

(1880) 08 CAL CK 0006

Calcutta High Court

Case No: None

Sheetanath
Mookerjee

APPELLANT

Vs

Promothonath
Mookerjee and
Another

RESPONDENT

Date of Decision: Aug. 25, 1880

Citation: (1881) ILR (Cal) 303

Hon'ble Judges: White, J; Field, J

Bench: Division Bench

Judgement

White, J.

I think that the Judge, Mr. DICKENS, was right in his view, both of the law and of the facts in this case.

2. Under Act XXVII of 1860 the Court is to determine the right to the certificate, subject to an appeal to this Court.

3. It appears to me, having regard both to the language and also to the authorities upon the construction of the Act, that when there are two claimants for the certificate, and they dispute between themselves as to the right to the certificate, the Judge ought to determine between those two claimants which of them has the preferential right to the certificate. So also, if one of them only claims the certificate, and the other merely opposes the grant, there is no difference made in the duty of the Judge by the fact, that the opponent alleges himself to be the adopted son of the deceased, and the claimant is the man who would be the heir of the deceased if the adoption had not been made. In the present case the certificate was applied for by the man who was the heir of the deceased failing the adoption, and its issue was opposed by the father and guardian of the adopted son, who is a minor. The Judge has held that so strong a prima facie case in favour of the adoption was made out, that he considered that he was entitled to refuse the application of the claimant. We

see no reason to differ from the Judge.

4. We have been referred to the case of Kali Goomar Chatterjee v. Tara Prosunno Mookerjee (5 C. L. R. 517) in which the following law is laid down:--"An adopted son not being, so to say, a natural heir, and the fact being disputed, we think the Judge was warranted in refusing to enter into that investigation, and the certificate was properly given to the nephew of the deceased, who was the next heir according to the Hindu law, in the absence of any nearer kinsmen and heirs."

5. That case has been cited as an authority to show why the decision appealed against before us should be reversed, but it appears to me no authority for that purpose. In the case cited, the lower Court had refused to go into the question of adoption, and the High Court considered that the Judge was warranted in so refusing.

6. It is one thing to say that a Judge is warranted in refusing to go into a particular question, and another thing to say, when he has gone into that question, that his order must be set aside. When a case comes before us, in which the facts are identical with those which are accepted in Kali Coomar Chatterjee v. Tara Prosunno Mookerjee (5 C. L. R. 517), it will be necessary to consider whether the law there laid down is in accordance with the current of authorities on the subject. It is sufficient now to say that that decision does not stand in the way of our declining to interfere with Mr. Dickens's order.

7. The appeal is dismissed with costs.

Field, J.

8. The first ground taken in this appeal is, that the District Judge was wrong in entering into and deciding the question of the validity and factum of the alleged adoption.

9. I am of opinion that this objection to the decision of the lower Court cannot prevail.

10. The third Section of Act XXVII of 1860 provides, "that the applicant in his petition, shall set forth his title," and that the Court "shall determine the right to the certificate and grant the same accordingly." I think this language clearly shows that it is the duty of the Court to enter into the question of title, when there are contending parties, and the title of the person who bases a preferential right thereupon is not admitted between them. Until this question has been decided, I do not see how the Court can determine the right to the certificate, and grant the same accordingly.

11. It has been held in the Madras Presidency that the language of the Section is not limited to heirs-at-law, and that a person claiming under a will (to which the Succession Act is not applicable), may obtain a certificate under the Act upon proof

of the title based upon the will. In the case of *Mussamut Anundee Koer v. Bechoo Sing* (20 W. R. 476) Mr. Justice Phear observed as follows:--" No doubt the Judge is quite right in thinking that the proceedings initiated for the purpose of obtaining a certificate under this Act, are not civil proceedings in this qualified sense,--namely, that no title is judicially determined between the parties as the result of the enquiry; still the Court is bound, under the Act, to give the certificate to the person who makes out a title; and it is for that purpose necessary, when parties are not agreed upon the fact, that the Judge should try the issues in the ordinary way by the aid of the evidence put forward by the parties." In *In re Oodoychurn Mitter* (I. L. R. 4 Cal. 411) the question of title was considered in order to the grant of a certificate under the Act. In another case, *Koonj Behary Chowdry v. Gocool Chunder Ghowdhry* (I. L. R. 3 Cal. 616), the case of *Mussamut Annundee Koer v. Bachoo Sing* (20 W. R. 476) was quoted as an authority for the proposition¹, that the Judge is bound to enquire which title has been made out for the purpose of the legal requirements of the Act,--a proposition in no way controverted or dissented from, although in that particular case the application for a certificate was rejected upon other grounds, one of which was that this application was made, not really for the purpose of obtaining a certificate to collect debt, but with the object of obtaining a decision on a question of title which could be definitively determined only in a regular civil suit.

12. In the case now before us, the question of title was raised with immediate reference to the grant of the certificate, and as the District Judge has decided this question carefully, grounding his judgment with the observation, that it shall have effect for the purposes of the Act XXVII only, I am of opinion that his decision ought not to be disturbed upon the first ground taken in the petition of appeal.

13. On the question of fact, I think that a strong *prima facie* case was made out before the District Judge, and that the order made by him in the case is supported on the evidence.

14. I concur in dismissing the appeal.