

**(1911) 03 CAL CK 0015****Calcutta High Court****Case No:** Appeal from Order No. 211 of 1910

Abinas Chandra Paul and Others

APPELLANT

Vs

Probodh Chandra Paul

RESPONDENT

**Date of Decision:** March 7, 1911**Judgement**

1. This appeal is directed against an order by which the Court below has dismissed an application for a succession certificate without any enquiry. It appears that one Gopal Chandra Pal died many years ago. He left a widow, Mahamaya Dasi, who took out a succession certificate under Act XXVII of 1860. Mahamaya died on the 20th December 1909. On the 24th February 1910, the proceedings out of which the present appeal arises, were initiated by an application presented by three of the nephews of Gopal Chandra Pal, under sec. 6 of Act VII of 1889. The application was vague and indefinite and the learned Judge would have been amply justified if he had rejected it or called upon the Petitioners to make more precise allegations. Neither of these courses was, however, pursued and the application was registered. When the case came to be heard, the application was treated as one for a succession certificate in respect of the debts and securities payable to the estate of Gopal Chandra Pal. The learned Judge held that as Gopal Chandra Pal had died many years before the application, it could not be entertained; and he suggested that the applicants might either ask for a succession certificate to the estate of Mahamaya Dasi or obtain letters of administration to the entire estate of Gopal Chandra Pal. The propriety of this order is questioned in the present appeal.

2. On behalf of the Appellant, it has been argued that the District Judge ought to have held that a succession certificate could be issued under the Act in respect of the debts and securities which are mentioned in the application and which, it is asserted, form part of the estate of Gopal Chandra Pal. In support of this contention, reliance has been placed upon the cases of *In re Tripura Soonduree* 22 W. R. 45 (1874). and *Bishnoo Doss v. Mungul Doss* 24 W. R. 203 (1875).. In answer to this contention, it has been argued on behalf of the Respondent, who also claims as a nephew of Gopal Chandra Pal, that the application could not be entertained under

the Succession Certificate Act, inasmuch as the debts mentioned accrued due long after the death of Gopal Chandra Pal and could not consequently be treated in any sense as debts due to the deceased, within the meaning of sec. 4 of the Succession Certificate Act. It has further been argued that there is no evidence to show that the debts and securities mentioned in the application did really form part of the estate of Gopal Chandra Pal. In our opinion the contention of the Appellant is well-founded and must prevail.

3. The three items in respect of which succession certificate is sought are described in the application as follows: first, a sum in deposit as compensation money awarded in a case under the Land Acquisition Act; secondly, a sum payable as arrears of rent for non-agricultural lands from the tenant of certain premises comprised in the estate of Gopal Chandra Pal; and, thirdly, a Government promissory note standing in the name of Mahamaya Dasi as the certificated holder of the estate of her husband, Gopal Chandra Pal.

4. With regard to the first two items, it may be conceded that as the compensation money was awarded and the rent due accrued long after the death of Gopal Chandra Pal, if the expression used by the Legislature in sec. 4 of the Succession Certificate Act, namely, "" a debtor of a deceased person," be strictly construed, the view may well be maintained that a succession certificate cannot be granted in respect of either of these sums. We are not prepared, however, to place a narrow and restricted construction upon the provisions of the Succession Certificate Act. In the case before us, although Gopal Chandra Pal died many years ago, his estate was in the possession of his widow as a qualified owner, and when succession opened out after her death, the reversionary heirs took the estate as if, for certain purposes at any rate, the limited estate taken by the widow had not intervened. For instance with regard to the question of limitation, the Legislature has expressly ruled that the reversionary heirs are entitled to recover the estate within twelve years from the date of the death, not of the original, but of the limited owner. In fact the true position in a case of the description now before us is to some extent anomalous. The widow was in possession not in her own right as full owner, but as the representative of her husband, clothed only with a qualified power of alienation. The sum claimed as compensation money under the Land Acquisition Act was consequently payable to her, not in her own right but as the representative of her husband. This is manifest from the provisions of sec. 32 of the Land Acquisition Act which provides as follows: " where land in respect whereof the sum was awarded belonged to any person who had no power to alienate the same, the Court shall either order the money to be invested in the purchase of other lands to be held under the like title and condition of ownership as the land, in respect of which such money shall have been deposited, was held, or if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit." It follows plainly from this provision that although the compensation money was nominally payable to the widow, yet in the contemplation of law, it could

be given to her only in her representative character as the holder of the estate of her husband, *Mrinalini Dasi v. Abinash Chandra* 11 C. L. J. 533 (1910). Similar remarks, it may be observed, apply to the second item, namely, arrears of rent in respect of certain premises comprised in the estate of the husband of the lady she was entitled to realize the rent not in her own right but as the representative of her husband. In so far as the third item is concerned, it is asserted on behalf of the Appellant that the security stands in the name of the lady as the certificated holder of the estate of her husband. We are clearly of opinion, therefore, that the language used by the Legislature in sec. 4 of the Succession Certificate Act, does not require to be unduly strained if we hold that a certificate may be granted to the Appellant in respect of each of the three items mentioned in the application.

5. The view we take is supported by the decision in *Bishnoo Doss v. Mungul Doss* 24 W. R. 203 (1875) It is suggested, however, by the learned Vakil for the Respondent that this view is inconsistent with that taken by a Full Bench of this Court in *Bancharam Mazumdar v. Adyanath Bhattacharjee* 13 C. W. N. 966: s. c. I. L. R. 36 Cal. 936 (1909). That case, however, is plainly distinguishable. It was ruled there that a debt existing in the life-time of a creditor, which did not become payable until after his death, was still a debt due to the deceased, and that consequently his heirs could obtain a succession certificate in respect thereof. The principle recognised by the Full Bench has obviously no application to the circumstances of the case before us, where, as we have held, the sum payable to the widow may by legal fiction be treated as a debt really due, if not to the deceased personally, at any rate to the estate of the deceased full owner. The result is that this appeal is allowed and the order of the Court below set aside. The case is remitted to the District Judge in order that it may be retried in accordance with law. All the issues which arise properly upon the pleadings, must be determined upon the evidence. The cost of this appeal will abide the result. We assess the hearing fee at two gold mohurs.