

(1981) 04 CAL CK 0003

Calcutta High Court

Case No: C.R. No. 242 of 1980

Chintamani Devi

APPELLANT

Vs

Upendranath Das and Another

RESPONDENT

Date of Decision: April 29, 1981**Acts Referred:**

- Succession Act, 1925 - Section 383, 383(c)
- Transfer of Property Act, 1882 - Section 73

Citation: 85 CWN 894**Hon'ble Judges:** B.N. Maitra, J**Bench:** Single Bench**Advocate:** B.C. Roy and Sarda Parmar, for the Appellant; K.K. Moitra and S.S. Roy, for the Respondent

Judgement

B.N. Maitra, J.

The petitioner instituted a partition suit in the court of the Subordinate Judge at Jalpaiguri, for partition regarding all the properties left by her deceased husband, Mahendra Nath Das. This suit was decreed in a preliminary form. It was held that she would get a widow's share in all the properties left by her husband barring the agricultural lands. An appeal was taken to the High Court and that decision was affirmed. Then a compensation roll was prepared according to the provisions of West Bengal Act I of 1954 regarding the agricultural property as well and compensation money assessed. Two sons of Mahendra Nath, who are opposite parties in this revisional application, made an application, for a succession certificate to get such money. The prayer was allowed. Later they applied for an extended succession certificate. Then the present petition was put in by the widow for revocation of the succession certificate. Her plea was that fraud had been practised by her step-sons because they had suppressed the fact that she also was Mahendra Nath's widow. Hence, due to material suppression of fact, envisaged by the provisions of clause (c) of section 383 of Indian Succession Act, the succession

certificate was liable to be revoked. The learned Judge considered the objection filed and rejected her application. Hence this revisional application.

2. It has been stated on behalf of the opposite parties that in view of the decision of *Mancharam vs. Kalidas* in ILR 19 Bom. 821 at page 825, only an appeal lies and not a revision, against the order refusing to revoke a certificate. This argument cannot be accepted. In the Bench case of [Mulukh Raj Sharma Vs. Raj Narain Sharma and Others](#), it has been stated that no appeal lies against the order refusing to revoke a succession certificate.

3. The learned Advocate appearing on behalf of the widow has contended that on the 12th June, 1956, Mahendra Nath Das breathed his last leaving his widow, petitioner, and two sons, opposite parties. Though the compensation roll was subsequently prepared, the agricultural property in question vested in the State free from all encumbrances with effect from 15th April, 1955. On the 10th April, 1956, raiyati interest vested in the State. Reference has been made to the case of [Bhudan Singh and Another Vs. Nabi Bux and Another](#), to show that the vesting of the estates in the State is absolute and free from all encumbrances. After the compensation roll was prepared, it was no longer an agricultural property. Its original character ceased to exist and instead of the agricultural property, only the compensation money stood in the office of the Collector at Jalpaiguri. Consequently, the widow is entitled to 1/3rd share in such compensation money. The cases in A. I. R. 1979 Del 240 Chamanlal v. Kundanlal and [Ramji Sao and Others Vs. Jageshwari and Another](#), have been referred to. Reference made by the learned Munsif to the provisions, of sub-section (2) of section 73 of the Transfer of Property Act is not germane for determination of the present controversy. The case of *Tulshi vs. Bibhuti Bhusan* in 41 C.W.N. 985 has been cited to show that a succession certificate can be granted regarding money due on a life insurance policy under which the money is payable to the assured and the money due on the policy remains part of the estate of the assured. The learned Judge fell into an error in turning down her prayer because admittedly, there was suppression of the fact that she also was an heir of her deceased husband, Mahendra Nath Das. In view of non-compliance with the provisions of section 383 (c) of the Indian Succession Act, the succession certificate, is liable to be revoked.

4. The learned Advocate appealing on behalf of the opposite parties has stated that even when Mahendra Nath expired, the agricultural property was in existence because the compensation roll was prepared long after his death. By no stretch of imagination, the widow can get a share in the compensation money. Reference has been made to the case of [Commissioner of Wealth Tax, West Bengal II Vs. U.C. Mahatab](#), at pages 472 and 473. It has been urged that this decision clearly shows that where the agricultural land was expressly excluded from the provisions of wealth tax under the Wealth Tax Act, the Revenue Officer cannot levy tax on the same after conversion of the exempted agricultural land by saying that after such

conversion it was merely a right to compensation independently of the agricultural land.

5. The questions for determination are whether after the preparation of the compensation roll, the widow could claim a share therein and if her alleged right has been enlarged after the agricultural property was converted into money.

6. In the case reported in AIR 1945 1 (Federal Court) the law has been laid down regarding such widow's rights. In the subsequent decision reported in 48 CWN 759 (Kailash vs. Nabakumar) at page 763, it has been stated that the term "agricultural land" does not include any interest in agricultural land. Mahendra died before Hindu Succession Act came into force and so the case is governed by the provisions of Hindu Women's Right to Property Act. If there were no vesting of the property in the State of West Bengal, she could not lay her hands on that property. Her right will not be improved or enlarged after the assessment of compensation for the self same property. It is immaterial whether the agricultural property was converted into another kind of property, which was compensation money. But since according to law she could not claim any interest in her husband's agricultural property, she cannot claim a better position and touch any portion of the compensation roll, which had its origin in an agricultural property. Such compensation money is merely a substitution of the agricultural property. The arguments advanced for the petitioner cannot be sustained. The learned Judge has rightly referred to the provisions of sub-section (2) of section 73 of the Transfer of Property Act in this respect. If the provisions of that sub-section are also considered, the position will not be different. When an agricultural property is acquired under the provisions of any other Act or under those of the Central Act I of 1894, the position will remain the same. Since her right has not been enlarged, the succession certificate will not be revoked though her stepsons have committed fraud by not complying with the provision of section 383(c) of the Indian Succession Act.

The Rule is, therefore, discharged without any order as to costs.