

## LAHORE HIGH COURT

Charjo

Vs

Dina Nath

(Tek Chand, J.)

18.11.1936

### ORDER

**Tek Chand, J.**

1. The following pedigree, table will be helpful in understanding the facts of the case:

2. Nawahu was a Brahmin of Sialkot City, admittedly governed by the Mitakshara. He died many years ago. He had married twice, and had a son, Thakar, from his first wife, and another son, Labha, from the second wife, Mt. Melo. Nawahu's first wife and his two sons Thakar and Labha are dead. Thakar left a daughter, Mt. Charjo. Labha died childless, leaving a widow, Mt. Partap Kaur. Mt. Melo, the surviving widow of Nawahu, died on 1st January 1935. At the time of her death a sum of ₹ 2,545/- was shown in her bahi as due to her by Amir Chand, respondent. After Mt. Melo's death, her daughter-in-law, Mt. Partap Kaur, and her step-son's daughter, Mt. Charjo, claiming to be her heirs, jointly brought a suit against Amir Chand for recovery of ₹ 3,200/- made up of ₹ 2,545/- principal and ₹ 655/- interest. The defendant Amir Chand objected that the suit was not maintainable in the absence of a succession certificate. The Sub-Judge, in whose Court the suit was pending, granted time to the plaintiffs to obtain a succession certificate and postponed further proceedings. In accordance with this order Mt. Charjo and Mt. Partap Kaur jointly made an application under Section 372, Succession Act, in the Court of the Senior Sub-Judge, Sialkot, for grant of a succession certificate for realization of the debt due by Amir Chand to Mt. Melo. In the application it was stated that Dina Nath and Narinjan Das were the collaterals of the husband of Mt. Melo, deceased, and that notices be served on them. At the hearing Dina Nath and Narinjan Das appeared and filed a written statement admitting their relationship with Nawahu and stating that they did not contest the claim of the applicants (Mt. Charjo and Mt. Partap Kaur) to obtain the succession certificate which might be granted to them. In the meantime Amir Chand, the alleged debtor, had applied that he be made a party to these proceedings. The Senior Sub-Judge granted the application. Thereupon Amir Chand raised an objection that under Hindu law, which admittedly governed succession to the estate of Mt. Melo,

neither Mt. Charjo nor Mt. Partap Kaur was her heir and that the certificate could not be granted to either or both of them. The Senior Sub-Judge upheld this plea and dismissed the application.

3. The applicants appealed to the District Judge, who has affirmed the order of dismissal, though on grounds different from those given by the Sub-Judge. Mt. Charjo and Mt. Partap Kaur have come up in revision to this Court, and the first contention raised on their behalf is that the learned Sub-Judge acted illegally and with material irregularity in making Amir Chand a party to the proceedings, and that, in any case, on the admission of Dina Nath and Narinjan Das, who being collaterals of Mt. Melo's husband were the only other heirs, the petitioners were the persons having prima facie the best title to the certificate, which should have been granted to them. After hearing counsel at length, I am not prepared to accept the first branch of this contention as sound. It is no doubt unusual to issue notices to the debtors of the deceased or implead them as parties to proceedings for grant of a succession certificate. But there is no legal bar to the Court doing so, and I cannot see how the decision of the Courts below could be set aside on this ground alone.

4. The second branch of the contention however appears to be more substantial. As already stated, the only surviving members of the family of the deceased were the two applicants, and the only two agnatic relations of her husband were Dina Nath and Narinjan Das. It is obvious that one or other of these four persons had the right to the certificate. There was, however, no dispute inter se between them. They were all agreed that the certificate be granted to the applicants. The learned Judge appears to have thought that the certificate could not be granted to the applicants, as neither of them was an heir to the estate of Mt. Melo and that it could not be granted to Dina Nath and Narinjan Das apparently for the reason that they had not asked for it. He accordingly dismissed the application, after expressing the opinion that the estate had probably escheated to the Crown.

5. Now, if this is the correct view, there seems little doubt that by the time the Secretary of State takes steps to sue for recovery of the amount, the claim against the debtor would have long since become time-barred. It is hardly necessary to say that it is to guard against such contingencies that the legislature has laid down that the enquiry in such proceedings is to be summary, and the Court, without determining questions of law or fact, which seem to it to be too intricate and difficult for determination, should grant the certificate to the person who appears to have prima facie the best title thereto. In such cases the Court has not to determine definitely and finally as to who has the best right to the estate. All that it is required to do is to hold a summary enquiry into the right to the certificate, with a view, on the one hand, to facilitate the collection of debts due to the deceased and prevent their being time-barred, owing (for instance) to dispute between the heirs inter se as to their preferential right of succession, and, on the other hand to afford protection to the debtors by appointing a representative of the deceased and authorizing him to give a valid discharge for the debt. The grant of a certificate to a person does not give him an absolute right to the debt nor does it bar a regular suit for adjustment of the claims of the heirs inter se. Their rights are amply protected by the statutory provision that in appropriate cases the Court, as a condition precedent to the grant of the certificate, may require the person to whom it

proposes to make the grant, to furnish security for indemnifying the person who may be ultimately held entitled to the whole or any part of the debt. In these circumstances, the proper course for the Court was to grant the certificate to one or other, or (under certain safeguards) to both the applicants jointly, conditional on their furnishing security and leaving the question of succession for subsequent determination in a regular suit by the collateral or the Crown. The lower Courts appear to have completely ignored this essential aspect of the case, and this material irregularity is sufficient to justify a reversal of the order dismissing the application.

