

1916
May, 3.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.
RADHIKA PRASAD BAPUDI (APPLICANT) v. SECRETARY OF
STATE FOR INDIA IN COUNCIL (OPPOSITE PARTY)*

Act No. VII of 1889 (Succession Certificate Act)—Certificate refused—Matters to be proved to entitle applicant to a certificate.

A Government promissory note payable to one Madho Sahai was assigned by a registered deed by the legal representative of Madho Sahai to one Radhika Prasad. Upon the assignee applying for a certificate of succession in respect of this note, it was refused on the ground that it was not established that the assignor had himself a good and subsisting title to the note.

Held, that whether the assignor of the applicant had a valid title or not, or whether the assignment conveyed any title to the applicant, or whether the debt secured by the promissory note was recoverable or not, were not matters which the court had to determine upon an application for a certificate. The only question which the court had to decide was whether the applicant was the representative of the person to whom the debt was alleged to have been due.

THIS was an appeal arising out of an order of the District Judge of Benares rejecting an application for the issue of a succession certificate with reference to a promissory note which was issued in the year 1845, upon the annexation of Tanjore by the British Government. The note in question was one of a number of notes which were called the Tanjore debt notes. One of these notes was issued to one Madho Sahai of Benares who died in 1862. In 1853, the Government of Madras issued a notification that it had reason to suspect that note number 307, issued to Madho Sahai, had never come into his hands, and the Government was prepared to consider the claim of persons entitled to it, and upon proof of the claim, the liability under the note was to be discharged in September, 1854. Neither Madho Sahai nor his heirs put forward any claim. In 1892, however, one Jiban Lal claimed payment of the money on the allegation that the note in question had been endorsed by Madho Sahai, the original holder, to Girdhari Lal the predecessor-in-title of the applicant. This claim did not find favour with the Madras Government which held that the title of the applicant was not proved. Two more abortive applications were made by Jiban Lal in the years 1898 and 1900. In 1909, the promissory note was sold to the appellant under a registered instrument. It bore the endorsement "pay to Girdhari Lal" which purported to have been signed by Madho

*First Appeal No. 9 of 1916, from an order of B. J. Dalal, District Judge of Benares, dated the 7th of October, 1915.

Sahai. On the presentation of the application in court, the District Judge issued a notice to the Collector. A written statement was put in denying the applicant's right to a succession certificate under the assignment made to him and also a plea as to limitation was raised. The plea of limitation was repelled by the court below. It also held that the applicant was the assignee of Makund Lal, who was the legal representative of Madho Sahai, the original holder. But the application as regards the particular note was refused on the ground that the note bore an endorsement of transfer to Girdhari Lal and consequently any assignment made by the legal representative of Madho Sahai would confer no title upon the applicant.

Dr. Surendra Nath Sen, for the appellant.

Mr. A. E. Ryves, for the respondent.

BANERJI and PIGGOTT, JJ. :—The appellant filed an application in the court below for a succession certificate under Act No. VII of 1889, in respect of a Government promissory note described as a part of what is called the Tanjore debt. The promissory note was in favour of one Madho Sahai. He and his brother Beni Sahai are said to have formed a joint family. Madho Sahai died long ago and one of his daughters left two sons, one of whom Madhuri Das, died in 1906, leaving a son Makund Lal. Makund Lal has assigned the note to the present applicant under a deed of assignment and the applicant as such assignee has applied for a succession certificate. The court below refused to grant his application on the ground that it had not been established to the satisfaction of the court that the applicant's assignor had a subsisting title at the date of the assignment. In our opinion this was not a question which the court ought to have gone into in the present case. Whether the assignor of the applicant had a valid title or not, or whether the assignment conveyed any title to the applicant, or whether the debt secured by the promissory note was recoverable or not, were not matters which the court had to determine upon an application for a certificate. The only question which the court had to decide was whether the applicant was the representative of the person to whom the debt was alleged to have been due. In this case the debt is alleged to have been due to Madho Sahai deceased and there is no doubt, according to the finding of

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the court below, that Makund Lal was the legal representative of Madho Sahai and the applicant is an assignee from him. Therefore the representative title of the applicant was established and in fact the learned Judge granted him a certificate as such assignee in respect of another promissory note. Under these circumstances the applicant was entitled to a certificate in respect of the promissory note No. 307. We allow the appeal and varying the order of the court below, direct that a certificate be issued under the Succession Certificate Act in respect of the promissory note in question No. 307. Having regard to the circumstances we make no order as to costs.

Appeal allowed.

PRIVY COUNCIL.

CHANDRIKA BAKHSH SINGH (PLAINTIFF) v. INDAR BIKRAM SINGH
(DEFENDANT).

P.C.*
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May, 25, 26.
June, 22.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Title, suit for declaration of—Transfer of estate made to plaintiff by widow of Oudh Taluqdar in possession as heir of her husband—Transfer made with consent of all the then existent next reversioners—Refusal of Revenue authorities to record name of plaintiff as proprietor—Title set up by defendant under alleged will of deceased Taluqdar which was found by first court not to have been executed—Transfer found to be valid—Appeal by defendant and admission by him during hearing of appeal of his want of title—Practice—Failure to maintain appeal.

31 M. L. J. 505

This appeal arose out of a suit which related to the transfer to the plaintiff of an impartible estate called Mahgawan by the widow of an Oudh Taluqdar in possession of his estate for a Hindu widow's interest under the Mitakshara law. The transfer was made with the consent of the only next reversioners in existence at the date of the execution of the deed of transfer who both attested it. The defendant set up a title under an alleged will of the deceased Taluqdar. In a suit brought for a declaration of the plaintiff's title to the estate in consequence of the refusal of the Revenue authorities to have his name recorded as proprietor, the Subordinate Judge held that the defendant had no title as the deceased husband had never executed the alleged will, and that the transfer to the plaintiff was valid. On the hearing of an appeal to the Judicial Commissioner's Court by the defendant, he admitted the correctness of the first court's decision as to his want of title.

Held that the Court of the Judicial Commissioner was wrong in then allowing the appeal and dismissing the suit on the ground that the widow had

*Present:—Lord ATKINSON, Lord PARKER of WADDINGTON, Sir JOHN EDGE and Mr. AMER ALI.