

31 C. 133 (=8 C. W. N. 51.)

[133] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pratt.

BASANTA LAL v. PARBATI KOER.\*

[3rd July, 1903.]

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C. W. N. 51.*Succession Certificate—Succession Certificate Act (VII of 1889) s. 7—Certificate, right to—Title.*

In a proceeding under s. 7 of the Succession Certificate Act (VII of 1889) the Court is bound to decide though in a summary manner the question as to the right to the certificate, especially when there is a conflict between two parties.

*Raghu Nath Misser v. Pate Koer* (1) distinguished.

*Hurri Krishna Panda v. Balabhadra Panda* (2) approved of.

[Dist. 11 I. C. 885=10 M. L. T. 164=21 M. L. J. 824=1911 M. W. N. (2) 142.]

APPEAL by Basanta Lal, the objector.

On the 4th of July 1902, Parbati Koer, the respondent, as the daughter of one Fakir Chand Sahu, who died on the 24th of April 1902, applied for the grant of a certificate under the Succession Certificate Act, stating in her petition that, besides herself, the said Fakir Chand Sahu left him surviving a nephew, Basanta Lal, the appellant, who was separate from the said Fakir Chand and therefore had no right whatever to the estate left by him. The list and description of debts, in respect of which the certificate was applied for, were as follows:—

DESCRIPTION.	Amount.	
	Ra.	A. P.
1. Decretal money due by Lalan Babu, inhabitant of mohulla Meharhatta, in city Patna, <i>in re</i> Fakir Chand Sahu, decree-holder, against Lalan Babu, under the decree No. 37 of 1900, dated 11th February 1900	6,999	2 9
2. Ditto and ditto, in case No. 38 of 1900	2,367	0 0
3. Ditto and ditto, in case No. 39 of 1900	2,210	7 8
4. The whole amount on account of <i>kistugahi</i> business, mentioned in the <i>kistugahi</i> khata, due by different debtors, whose number is large	2,000	0 0
[134] 5. Rent of the gola situate in mohulla Mankhanpore, one of the quarters of Patna, due by Gopi Lal and Mahesh Lal, tenants, for four months, at Rs. 6 a month.	24	0 0
6. Bond-money (due by) Dasrath Dyal Bhagat, inhabitant of mohulla Mahdiganj, in city Patna, under the bond, dated 12th December 1899	500	0 0
7. Half of the amount, on account of <i>kistugahi</i> business, due by different debtors, who also are large in number	475	0 0
	14,575	9 9

The application was opposed by the said Basanta Lal, who put forward an objection, saying that the said Fakir Chand and himself were members of a joint Hindu family under the Mitakshara law, and that therefore he, Basanta Lal, was the person entitled to the certificate. In his petition of objection he stated that by right of survivorship he was

\* Appeal from Order No. 329 of 1902, against the order of W. B. Brown, District Judge of Patna, dated Aug. 16, 1902.

(1) (1901) 6 C. W. N. 345.

(2) (1896) I. L. R. 23 Cal. 431.

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in possession of all the properties left by the said Fakir Chand and also of all documents and papers relating thereto.

The following order was made by the lower Court :—

“ Petitioner is the daughter and natural heir of deceased, Fakir Chand Sahu. Objector, Basanta Lal, is his nephew, and says that he and deceased were joint, and that he is his representative by survivorship. It appears that the documents and accounts are in Basanta Lal's possession, and he has filed documentary evidence which, at first sight, seems to go a good way to establish that he was joint with deceased. But it has been ruled (see *Raghu Nath Misser v. Pate Koer*, 6 C. W. N. 345), that the natural heir is entitled to a certificate under this Act on the mere allegation that the debts were the separate property of the deceased; the Court should not go into the question of jointness, and need not decide whether the debts were deceased's separate property, or whether he left any separate property at all. On this ground, I think the petitioner is entitled to a certificate in respect of the debts for which a certificate is necessary.