6. It is not necessary to consider the relative rights of the two applicants, as Mr. M.L. Puri, their learned advocate, stated that he does not press the claim of Mt. Partap Kaur for the grant of the certificate, reserving to her the right to adjust her claims with Mt. Charjo in a separate case if necessary. He argues, however, that Mt. Charjo was the next heir to the estate of the deceased and he strenuously urges that the certificate be granted to her. This prayer is strenuously opposed by Mr. Achhru Ram, counsel for the contesting respondent Amir Chand. It is conceded by Mr. Puri that the debt in question must be considered to be the absolute property of Mt. Melo, and the question for determination is whether Mt. Charjo was an heir to her stridhana at the time of her death. Now it is common ground between the parties that Mt. Melo left her surviving no descendants, male or female. According to the Mitakshara, stridhana (other than sulka) belonging to a female (if she was married in one of the approved forms) passes, in the absence of her issue, to her husband, and after him to his heirs in order of their succession to him; and on failure of the husband's heirs it goes to her blood relations in preference to the Crown: Mulla's Hindu Law, para. 147. It is conceded by both counsel that the parties being Brahmins, residents of a town, the marriage of Mt. Melo with Nawahu must, in the absence of any evidence to the contrary, be presumed to have been in one of the approved forms, The short question for decision, therefore, is, "who would have taken the property if it had belonged to Nawahu?" There is no doubt that under the Hindu law of the Benares School, as interpreted by British Indian Courts before 1929, a son's daughter was not in the line of heirs. The text of the Mitakshara, enumerating the female heirs of a male, was held to be exhaustive and not illustrative and therefore such near relations as son's daughter, sister, etc., who were not expressly mentioned in the text, were held to be excluded from succession. In 1929, however, the legislature intervened, and by Act 2 of 1929 several important modifications were made in the Hindu law of succession with respect to the property of males not held in co-parcenary and not disposed of by will. By Section 2 certain persons, who were not in the original line of heirs, were recognized as such, and the first of them is the son's daughter, who ranks after the father's father. If therefore, Nawahu had died intestate after 1929, his son's daughter, Mt. Charjo, would have been in the line of his heirs. The fact that he had died long before 1929 is however, immaterial, as he had left a widow, Mt. Melo, who had succeeded to his estate and she died on 1st January 1935, when the Act was in force.

7. It is settled law that the provisions of Act 2 of 1929 regulated succession to the estate of a Hindu male, governed by the law of the Mitakshara, who had died before the Act came into force, but whose estate had vested in a female holder, who was alive on 21st February 1929,

which is the date of the enforcement of the Act: *Shib Das v. Nand Lal*<sup>1</sup> and *Shakuntala Debi v. Kaushalya Devi*<sup>2</sup> Mr. Achhru Ram has not contested this proposition and has conceded that if the debt in question had been

<sup>1</sup> AIR 1932 Lah 361

<sup>2</sup> AIR 1936 Lah 124

proved to have been owned by Nawahu in his lifetime, Mt. Charjo's right to inherit it would have been unquestioned. He urges, however, that Act 2 of 1929 is inapplicable to the present case as it applies "only to the property of males not held in co-parcenary and not disposed of by will," and it had been found as a fact and is indeed no longer denied, that the debt in dispute was never held by a male but was the acquired and absolute property of Mt. Melo. This contention is obviously devoid of force. It is quite true that the Act is very limited in its scope. It, in terms, regulates succession only to the separate property of a Hindu male dying in intestacy. It does not purport to alter the law in respect of the devolution of other property of a Hindu male or the property of a female. But in referring to the Act for the purpose of deciding the question involved in this case, we are not going beyond its proper scope. As already stated, the rule of succession to stridhana, as laid down in Mitakshara is that, in the absence of the issue of the female holder it devolves on her husband, and if he is dead, it descends in the same way as if it had belonged to the husband himself. To ascertain as to who the heirs of the husband are we must, ex necessitate rei refer to the law governing succession to the property of the husband in force at the time when succession opened out. In the present case, therefore, the heir to Mt. Melo's property is the person, who would have inherited it, if it had been Nawahu's property, in 1935, and this as shown above is his son's daughter Mt. Charjo.

8. In coming to the contrary decision the learned District Judge has relied upon *Raj Bachan Singh v. Bhanwar Lalji*<sup>3</sup> That case was, however, decided long before Act 2 of 1929 came into force and no question of the interpretation of its terms arose. Further, there an attempt was made to extend a certain custom, found to exist in the matter of succession of the property of a male owner, to inheritance to the property of a female, but the learned Judge ruled that this could not be done, as it was not permissible to find custom by analogy. Mr. Achhru Ram frankly conceded that the case is clearly distinguishable and it does not seem to be necessary to discuss it further. I accept the petition for revision and in supersession of the order of the Courts below, direct the Senior Sub-Judge to grant Mt. Charjo a succession certificate to collect the debt mentioned in the application. Amir Chand, respondent, shall pay to Mt. Charjo her costs throughout. The application of Mt. Partap Kaur is dismissed. She will bear her own costs in all Courts.

<sup>3</sup> AIR 1929 Oud 296