
(1870) 02 CAL CK 0002

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 418 of 1869

Rani Raisunnissa
Begum

APPELLANT

Vs

Rani Khujjunnissa

RESPONDENT

Date of Decision: Feb. 8, 1870

Judgement

Loch, J.

The appellant in the present case claiming a one anna share to her deceased husband's property, prays that a certificate may be given her, under the provisions of Act XXVII of 1860, to collect her share of the debts due to her husband's estate. She is opposed by the respondents, who claim under a will of the deceased Raja, and who are in possession of the deceased Raja's estate; and who urge that, under no circumstances, can the appellant be entitled to a larger share of the property than one anna, while they are entitled to fifteen annas; and that the Judge, looking at all the circumstances of the case, has exercised a proper discretion in giving them a certificate. This case was before this Court on the 16th December 1868, and as the question of the genuineness and validity of the will had not been found by the Judge, the case was remanded for him to retry it as if it was put before him for the first time. In his proceedings of the 11th June 1869, the Judge has again awarded a certificate to the respondent, and has not tried the question as to the validity of the will, and has referred the appellant to a regular suit to contest the validity of that will, if so advised.

2. In appeal it is urged that the Judge should have tried that question, and probably it would have been well if the Judge had disposed of it. But it certainly does not lie in the appellant's mouth to urge the Judge's failure to do so as a ground to ask for a remand, for it appears from the judgment of the Court below that she herself objected to the Judge's entering upon the question of the genuineness of the will

3. It is urged that as the appellant is entitled to a one-anna share in her husband's property, she is entitled to have a certificate given to her to collect the proportionate share of the debts; and that there is nothing in the terms of the law by which she is excluded

from having such a certificate. It may be conceded that, according to the terms of the law, she is not excluded; but then another question arises, whether the Courts have or have not a discretion as to which party they are to award a certificate. It must be borne in mind, which the lower Courts seem frequently to forget, that this law, Act XXVII of 1860, is a law for the protection of debtors; and that it was never intended to enable parties to establish their right to a particular share in the estate of the deceased; that the object of the law is, in the benefit of the debtors, to select some representative of the deceased, and to give him a certificate, which will enable him to collect the debts due to the deceased, for which of course he would have to account to the heirs of the deceased; and the course the Court has to pursue in determining who is to represent the deceased is, that, on an application for a certificate being presented, the Court issues a proclamation inviting claimants, and fixes a day for hearing the petition; and upon the appointed day, or as soon after as may be convenient, determines the right to the certificate, and grants the same accordingly. It is said that from the use, in section 3 of Act XXVII of 1860, of the words shall determine the right to the certificate," if there be two or more claimants, each of whom has a right, the Court cannot; use its discretion and appoint one of those parties to hold the certificate; but it is bound to give certificates to each of them to enable them to collect according to their own shares. Now looking at the wording of section 5, it would appear that the Court has a discretion, for that section provides for security being taken from the party to whom a certificate has been given; and in section 6, where an appeal lies to the Sudder Court, that Court may declare the party to whom the certificate shall be granted; and it would be very inconvenient, and would entirely frustrate the object of the Act, were the Court unable to use its discretion. Instead of facilitating the collection of debts, the Act, so construed, would hinder their collection if it were necessary, on all occasions, either to give a joint certificate or to give a separate certificate. No doubt where the parties are of one accord, a joint certificate may be given; but where the parties are not of one accord, as in the present case, if a joint certificate were given, it would be impossible for the debtor ever to get a joint receipt; and if a separate certificate were given, the debtor would never pay. It seems to me, therefore, that there can be no doubt that the Court has discretion.

4. Then the question comes, has that discretion been properly used in the present case. We have been asked, during the course of the hearing of this case, to grant a joint certificate, but that was never asked for by the appellant, in the Court below; and with regard to the discretion shown on this occasion, looking to the reasons given by the Judge for giving a certificate to the respondent, we think he has exercised a proper discretion, for the respondent is in possession of the property of the deceased, and being in possession she is in a position much more likely to facilitate the collection of the debts than that of the appellant, who represents only one anna of the property, and is not in possession.

5. Under these circumstances it appears to me that the appeal should be dismissed with costs, and the order of the Judge should be affirmed.

6. I think that the order of the Judge in this case is a correct one. The appellant before us asked for a certificate to collect a one-anna share of the debts of the deceased. The respondent asked for a certificate to collect sixteen annas of the debts of the said deceased. The respondent appeared admittedly as representing fifteen annas share of the estate, partly in her own right, and partly in right of her minor son. She also appeared under a will purporting to appoint her to be the representative of the estate.

7. The Judge of the Court below thought that, as between these two persons, he had to decide who was the person best fitted to be the representative of the deceased for the purpose of collecting debts due to the deceased and giving due discharges for the same. He considered that as between the two persons before him, the respondent, who was in actual possession of the whole of the estate, and who was the heir-at-law of fifteen annas of that estate, was a fitter person to be the representative for the purposes mentioned than the appellant who was but an heir of one anna of the estate.

