

(1878) 07 CAL CK 0021

Calcutta High Court

Case No: None

Prosunno Chunder
Bhattacharjee

APPELLANT

Vs

Kristo Chytunno Pal

RESPONDENT

Date of Decision: July 4, 1878

Acts Referred:

- Succession Act, 1865 - Section 206

Citation: (1879) ILR (Cal) 342

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

In the year 1872 one Prankristo Chuckerbutty died leaving no child or near relation. Prior to his death he had been living with one Bibuty Bhusun Dayi as his wife, and at his death this woman managed the ceremonies of his funeral, no other relative having then come forward, and she continued to live in Prankristo's house and took possession of his property. About a year before his death, Prankristo had obtained a loan from the present plaintiff for a small amount. After Prankristo's death, the plaintiff sued Bibuty as representative of Prankristo, describing her as his widow, for the amount of the loan. She did not defend the suit, and the plaintiff obtained a decree for Rs. 71-3-9.

2. When, however, the plaintiff went to execute his decree against the property of Prankristo, he found that it had all been transferred to the possession of the present defendant, Prosunno Chunder Bhattacharjee, the brother of Bibuty, with whom she had gone to reside. Prosunno Chunder was a distant relative of Prankristo, but he made no claim to the property on that account. He claimed under a will, by which he alleged that Prankristo had made him devisee of his whole property for the maintenance of Bibuty and the performance of certain religious ceremonies, and subject thereto for his own benefit.

3. The value of the estate is not mentioned, but it is very small. There were some other debts due by the estate.
4. Prosunno Chunder Bhattacharjee, after the plaintiff had got his decree against Bibuty, obtained probate of the will, and then applied that the property which the plaintiff had attached in execution of his decree might be released from attachment, which application was granted.
5. The plaintiff then brought this suit to have it declared that the property of Prankristo in the hands of Prosunno Chunder was liable to satisfy the decree which he obtained against Bibuty as representative of the deceased.
6. The Courts below have found upon evidence that the debt was really due by Prosunno Chunder; that the plaintiff brought his suit against Bibuty in good faith, believing her to be the true representative of Prankristo; and that Prosunno Chunder, though he was aware of these proceedings, and knew what mistake the plaintiff was making, purposely abstained from coming forward or saying anything about the will. It also appears that Bibuty was not the wife of Prankristo, but the widow of a relation living under his protection. Both Courts have declared the property in the hands of the defendant Prosunno Chunder, belonging to the estate of Prankristo, to be liable to be taken in execution of the plaintiff's decree. The defendant Prosunno Chunder has appealed. There is no doubt that it will be a grievous hardship upon the plaintiff if he fails in this suit. If he cannot enforce the decree which he obtained against Bibuty, he will lose the debt which is justly due to him; for the cause of action on the original bond has been barred long ago, and yet the plaintiff has been diligently pursuing his remedy against the person who, he had every reason to believe, was the true representative of the deceased.
7. The question is really this--are the creditors of a deceased person liable to have their claims defeated by the trick of keeping secret the existence of a will until their claims are barred by limitation?
8. If this had been the estate of a European British subject, there would have been no difficulty. u/s 206 of the Succession Act, the plaintiff as a creditor might have applied for letters of administration. Then, whether the party in possession of the will had produced it or not, the administration would have gone on, and the creditors would not have lost their remedy. But Section 206 of the Succession Act does not apply to Hindus.
9. The executor does not represent the deceased by virtue of the will until he has obtained probate. Who then represents the deceased who has left a will from his death until probate has been obtained? Surely some one must do so, or the law would not have provided that the Statute of Limitations should run between the death and the grant of probate as it undoubtedly does.

10. The decisions of the Courts in India have been liberal in recognizing the acts of the de facto manager of a deceased's estate as valid. If Bibuty had actually paid the debt of the plaintiff, or if the plaintiff had actually seized and sold the property of the deceased whilst in her possession, and had received payment out of the proceeds, I do not think the executor could have recovered back either the money paid to the plaintiff or the property sold in execution (see the cases set out in my judgment in the case of Assamathem Nessa Bibee v. Roy Lutchmееput Singh (Ante 4 Cal. p. 142 : 2 C.L.R. 223)).

11. Upon the whole, I think that, until some other claimant comes forward, the party who takes possession of the estate of a deceased Hindu must, in the present state of the law, be treated for some purposes as his representative, and that a judgment obtained against such a representative is not a mere nullity. Even if it cannot be executed against the estate in the hands of the executor when he has taken out probate, it is at any rate sufficient to enable the plaintiff to bring a suit against the executor in order to have the decree satisfied.

12. I give this opinion with some hesitation as the subject is one which in its general bearings has not been much considered. But, on the whole, I think that this view of the matter, whilst it meets the justice of the case, is in accordance with decided cases.

13. I think, therefore, that the decree of the Munsif was right, and should be affirmed, and that this appeal should be dismissed with costs.