followed.

Where the opposite party has taken possession of all the valuable movable properties left by the deceased holder and claims the properties on behalf of his son the petitioner is entitled to maintain an application under s. 3 of the Curators Act.

CIVIL RULE.

One Purna Chandra Saha, a wealthy inhabitant of Rangpur, died in 1899, leaving a will, whereby he left the properties to his wife, Sarada Sundari, for her life and then to his son to be adopted by his wife, after his death, and on her failure to adopt such a son, the properties were to be endowed in favour of the two family deities named in will and in favour of various other charities.

* Civil Rule No. 1176 of 1925, against the order of R. L. Sadhu, District Judge of Rangpur, dated Aug. 26, 1925.

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Sarada Sundari died in November, 1924, leaving an adopted son, he being a son of her sister, and the petitioner, Benode Behari Saha, who was an agnate of Purna Chandra Saha. After Sarada Sundari's death, the petitioner took possession of the properties of Purna on behalf of the infant. The opposite party, Rai Sundari, who was the mother of Purna, applied to the District Judge for obtaining possession of the properties left by Purna, alleging that there was no adoption, that the properties had vested in the family deities and that she, as the next heir-at-law of Purna, was entitled to possess the properties as the *shebait* of the deities.

Thereupon, the Judge, acting under the Indian Curators Act, appointed an officer of the Court as Curator of the properties and called upon the petitioner, Benode, to attend the proceedings under the said Act to determine the right to possession of the properties alleged to have been left vacant by the death of the last proprietrix. This order of the Judge was eventually set aside by the High Court, the Judge being directed to proceed under the Act upon proper affidavits.

Thereafter, on an affidavit sworn to by Rai Sundari Dassya, the Judge continued the proceedings under the Curators Act, keeping the properties in charge of an officer of the Court as Curator. The Judge came to the conclusion, on the evidence adduced in these proceedings, that no adoption had taken place, that the properties had devolved upon the family deities under the will of Purna and that Rai Sundari was entitled to recover possession of the properties as *shebait* of the family deities as heir-at-law of Purna. He accordingly directed the Curator to make over possession of the properties to Rai Sundari.

The petitioner thereupon moved the High Court and obtained this Rule.

Sir B. C. Mitter (with him *Mr. Atulchandra Gupta* and *Babu Jitendra Kumar Sen Gupta*) for the petitioner. The Curators Act has no application to a case like the present one, where two *shebaits* were fighting for possession of the *debutter* properties. The Act, moreover, does not apply to cases of testamentary succession, where the *debutter* owes its origin to a will. The proper course in such a case was a regular suit and not the summary proceeding under the Curators Act. In any event, under section 14 of the Act, such action can only be taken, if application is made within six months from the death of the "proprietor." The "proprietor" in this case was Purna, who died in 1899, which was very much more than six months before the application. Sarada Sundari was a mere legatee under the will of Purna.

Mr. H. D. Bose (with him *Mr. Girija Prasanna Sanyal*, *Babu Mrityunjay Chattopadhyay* and *Babu Provat Kumar Sen*) for the opposite party. The Curators Act does apply to the facts of this case. The Act is not confined to any particular cases of succession. The scheme of the Act shows that its object is to protect properties left by a deceased from waste, alienation or damage, where rival claims are set up to such properties after the death of the proprietor, till an adjudication by a competent Court is arrived at as to the conflicting claims. In this case, both the allegations of the petitioner before the Court below and the report of the Curator show that considerable properties had already been removed and misappropriated. Hence, there was ample justification for the District Judge to institute these summary

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proceedings. The only question before the Court was, who ought to remain in possession of the properties and not who had the better right to possess. Section 47 of the Act is no bar to the maintainability of the present application by Rai Sundari as the last proprietrix, Sarada Sundari, died within six months of the application before the District Judge. See *Bhimappa* v. *Khanappa* (1).

Sir B. C. Mitter, in reply.