8. I think that although the Judge would have done more rightly had he put in issue the question of the will, still that he has done his best, under the circumstances, at least so far as regards the appellant before us, when he decided in favour of the respondent as the proper representative.

9. I observe that Act XXVII of 1860 is an Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons. Then in the preamble the expediency is represented of consolidating and amending certain Acts on the subject of the title of the Act, and sections 2 to 6 seem to me to comprehend all those provisions of the Act with which we have anything to do in the case before us.

10. I understand that the Judge had to determine, not necessarily who was the heir of the deceased, but, in the words of the Act, who was the representative of the deceased. Now clearly when there was a will, and when in that will the deceased had expressly declared that the respondent before us was to be his representative, then if that will had been found, the Judge would have been compelled, supposing that the executor named in the will was otherwise a proper person, to give him a certificate to collect the debts of the estate. The Judge did not find upon the will, but as Mr. Justice Loch has observed, the appellant cannot complain to us on that score, because it was upon her own contention that the will did not rightly form a question upon which the Judge had to determine, that the Judge considered that it was not necessary to enter into the matter of the will. Neither in one sense was it absolutely necessary that the Judge should find upon the will, because it might well be that, notwithstanding the will, and even if it had not been proved, the respondent before us might still be the proper person to represent the estate of the deceased.

11. Then, as I understand the law, the Judge having, as I said before, to select a representative for the purposes of the Act, his duty is clearly pointed out in sections 3 to 5 of the Act. By section 3 he is told to invite claimants, and to fix a day for hearing the petition, and upon the appointed day or some other convenient day to determine the right to the certificate, and to grant the same accordingly. So that the Act contemplates that the Judge shall have before him several claimants, and here he had in fact before him two claimants, one claiming the certificate, because (the will being put out of consideration for the sake of the argument) she was in possession of the estate and was a representative of the deceased in that estate to the extent of fifteen annas, and the other claimant as the representative of the deceased to the extent of one anna. Obviously, upon the petitions of these two claimants, a certificate might, if the law permitted it, be given to one to collect a share of one anna, and to the other to collect a share of fifteen annas, of the debts, or to the two jointly; but I am of opinion further that the Judge had a discretion not to elect either of these alternatives, but to appoint one or other of the claimants to be sole representative. The provisions of section 3 of the Act seem to me to point directly and unmistakably to the exercise of such a discretion, for by those provisions it is in so many terms contemplated that the person elected may be not at all beneficially interested in the debts to be collected, and may be in short a stranger, from whom security is to be taken that the debts collected may be applied not to himself but to those beneficially interested.

12. In this view of the provisions of the Act, I do not think that it is necessary for us to say in this case whether the Act does or does not contemplate the grant of more than one certificate, or of a joint certificate. There is, no doubt, at least one decision of a Division Bench of this Court, which has held that a certificate to collect the debts cannot be granted for the collection of fractions of the debts of the deceased. That decision is *Waselun Hak v. Gowhurrun Nissa Bibi* 1 B.L.R. S.N. 7. There is, on the other hand, a decision, *Azeem Khan v. Mussamut Ameerun* 12 W.R. 38, which, in so many words, seems to me to hold that, as between rival claimants, the person having the largest interest in the estate is the person best entitled to have the certificate. I do not think that there is any decision pointed out to us which goes to the length of saying that there may not be a joint certificate. On the contrary, the decision in *Waselun Hak v. Gowhurrun Nissa Bibi* 1 B.L.R. S.N. 7 clearly contemplated and directed the issue of a joint certificate. But, as I said before, neither the question of two certificates, nor of a joint certificate, necessarily arises, nor need be determined by us.

I think, upon the terms of the Act, and following the decision in *Azeem Khan v. Mussamut Ameerun* 12 W.R. 38, the question before us is whether or not the Judge having, as I think he has, a discretion to determine who should be the representative of the estate of the deceased as between two rival and hostile claimants has rightly exercised that discretion; and on this point I quite agree with Mr. Justice Loch that the Judge's decision is a right one. I observe shortly that the appellant before us did not ask for a certificate of sixteen annas, whereas the respondent did so ask. I feel quite certain from what I know of native thoughts and causes of actions, that if a certificate for the collection of one share of

the estate were given to the appellant, one rival claimant, and a certificate to collect the debts of the other share was given to the respondent, the other rival claimant, then in that case the debtors would not pay to either; and I feel equally certain from the same knowledge that if a joint certificate were given to the appellant and the respondent, who are fighting tooth and nail about their shares, that they would not consent to give, and in fact it is out of question to suppose that they would give, that joint release for the debts which, under the certificate, would be necessary. So that whether the facility of the collection of the debts on the one hand be considered, and the due release to be given to the debtors on the other hand, in either case, I think, that, in the case before us, a joint or a separate certificate would be equally ineffectual for the purposes of the Act; and it seems to me impossible not to say that when the Judge had to select a representative from between the two persons before us that he was right in selecting that person who was in actual possession of the whole of the estate, and who had a better title in law to the great bulk of the estate, viz., to fifteen annas out of sixteen annas of it.

The appeal is dismissed with costs.