

1908
MAY 1.

30 C. 581.

[581] APPELLATE CIVIL.

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GUNINDRA PROSAD v. JUGMALA BIBI.* [1st May, 1903.]

Succession Certificate—Succession Certificate Act (VII of 1889), object of.

The object of the Succession Certificate Act (VII of 1889) is to obtain the appointment of some one to give a legal discharge to debtors to the estate for the debts due, and not to have nice and intricate questions of law as to the rights of parties to the estate of the deceased decided, on an application under it.

APPEALS by the objector, Gunindra Prosad.

These two appeals arose out of two applications for certificates under the Succession Certificate Act. The parties were Jains. In one of the cases Musammât Jugmala Bibi and Musammât Jugmohun Bibi were the applicants, and in the other case Gunindra Prosad was the applicant. The allegation of the said Musammats was that their mother, Musammât Sham Soonder Koer, died leaving certain debts due from certain persons, which, according to Hindu Law being their mother's *stridhan*, they as daughters were entitled to get.

Their application for the succession certificate was opposed by Gunindra Prosad, their brother, on the grounds that these debts were not the *stridhan* of the deceased Musammât Sham Soonder Koer; and that even if they were so, the family being a Jain family, the inheritance would be governed by custom. Gunindra Prosad also made a separate application for a certificate under the Succession Certificate Act. Both these applications were dealt together by the District Judge of Arrah, who refused to enter into the intricate questions of law, and granted a certificate under the Act to the Musammats. The material portion of the learned Judge's judgment was as follows:—

"It has been held that, in the absence of proof of custom, the Jains must be regarded as governed by ordinary Hindu Law, and this is certainly not the case for us to enquire into Jain customs.

[58%] "It has been held that enquiries must be made in these cases, but the decisions quoted all refer to cases when the facts were disputed. That is not the case here. Both parties admitted the relationships alleged. All that is in dispute is the law governing them. Without for a moment pretending to lay down what law should govern the descent, I think, that I clearly ought to follow the Mitakshara in a summary proceeding like this, taking ample security for the safety of the property."

Dr. Rash Behary Ghosh and Babu Saligram Singh for the appellant.

Mr. C. P. Hill, Babu Satis Chunder Ghose, Babu Makhan Lall and Babu Krishna Prosad Sarvadhicary for the respondent.

MACLEAN, C. J. I do not think we ought to interfere on these appeals. It is difficult for us to decide the question of the strict right to the succession certificate without determining questions of law which are obviously intricate and difficult, and not such as can be properly decided upon a summary proceeding such as the present. The object of the Succession Certificate Act is to obtain the appointment of some one to give a legal discharge to debtors to the estate for the debts due. It was not, I think, intended that nice questions of law as to the rights of parties to the estate of the deceased should be decided on an application under it. It is reasonably clear that the persons now appointed have *prima facie* the best right to a grant of a certificate, but in saying this I am not

* Appeals from Orders Nos. 381 and 409 of 1901, from the orders of H. R. H. Coxe, District Judge of Arrah, dated July 25, 1901.

to be taken as deciding anything as to the ultimate rights of the parties in the estate. These, if disputed, will probably have to be decided in a regular suit. Under these circumstances I do not think we ought to interfere. The appeals are dismissed. We make no order as to costs.

GEIDT, J. I concur.

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Appeals dismissed.

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[583] FULL BENCH.

GONESH DAS BAGRIA v. SHIVA LAKSHMAN BHAKAT.*

[13th February, 1903.]

Rateable distribution—Execution of decree—Civil Procedure Code (Act XIV of 1882) s. 295—Proportionate distribution of sale-proceeds—Decrees against the same judgment-debtor—Suit for refund of assets distributed.

B obtained a decree against three judgment-debtors—X, Y and Z. A obtained a decree against X and Y only :—

Held, that A is entitled under the provisions of s. 295 of the Code of Civil Procedure to a proportionate distribution of the assets realised by the sale of a property of X, Y and Z, so far as they represent the share of his own judgment-debtors X and Y in that property.

Debeki Nundun Sen v. Hart (1) overruled.

[*Foll.* 27 All. 158=1904 A. W. N. 200=1 A. L. J. 562 ; 29 Bom. 528=7 Bom. L. R. 567; *Rel.* on 10 O. C. 123; *Ref* 8 O. C. 86 ; 42 Cal. 1 ; 15 C. W. N. 872=14 C. L. J. 50 ;=10 I. C. 527. *Not App!* 86 Cal. 130]

REFERENCE to a Full Bench, in second appeal by the plaintiffs, Gonesh Das Bagria and another.

The defendant No. 1 had obtained a decree against the *pro forma* defendants Nos. 3 to 5, and in execution of it a certain sum of money was realised by the sale of immovable properties belonging to them jointly. The defendant No. 2, in execution of a decree obtained by him against these three defendants, applied for a rateable division of the proceeds of the execution sale, under section 295 of the Code of Civil Procedure. The plaintiffs also, who had taken out execution of a decree obtained by them against the *pro forma* defendants Nos. 3 and 4 only, applied for a rateable division of the said proceeds under the same section of the Code. But the Court rejected their application, and directed the proceeds of the execution sale to be rateably divided amongst the defendants Nos. 1 and 2.

[584] Thereupon the present suit was instituted by the plaintiffs under the penultimate clause of section 295, to compel the defendants Nos. 1 and 2 to refund the assets that had been paid to them in excess of their own shares, and which, it was alleged, was due to the share of the plaintiffs. The Munsif decreed the suit; but on appeal by the defendant No. 1, the Subordinate Judge held that the plaintiffs were not entitled to claim a refund of the assets, and set aside the decree of the Munsif so far as the defendant No. 1 was concerned.

The appeal to the High Court originally came on for hearing before a Division Bench (MACLEAN, C. J. and BANERJEE, J.); and their Lordships, entertaining a view in conflict with that expressed in the case of

* Reference to Full Bench, in appeal from Appellate Decree No. 1295 of 1899.

Full Bench : Sir Francis W. Maclean, K. C. I. E., Chief Justice, Mr. Justice Prinsep, Mr. Justice Sale, Mr. Justice Stevens and Mr. Justice Geidt.

(1) (1885) I. L. R. 12 Cal. 294.