GHOSE AND PANTON JJ. This Rule was obtained on an application for revision of an order passed by the District Judge of Rangpur under section 115 of the Civil Procedure Code. The order was passed by the Judge under the provisions of the Succession (Property Protection) Act No. XIX of 1841, directing that the curator appointed under that Act should make over certain properties to one Rai Sundari Dassya.

The facts are these : One Purna Chandra Saha died in 1899. He left a will, under the provisions of which, amongst other things, it was directed that his widow should remain in possession of the properties for her life. Certain annuities were given to his mother, the opposite party before us, and his grandmother. The widow Sarada Sundari was given authority to adopt a son, and it was provided that if she died without making any adoption all the properties left by the testator should vest in two idols and that by the income of the properties the *debsheba* of the idols should be performed, and if there was any surplus left that would be spent for certain charitable and educational purposes. The lady Sarada Sundari died on the 23rd November, 1924, and after her death the present petitioner, Benode Behari Saha, took

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possession of the properties, movable and immovable, left by Sarada Sundari, on the allegation that Sarada Sundari had adopted his son Sudhir according to the authority given in the will of Purna Chandra Saha. Thereupon, the opposite party, the mother of Purna Chandra Saha, Rai Sundari, made an application under Act XIX of 1841 on which the order complained of was made by the District Judge.

The contentions on behalf of the petitioner may be shortly summarised in this way. The opposite party and Purna Chandra Saha belonged to the same family and were agnatic relations. There are two other persons, Bhabani and Banku, who are also descendants from the common ancestor. The idols to whom the property has been left by the testator were established by an ancestor of all these persons. Therefore, all the persons, Purna, the opposite party and the others mentioned above were *shebaits* of the two idols. Purna used to perform the *sheba* for nineteen days in the month and the other three persons performed the *sheba* for the remaining eleven days. On this fact, the contention raised is that the mother Rai Sundari who presented the petition describing herself as *shebait* of the two idols and as such entitled to possession of the properties was not the sole *shebait*, and as the question involved relates to the conflicting claims of *shebaits* to the custody of the property belonging to the idols, the matter does not come within the purview of the Curators Act.

Secondly, the *shebait* is not one of the persons who are authorised to present an application under that Act.

The third argument is that the dispute does not arise on a question of succession, because the title of the idols arises for the first time by virtue of the will and the mother, therefore, cannot claim the properties by succession.

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Fourthly, it is urged that there is no finding in the judgment that the applicant was likely to be materially prejudiced if left to the ordinary remedy of a regular suit.

Lastly, it is argued that under section 14 of the Act, this application of Rai Sundari was incompetent, as it was not made within six months of the death of Purna Chandra Saha from whom the succession can only be claimed.

With regard to the first point, it may be pointed out that there was no conflicting claim as to the right of *shebaitship* in the Court below. The question that was raised and which was decided was whether the opposite party was entitled to hold the properties on behalf of his son, Sudhir Kumar, who was alleged to have been adopted by Sarada Sundari, the widow of Purna Chandra. No claim was preferred by Benode Behari, the opposite party, that he was entitled to remain in possession of the properties as one of the joint *shebaits*, and this question has not at all been discussed by the lower Court. This point we cannot allow to be raised for the first time in revision.

The second point may be answered thus: that the properties were claimed by the idols and that the idols are juridical persons can hardly be disputed. The idols were certainly entitled, therefore, to make the present application under the Curators Act and, as is well known, the idols must act through some human agency. The lady Rai Sundari presented the application, as *shebait* of the idols, to be put into possession of the properties. There cannot, therefore, be any question of the *shebait* being the proprietor of the properties; the properties have been ordered to be made over to Rai Sundari only as *shebait* of the two idols as she describes herself to be.

The third point seems to be somewhat obscure. Although the title of the idols arises from the testamentary provisions of the will and it is a case of testamentary succession, there is nothing to show that the expression "succession" in the Curators Act must be confined to intestate succession and would not apply to testamentary succession. This point also fails.

