(1926) 01 CAL CK 0047

Calcutta High Court

Case No: None

Benode Behary Saha		APPELLANT
	Vs	
Rai Sundari Dassya		RESPONDENT

Date of Decision: Jan. 29, 1926

Citation: AIR 1926 Cal 779

Judgement

1. This Rule was obtained on an application for revision of an order passed by the District Judge of Rungpur u/s 115 of the Civil Procedure Code. The order was passed by the Judge under the provisions of the Succession of Property Protection Act No. XIX of 1841 directing that the curator appointed under that Act should make over certain properties to one Rai Sundari Dassya.

2. The facts are these: One Purna Chandra Saha died in 1899. He left a Will under the provisions of which amongst other things it was directed that his widow should remain in possession of the properties for her life. Certain annuities were given to his mother, the opposite party before us, and his grandmother. The widow Sarada Sundari was given authority to adopt a son and it was provided that if she died without making any adoption all the properties left by the testator should vest in two idols and that by the income of the properties the debsheba of the idols should be performed and if there was any surplus left that would be spent for certain charitable and educational purposes. The lady Sarada Sundari died on the 23rd November 1924, and after her death the present petitioner, Benode Behary Saha took possession of the properties, moveable and immovable, left by Sarada Sundari on the allegation that Sarada Sundari had adopted his son Sudhir according to the authority given in the Will of Purna Chandra Saha. Thereupon, the opposite party, the mother of Purna Chandra Saha, Rai Sundari, made an application under Act XIX of 1841 on which the order complained of was made by the District Judge.

3. The contentions on behalf of the petitioner may be shortly summarized in this way. The opposite party and Purna Chandra belonged to the same family and were agnatic relations. There are two other persons, Bhabani and Banku, who are also

descendants from the common ancestor. The idols to whom the property has been left by the testator were established by an ancestor of all these persons. Therefore all the persons, Purna, the opposite party and the others mentioned above were shebaits of the two idols. Purna used to perform the sheba for nineteen days in the month and the other three persons performed the sheba for the remaining eleven days. On this fact, the contention raised is that the mother Rai Sundari who presented the petition describing herself as shebait of the two idols and as such entitled to possession of the properties was not the sole shebait and as the question involved relates to the conflicting claims of shebaits to the custody of the property belonging to the idols the matter does not come within the purview of the Curators Act.

4. Secondly, the shebait is not one of the persons who are authorized to present an application under that Act.

5. The third argument is that the dispute does not arise on a question of succession because the title of the idols arises for the first time by virtue of the Will and the mother, therefore, cannot claim the properties by succession.

6. Fourthly, it is urged that there is no finding in the judgment that the applicant was likely to be materially prejudiced if left to the ordinary remedy of a regular suit.

7. Lastly, it is argued that u/s 14 of the Act, this application of Rai Sundari was incompetent as it was not made within six months of the death of Purna Chandra Saha from whom the succession can only be claimed.

8. With regard to the first point, it may be pointed out that there was no conflicting claim as to the right of shebaitship in the Court below. The question that was raised and which was decided was whether the opposite party was entitled to hold the properties on behalf of his son Sudhir Kumar who was alleged to have been adopted by Sarada Sundari, the widow of Purna Chandra. No claim was preferred by Benode Behari, the opposite party, that he was entitled to remain in possession of the properties as one of the joint shebaits and this question has not at all been discussed by the lower Court. This point we cannot allow to be raised for the first time in revision.

9. The second point may be answered thus: that the properties were claimed by the idols and that the idols are juridical persons can hardly be disputed. The idols were certainly entitled, therefore, to make the present application under the Curators Act and as is well known the idols must act through same human agency. The lady Rai Sundari presented the application as shebait of the idols to be put into possession of the properties. There cannot, therefore, be any question of the shebait being the proprietor of the properties; the properties have been ordered to be made over to Rai Sundari only as shebait of the two idols as she describes herself to be.

10. The third point seems to be somewhat obscure. Although the title of the idols arises from the testamentary provisions of the Will and it is a case of testamentary succession, there is nothing to show that the expression "succession" in the Curators Act must be confined to intestate succession and not apply to testamentary succession. This point also fails.

11. The next question is with regard to Section 14 of the Act, which lays down:

That this act shall not be put in force, unless the aforesaid application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

12. Here, the proprietor is said to be, by the opposite party, Sarada Sundari and she died within six months of the application. The contention on behalf of the petitioner is that succession is not claimed from her as succession is claimed from Purna Chandra who died in 1899. Under the provisions of this section, the application is not maintainable. But as has been observed with regard to a similar contention in the case of Bhimappa v. Khanappa [1909] 34 Bom. 115, it is not necessary to bring the operation of this Act into play that the succession should be claimed from the last deceased proprietor. The learned Chief Justice in delivering the judgment of the Court in that case observed:

It is, however, admitted that the application was within six months of the death of Basawa, and it is contended on behalf of the opponents that the decease of the proprietor whose property is claimed by the right ''in succession'' referred to in Section 14 would include the decease of Basawa in the present case, because Basawa was, between the death of her husband and her own decease, the proprietor of the property which is claimed, and it is claimed ''in succession'' to her, that is to say, the claimant claims to succeed her in the possession of the property. This view of the section is, we think, correct. The words of the Act appear to have been very carefully chosen. Thus in the beginning of the preamble we find a reference to "to pretended claims of rights by gift or succession." Here the expression is "by succession" and is used to express the point of view of the claimant. Then in the second paragraph of the preamble W6 have "the circumstance of actual possession when taken upon a succession," that is, regarding the succession from the point of view of the Judge and not from the point of view of an interested party.

13. The learned Chief Justice further observed:

All that the Judge has to decide is who should be put into possession of the property in succession to the last deceased holder. An application was made to him to come to a decision upon that point within six months of the death of Basawa and we, therefore, think that he acted with jurisdiction in coming to his decision.

14. We agree with this view of the reading of Section 14 of the Curators Act.

15. With regard to the contention that the District Judge did not come to a finding that the applicant was likely to be materially prejudiced if left to the ordinary remedy of a regular suit, we have to observe that although there is no actual finding in those words, the facts found by the learned Judge sufficiently show that this question was present in his mind, and he expressly refers to the provision of Section 3 of the Act with regard to this application. He has found that the Opposite Party has taken away all the valuable movable properties left by the deceased and he claims the properties on behalf of his son. That finding is sufficient to maintain an application u/s 3.

16. It is unnecessary for us to express any opinion on the question whether Benode Behary would be entitled to the possession of the properties as shebait of the idols or what the rights of parties are under the Will. It is sufficient to say that we do not find that the order of the Judge of the Court below is without jurisdiction or has been made by any irregular exercise of jurisdiction.

17. The Rule is, therefore, discharged with costs. Hearing-fee, five gold mohurs.