Debts 1, 2 and 3 are mortgage decrees obtained by deceased who had applied for execution, and I understand that the execution cases are still pending. No certificate is required to realize mortgage debts, and I think it would be better that the question of substitution should be decided by the Judge who is holding that execution proceeding. These debts should, therefore, be excluded from the certificate.

The application has been withdrawn in respect of debts 4 and 7.

Debt 5 is a claim for house rent. Basanta Lal says that the tenant has already paid the rent to him. This is a plea which may properly be left for the tenant to bring forward.

Debt 6 is a bond standing in the name of deceased's son, who predeceased him. The bond itself is in Basanta Lal's possession. On the whole, I think that certificate may be granted in respect of this debt.

[135] Petitioner will therefore get a certificate to collect debts 5 and 6 only on her giving security for the amount. This will not be taken as prejudicing the claim of Basanta Lal in any way. Petitioner is entitled to a refund of the excess duty deposited by her.”

Babu Lal Mohan Gangooly for the appellant. Clauses (3) and (4) of s. 7 of the Succession Certificate Act make it clear that in a proceeding under that section there should be some enquiry, however summary, into the title of the applicant for the certificate, especially where there is a conflict between two parties. The petitioner respondent was not entitled to the certificate on the mere allegation that the debts were the separate property of the deceased. The case of *Raghu Nath Misser v. Pate Koer* (1) cited by the lower Court, is a case under s. 201 of the Probate and Administration Act, the language of which is different from that of s. 7 of the Succession Certificate Act. The point was very fully discussed in *Hurri Krishna Panda v. Balabhadra Panda* (2).

No one appeared for the respondent.

GHOSE AND PRATT, JJ. This appeal arises out of an application under the Succession Certificate Act, VI of 1889. The applicant was one Mussammatt Parbati Koer, the daughter of the deceased Fakir Chand Sahu. The application was opposed by Basanta Lal, the nephew of the deceased Fakir Chand who put forward an objection saying that Fakir Chand was a member of joint Hindu family, and that, therefore, he (Basanta Lal) was the person entitled to a certificate. The learned District Judge stated in the first portion of his order :—“ It appears that the documents and accounts are in Basanta Lal's possession, and he has filed documentary evidence which, at first sight seems to go a good way to establish that he was joint with the deceased.” He further observes :—“ But it has been ruled in *Raghu Nath Misser v. Pate Koer* (1),

(1) (1901) 6 C. W. N. 345.

(2) (1896) I. L. R. 23 Cal. 431.

that the natural heir is entitled to a certificate under this Act on the mere allegation that the debts were the separate property of the deceased; the Court should not go into the question of jointness, and need not decide whether the debts were deceased's separate property [136] or whether he left any separate property at all. On this ground I think the petitioner is entitled to a certificate in respect of the debts for which a certificate is necessary." And then dealing with the debts mentioned in the application of the petitioner Parbati Koer, he has held that she is entitled to a certificate with respect to two out of the seven debts.

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The case of *Raghu Nath Misser v. Pate Koer* (1) quoted by the District Judge is not a case under the Succession Certificate Act, but one under the Probate and Administration Act. It was no doubt there held that a Hindu widow governed by the Mitakshara law is entitled to obtain letters of administration of her husband's estate on the mere allegation that he left separate property; and that the Court cannot go into the question whether the property left was joint or separate. We do not however understand how this case can be regarded as a precedent upon the question which the District Judge was called upon to decide in this case; and it will be observed that the language of section 7 of the Succession Certificate Act is different from the language of the section in the Probate and Administration Act, which refers to the grant of letters of administration. Section 7 of the Succession Certificate Act provides that upon the day fixed for hearing the application, or as soon thereafter as may be practicable, the Court shall proceed to decide in a summary manner the right to the certificate. And when the Court decides the right to such certificate it shall make an order for the grant of certificate to the person who is so entitled. This indicates that the Court is bound to decide, though in a summary manner, the question as to the right to the certificate, especially when there is a conflict between two parties. Clause (3) of the same section provides that "If the Court cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant, if he appears to be the person having *prima facie* the best title thereto." This clause also indicates that the Court has to determine the question of title to the certificate asked for. Clause (4) however provides that "when there are more applicants than one for a certificate and it appears to the Court [137] that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants."

