

REVISIONAL CIVIL.

Before Bhide J.

BUA DITTA AND OTHERS (DEFENDANTS) Petitioners,

versus

SAHIB DIYAL (PLAINTIFF) Respondent.

Civil Revision No. 588 of 1938.

Indian Succession Act (XXXIX of 1925), SS. 192—194, 209 — Joint Hindu Family property — Dispute between the brothers — Application under S. 192 for the protection of property — Jurisdiction of the Court — Revision against the order of District Judge acting under S. 192 — Whether competent.

The deceased P. was the manager of a Joint Hindu family, consisting of himself and his sons, the petitioners being his sons by one wife and the respondent being his son by another wife. The respondent alleged that the petitioners had forcibly seized his share of the property and were making alienations to his prejudice, and he, therefore, moved the Court to take action under the provisions of ss. 192—194 of the Indian Succession Act, which relate to the protection of the property of a deceased person when the succession is in dispute. The District Judge issued notice to the petitioners and appointed a Commissioner to make list of the deceased's property. On a petition for revision of the order of the District Judge it was contended that no petition for revision was competent as the order complained of was interlocutory and further under s. 209 the decision of the District Judge is final and not subject to any appeal or review.

Held (repelling the contention), that in the circumstances, the case was open to revision as the Indian Succession Act was no bar to a revision and the District Judge had no jurisdiction to take any action under Part VII of the Indian Succession Act on the very facts alleged in respondent's petition.

Gorakh Nath v. Bishember Nath (1), relied upon.

Held further, that the respondent's petition must be dismissed as the provisions of s. 192 were not applicable because

the dispute related to the property of a Joint Hindu family where property passed by survivorship and not by succession.

Sato Koer v. Gopal Sahu (1), relied upon.

Revision from the order of Lala Munshi Ram, District Judge, Gurdaspur, dated 19th May, 1938, appointing Mr. Alakh Dhari Pleader as Commissioner.

MEHR CHAND MAHAJAN and H. R. MAHAJAN, for Petitioners.

C. L. AGGARWAL and DURGA DAS JAIN, for Respondent.

BHIDE J.—This is a petition for revision of an order passed by the District Judge, Gurdaspur, under the provisions of sections 192-194 of the Indian Succession Act relating to the protection of the property of a deceased person, when the succession is in dispute.

BHIDE J.

A preliminary objection is raised that no petition for revision is competent, as under section 209 of the Indian Succession Act the decision of the District Judge in a summary proceeding under part VII of the Indian Succession Act (which includes sections 192 and 210) is final and no appeal or review is allowed. But the Succession Act does not say that no revision is competent. By virtue of section 141 of the Civil Procedure Code, the procedure of that Code would, in absence of a provision to the contrary, govern these proceedings and I do not see why revision should not be competent under section 115 of the Civil Procedure Code. It was held by a Full Bench of the Punjab Chief Court in *Gorakh Nath v. Bishember Nath* (2), with reference to the corresponding provisions of Act XIX of 1841 (which have been now incorporated in the Indian Succession Act with some modifications),

(1) I. L. R. (1907) 34 Cal. 929.

(2) 66 P. R. 1882 (F. B.).

1938
BUA DITTA
 v.
SAHIB DITTA.

1938

BUA DITTA
v.
SAHIB DYAL.

BHIDE J.

that revision was competent under section 672 of the old Civil Procedure Code of 1877 and the reasoning on which that decision was based applies to the present case also.

It was next contended that the order in question is an interlocutory one, and hence revision is not competent. But the contention of the learned counsel for the petitioners is that on the very facts alleged in the respondent's application, the District Judge had no jurisdiction to take any action under Part VII of the Indian Succession Act. The learned District Judge in issuing notice to the petitioner and appointing a commissioner to make a list of the deceased's property has certainly decided that the case came within the purview of part VII. If the contention of the learned counsel for the petitioners is correct, it will be obviously abuse of the processes of Court and waste of time to allow these proceedings to continue. In my opinion, the learned District Judge's decision that the case is governed by sections 192-94 of the Indian Succession Act is open to revision in the circumstances. It may be mentioned here that when the present petitioners appeared in the Court below they raised the objection as to jurisdiction but the learned District Judge seems to have gone on with the proceedings relating to the preparation of an inventory without considering the petitioners' objection. In doing so, he appears to have acted with material irregularity in the exercise of his jurisdiction.

According to the respondent Sahib Dyal, the deceased Punnu Shah, his father, was the manager of a joint Hindu family consisting of himself and his sons. The petitioners are his sons by one wife while the respondent is his son by another wife. The respondent alleged that the petitioners had forcibly seized his share

of the property and were making alienations to his prejudice and he, therefore, moved the Court to take action under the provisions of sections 192—94 of the Indian Succession Act.

It would be clear from the above that the dispute related to the property of a joint Hindu family. In the case of such a family, the co-parceners are all entitled to the possession of the whole of the property and no co-parcener has any definite share in the property. The whole of the family of which Punnu Shah was the manager was, therefore, in possession of the property and on Punnu Shah's death, his interest merely passed to the other members of the family by survivorship. In the circumstances, it seems clear that the provisions of section 192 which relate to disputes relating to cases of *succession and not of survivorship* were not applicable (*c.f. Sato Koer v. Gopal Sahu* (1)). The learned counsel for the respondent had to concede that sections 192 to 194 will not apply to a case where joint Hindu family property passes by survivorship but he contended that the parties were governed by the ' *chundarand* ' rule of division according to which the property is divided *per stirpes* and not *per capita* and hence the Act applies. But *Chundarand* is only a rule of division and will have to be enforced (if the respondents' allegation is correct) when the property is to be divided. At present, the property is undivided and the mention of the above rule in the petition does not seem to me to affect the question of jurisdiction. The learned counsel next referred to *Gopi Krishna Rai v. Raj Krishna Rai* (2). But that ruling only lays down that the Succession Act (Property Protection) is not limited in its application to cases when the dispute arises between persons

1938

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BUA DITTA
v.
SAHIB DIAL.

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BHIDE J.

(1) I. L. R. (1907) 34 Cal. 929.

(2) (1910) 6 I. C. 259.

1938

BUA DITTA
v.
SAHIB DIYAL.
BHIDE J.

each of whom claims title to the entire estate, but it also covers a case in which the claim relates to an undivided share of the estate of the deceased. That ruling, however, relates to a family governed by Dhayabhaga rule of succession and according to that rule property does not pass by survivorship.

Lastly, it was urged that the present petitioners alleged in their written statement that the property belonged to Punnu Shah and he had made a will. But this was not the respondent's case and the question of jurisdiction must be decided on the allegations made by him in his application. On these allegations, it seems to me clear that Part VII of the Indian Succession Act was not applicable to this case.

I accordingly set aside the order of the learned District Judge and dismiss respondents' application with costs throughout.

A. N. K.

Petition dismissed.
