

Appellate Jurisdiction (a)

Miscellaneous Regular Appeal No. 105 of 1868.

BANDAM SETTAH and another.....*Petitioners.*

BANDAM MAHA LAKSHMY.....*Counter Petitioner.*

A daughter-in-law is not the heiress of her mother-in-law according to Hindu Law.

An application by a daughter-in-law under Act XXVII of 1860 for a certificate as heiress would be properly rejected upon the sole ground that the applicant was not the heiress.

If a Civil Court is proceeding under Section 8 of Act XXVII of 1860 to grant or has granted a certificate authorizing a person to deal with Government Securities which are claimed by a third person as his property, that is a ground on which such third person may come into Court to oppose the grant of a certificate or to seek for its cancellation.

1868.
December 18.
M. R. A. No.
105 of 1868.

THIS was a petition against an order of E. B. Foord, the Civil Judge of Berhampore, dated the 11th February 1868.

In this case two classes of petitioners presented petitions to the Civil Court of Berhampore asking for certificates under Act XXVII of 1860.

In extra petition No. 2 of 1868, the petitioner, Bandam Maha Lakshmy, stated that she had appointed Subammah, her mother-in-law, trustee of an "Una Chuttrum" established at Ganjam, and entrusted to her a Government promissory note for rupees 15,000 to enable her to apply the interest to the management of the charity; and that Subammah died on the 6th December 1866. Petitioner prayed that a certificate might be granted to her to enable her to collect a sum of rupees 69-6-0 due for interest on the promissory note, and also a sum of rupees 639 deposited in the Collector's Treasury on account of the half-yearly interest, both sums to be expended upon the charity.

In extra petitions Nos. 66 and 67 of 1868, Bandam Settah and Bandam Venkata Lakshmy, who were also daughters-in-law of Subammah, stated that Subammah sold the Government promissory note for rupees 15,000 to them for rupees 3,000 on the 5th December 1866 and executed a registered deed of sale in their favor, and that they per-

(a) Present: Collett, and Ellis, JJ.

formed the funeral rites of Subammah and became her legal heirs. They also asked for a certificate to enable them to obtain payment of the interest due on the promissory note.

1868.
December 18.
M. R. A. No.
105 of 1868.

The Civil Judge made an order directing that a certificate should be granted in favor of Bandam Maha Lakshmy as trustee for the property, as the petitioner appeared to be the legal heiress of Subammah, and he observed that the claims set up by the petitioners in Nos. 66 and 67 of 1868 could only be properly decided by a regular suit, it being impossible to do so in a summary enquiry such as was contemplated by the Act.

Bandam Settaah and Venkatah Lakshmy appealed to the High Court against the order of the Civil Judge upon the following grounds :—

I. That Maha Lakshmy was not the heiress of Subammah.

II. That the Judge was only authorized to grant a certificate of property which belonged to Subammah at her death and was bound to inquire into the sale to the petitioners.

III. That the Judge ought to have granted a certificate to the petitioners.

At the first hearing, the Civil Judge was directed to take evidence upon the sale of the promissory notes set up by the petitioners. The evidence taken showed that the legal ownership of the note was vested in Subammah, and that it was, shortly before her death, transferred to the appellants.

Mayne, for the petitioners.

Snell, for the counter-petitioner.

The Court delivered the following

JUDGMENT :—We are of opinion that the certificate under Act XXVII of 1860 granted to the respondent Maha Lakshmy by the Civil Court, authorizing her to receive the dividends on the Government promissory Note, No. 16,013, for Rupees 15,000 as the heir of the deceased Subbamma, ought to be cancelled.

It is quite clear that the parties cannot be allowed to turn this application into a suit for the decision of their

1868.
December 18.
M. R. A. No.
195 of 1868.

respective claims to the above promissory note. The right to a certificate must depend upon the fact of heirship to Subbamma. Now it is obvious that Maha Lakshmy, a daughter-in-law, could not be the heiress of her mother-in-law, Subbamma, and the Civil Court would have acted very properly if on this ground it had at once rejected her application for a certificate. But the Civil Court having granted the certificate, and the appellants holding exactly the same relationship to Subbamma as respondent, and being consequently equally not heiresses of Subbamma, we should not have interfered on appeal if the appellants had no other ground but relationship on which to rest their claim to be heard. But we can have no doubt that if a Civil Court, under Section 8 of Act XXVII of 1860, is proceeding to grant, or has granted, a certificate, authorizing a person to deal with Government Securities which are claimed by a third party as his property, that is a good ground on which such third party may come into Court to oppose the grant of a certificate, or to seek its cancelment. The appellants in this case set up a title to the Government promissory note in question under a transfer to them by Subbamma in her life-time, and therefore the Civil Court has been required to take evidence on the matter. It is clear that the legal ownership of the note was transferred to and vested in Subbamma, and the evidence that it was just before her death transferred by her to appellants was not questioned nor discussed before us by the Counsel for respondent. It is *primâ facie* satisfactory evidence and we think that, without deciding in the least whether the transfer to Subbamma was subject to any trust in favor of any charity, or any person, or whether the transfer by her to appellants was made under such circumstances as will enable any person having an interest in the note hereafter to set aside the transfer, there is made out such a *primâ facie* case for appellants as to cancel the certificate granted to the respondent, the more especially as on the ground of heirship the respondent was not at all entitled to a certificate.