The question raised in this appeal was very fully discussed in the case of *Hurri Krishna Panda v. Balabhadra Panda* (2). The learned Judges, while dealing with the question raised, made, among others, the following observation and which we think are most pertinent to the present case:—"These provisions in our opinion indicate the necessity of some inquiry into the right to the certificate. The inquiry is expressly directed to be summary, but it is to be an inquiry into the right to the certificate. Now, though the right to the certificate may not be the same thing as the right to the estate of the deceased proprietor, yet, on the other hand, we must take it that it is not to be altogether unconnected with that right. It would be unreasonable to hold that the right

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to the certificate may belong to a stranger who has no connection with the estate, and the provisions of sub-sections (3) and (4) of section 7 go to indicate that the right to the certificate must have some connection with the right to the estate though it may not be identically the same thing as the right to estate of the deceased. Thus sub-section (3) merely authorises the Court, where the determination of the right to the certificate involves an inquiry into questions of law or fact which seem to the Court to be too intricate and difficult in a summary proceeding to grant a certificate to the applicant if he appears to be the person having *prima facie* the best title to the certificate, but it does not authorise the Court to grant a certificate to any other person who may be best entitled to it,"—and so on.

We think that the learned Judge of the Court below ought not to have disposed of the questions raised before him in the way that he has done. We accordingly set aside his order and send back the record to him so that the question of the right to the certificate may be dealt with in accordance with law.

Costs will abide the result.

*Case remanded.*

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[138] APPELLATE CIVIL.

*Before Mr. Justice Mitra and Mr. Justice Pargiter.*

PRAYAG KAPRI v. SHYAM LAL.\*

[12th June, 1903].

*Penalty—Interest, rate of—Exorbitant rate—Mortgage—Compound Interest—Date of payment—Transfer of Property Act (IV of 1882), s. 86—Contract Act (IX of 1872), s. 74—Act VI of 1899.*

Simple or compound interest at a high rate is not in itself a penalty within the meaning of s. 74 of the Contract Act.

*Pardhan Bhukhan Lal v. Narsing Dyal* (1), and *Satish Chunder Giri v. Hem Chunder Mookhopadhyu* (2) distinguished.

The mortgagee is ordinarily entitled to interest\* at the rate stipulated in the bond till the date fixed in the mortgage decree for payment. He is also entitled to recover reasonable interest from that date till the date of realisation.

*Rameswar Koer v. Mahomed Mekdi Hossein Khan* (3) and *Maharaja of Bhartpur v. Rani Karno Dei* (4) followed.

[Ref. 10 C. W. N. 1020 ; 16 I. C. 379=18 C. L. J. 43 ; 64 I. C. 247.]

SECOND APPEAL by the plaintiff, Prayag Kapri.

The defendants Shyam Lal and Gajadhar Prosad and their mother executed in favour of the plaintiff a mortgage bond dated 27th April 1896, for a loan of Rs. 98-8. The stipulation as to interest was as follows:—

"We agree to pay interest thereon, at the rate of Rs. 6-4 annas per cent. per mensem, and promise to pay off in one lump sum, the principal with interest thereon, on the 15th Pous 1304 F. S. (4th January 1897), by giving *sira bhao* paddy. If we do not give paddy at the time stated, the interest will run on at the said rate, till the repayment of the amount. We stipulate to pay off the amount of annual

\* Appeal from Appellate Decree No. 1861 of 1900, against the decree of W. H. Vincent, Offg. District Judge of Rhagalpur, dated Aug. 1, 1900, affirming the decree of Parash Chandra Banerjee, Munsif of Benka, dated Feb. 26, 1900.

(1) (1898) I. L. R. 26 Cal. 900.

25 I. A. 179.

(2) (1902) I. L. R. 29 Cal. 823.

(4) (1900) I. L. R. 23 All. 181 ; L. R.

(3) (1898) I. L. R. 26 Cal. 39 ; L. R. 28 I. A. 35.