Before Mr. Justice Kemp and Mr. Justice Markby.

1869
Aug. 12.

SRIMATI AMIRUNNISSA BARKAT (OBJECTOR) *v.* SRIMATI AFIATTUNNISSA AND OTHERS (PETITIONERS.)*

Act XXVII. of 1860, s. 6—Certificate of Administration.

Certificates to collect fractional parts of debts due to a deceased cannot be granted to different heirs according to their respective shares in the inheritance, but one certificate to collect debts should be granted to all or such of the heirs as would consent to act in concert.

Mr. *R. T. Allan* and Baboo *Hem Chandra Banerjee* for appellant.

Baboos *Gopinath Mookerjee* and *Mahesh Chandra Bose* for respondents.

KEMP, J.—This was an application for a certificate under the provisions of Act XXVII. of 1860, on the part of Afiatunnissa, Nadirunnissa and Halemunnissa: the first party alleging herself to be the wife, and the two latter parties alleging themselves to be the daughters, of the late Golam Hossein *alias* Hari Miah. In the petition applying for a certificate, the shares which the applicants considered themselves entitled to under the Mahomedan law, are set forth; and it is said that the debts and the sums to be received by the deceased in proportion to the shares of the applicants, amount to about 1,000 rupees per annum. The application was opposed by the widow of the deceased, who alleges that the applicants are not the married wife and the legitimate daughters of the deceased, and therefore are not entitled to a certificate. The Judge, after taking evidence on both sides, has come to the conclusion that the applicants are the wife and the legitimate daughters of the deceased, and he therefore granted them a certificate. The question which arises in this case, although not taken in the Court below, or in the grounds of appeal, is one which we think we ought to express an opinion upon. Under section 6 of Act XXVII. of 1860, the

* Miscellaneous Regular Appeal, No. 250 of 1869, from an order of the Officiating Judge of Midnapore, dated the 15th May 1869.

granting of a certificate may be suspended by this Court. It is in the discretion of the Court to declare the party to whom the certificate should be granted, or it may direct such further proceedings for the investigation of the title as it shall think fit. As this, therefore, is a matter in which the Court has discretion, we think it proper, although this point was not taken in the Court below, to allow it to be taken in this stage of the case. It appears to me a matter of great doubt whether a certificate to collect fractions of debts due to a deceased party can be granted under the provisions of the Act. It appears that the Act was passed to provide for the greater security of persons paying debts due to the representatives of a deceased Hindu or Mahomedan. It was also passed to facilitate the collection of such debts by removing all doubts as to the title of the representatives to demand and receive the sums due. It appears to me that the Legislature did not intend that a certificate should be granted to any number of representatives of the deceased under either the Hindu or the Mahomedan law. It is notorious that, under the Mahomedan law, the deceased's estate might be split up into a great number of estates of a very trifling extent, and it therefore would not, in my opinion, be facilitating the collection of such debts, which was the object of the law, to grant certificates to any number of separate applicants, simply because, under the Mahomedan law, they may be entitled to a *Seham*, or fractional share, in the estate of the deceased. I am supported in this view by a decision in *Waselun Huq* v. *Gowhurunnissa Bibi* (1), in which the learned Judges, BAYLEY and MACPHERSON, JJ., held that a certificate cannot be granted for the collection of a fraction of the debts of the deceased. *Rani Raisunnissa Begum* (2) has been mentioned by the pleader for the respondent, but in that case the question before us was not raised. It appears that in that case it was said that the applicant was entitled only to a small portion, if entitled to anything; and that as the respondent had a greater interest, the certificate ought to be given to her. The point now before us was not raised, and was not decided in that case.

(1) 1 B. L. R., S. N., 7; S. C., 10 W. R., 105 (2) 2 B. L. R., A. C., 129.

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It also appears in this case very clear to me that this is not a *bonâ fide* application for a certificate to enable the parties to collect debts, but is an attempt, under cover of an application under the Act, to get possession of the shares claimed by the applicants in the estate of the deceased, which is now in the possession of the opposite party. Looking to the great delay in bringing the application before the Court, to the manner in which the application is made, in which the shares are set forth in great detail, and the debts are in no way specified, I think that the application ought to have been rejected, and that the applicants ought to have been referred to a regular suit. I would therefore reverse the decision of the Judge, and decree this appeal with costs.

MARKBY, J.—I am entirely of the same opinion. I agree with Mr. Justice KEMP as to both the grounds on which he thinks this certificate ought to be refused; and I fully concur in all the reasons which he has given in support of his judgment. The only thing I wish to add is with reference to the objection made by the vakeel for the respondent, that unless a certificate be allowed for a share to the party entitled to such share, it will be impossible for him, in case of differences between himself and his co-shareholders, to proceed at all. As I understand the Act, I do not think that that would be the case. If a shareholder could not, having established his right to a share, prevail upon his co-shareholders to consent to one certificate being granted to all the shareholders, I think it would be within the competency of the Court, under Act XXVII. of 1860, to select one or more of those co-sharers who would consent to act, and appoint him or them as the representatives of the deceased, taking of course proper security for the safe custody of the amount of debts that might be realized ; but even if this could not be done, and if there should be any difficulty in appointing one or more of the co-sharers, I apprehend there would be no difficulty whatever in taking steps to have a receiver appointed under section 101 of Act VIII. of 1859.