The next question is with regard to section 14 of the Act, which lays down that "this Act shall not be "put in force unless the aforesaid application to the "Judge be made within six months of the decease of "the proprietor whose property is claimed by right in "succession." Here, the proprietor is said to be, by the opposite party, Sarada Sundari, and she died within six months of the application. The contention on behalf of the petitioner is that succession is not claimed from her, as succession is claimed from Purna Chandra who died in 1899. Under the provisions of this section, the application is not maintainable. But as has been observed with regard to a similar contention in the case of *Bhimappa v. Khanappa* (1), it is not necessary to bring the operation of this Act into play that the succession should be claimed from the last deceased proprietor. The learned Chief Justice in delivering the judgment of the Court in that case observed: "It is, however, admitted that "the application was within six months of the death "of Basawa, and it is contended on behalf of the "opponents that the decease of the proprietor whose "property is claimed by right 'in succession' referred "to in section 14, would include the decease of Basawa "in the present case, because Basawa was, between the "death of her husband and her own decease, the pro-"prietor of the property which is claimed, and it is

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"claimed 'in succession' to her, that is to say, the "claimant claims to succeed her in the possession of "the property. This view of the section is, we think, "correct. The words of the Act appear to have been "very carefully chosen. Thus, in the beginning of the "preamble, we find a reference to 'pretended claims "of rights by gift or succession.' Here the expression "is 'by succession' and is used to express the point "of view of the claimant. Then, in the second para- "graph of the preamble, we have 'the circumstance of "actual possession when taken upon a succession' that "is, regarding the succession from the point of view "of the Judge and not from the point of view of an "interested party." The learned Chief Justice further observed: "All that the Judge has to decide is who "should be put into possession of the property in "succession to the last deceased holder. An applica- "tion was made to him to come to a decision upon that "point within six months of the death of Basawa, and "we, therefore, think that he acted with jurisdiction "in coming to his decision." We agree with this view of the reading of section 14 of the Curators Act.

With regard to the contention that the District Judge did not come to a finding that the applicant was likely to be materially prejudiced if left to the ordinary remedy of a regular suit, we have to observe that although there is no actual finding in those words, the facts found by the learned Judge sufficiently show that this question was present in his mind, and he expressly refers to the provision of section 3 of the Act with regard to this application. He has found that the opposite party has taken away all the valuable movable properties left by the deceased, and he claims the properties on behalf of his son. That finding is sufficient to entitle the petitioner to maintain an application under section 3

It is unnecessary for us to express any opinion on the question whether Benode Behari would be entitled to the possession of the properties as *shebait* of the idols or what the rights of parties are under the will. It is sufficient to say that we do not find that the order of the Judge of the Court below is without jurisdiction or has been made by any irregular exercise of jurisdiction.

The Rule is, therefore, discharged with costs.

S. M. *Rule discharged.*

CRIMINAL REVISION.

Before C. C. Ghose and Duval JJ.

BIJOY GOPAL GHOSH

v.

ISWAR CHANDRA KUMAR.*

1926

Jan. 20.

Commitment—Discharge of an offence exclusively triable by the Court of Session—Power of the Sessions Judge to direct commitment of connected offences not so exclusively triable—Criminal Procedure Code (Act V of 1898) s. 437.

When an accused is discharged of an offence exclusively triable by a Court of Session, such as mischief under s 426 of the Penal Code, a Sessions Judge is competent to order a commitment for an offence not exclusively triable by such Court, *e.g.*, one under s. 427 of the same, if it is intimately connected with the former and forms part of the same transaction but not for an offence of an entirely different character, *e.g.* under s. 380, committed in the course of the same transaction.

Emperor v. *Gendlal Chimanbhai* (1), referred to.

*Criminal Revision No. 957 of 1925, against the order of M. H. B. Lethbridge, Additional Sessions Judge of Alipore, dated July 10, 1925.

(1) (1913) 16 Bom. L. R. 80