

(1944) 11 AHC CK 0026
In the Allahabad High Court
Case No : Review Application No. 4 of 1944

Afsar Ara Begam

APPELLANT

Vs

Prince Ram Bakht and Others

RESPONDENT

Date of Decision : 06-11-1944

Acts Referred:

Succession Act, 1925 — Section 302

Citation : (1944) 11 AHC CK 0026

Hon'ble Judges : Misra, J; Madeley, J

Bench : Division Bench

Advocate : Ali Mohammad, for the Appellant;

Final Decision : Dismissed

Judgement

Misra and Madeley, JJ.—This is an application under Order 47, Rule 1 CPC for review of our order, dated 11th May, 1944, rejecting Civil Miscellaneous Applications Nos. 684 and 788 of 1943.

2. The case has a long history, and it is necessary to state the following pedigree for the proper understanding of the facts.

3. Amongst the assets of Badshah Begam there were certain Government promissory notes of the value of Rs. 62,300 in deposit in the Bank of Bengal at Calcutta standing in the joint names of Roshan Ara Begam and Jehangir Mirza. On her death Roshan Ara Begam and Jehangir Mirza were her heirs and inherited the notes in proportion to 1/3rd and 2/3rds. Roshan Ara Begam died in 1902 and left her children and Mirza Kambakht, her husband, as her successors. Jehangir Mirza also died leaving him surviving Afsar Ara Begam his widow and Mst. Khairunnissa, his daughter. On 11th March, 1911, Afsar Ara Begam applied for letters of administration in respect of the promissory notes of Rs. 62,300, and on 21st of June, 1912 she obtained a grant from this Court in respect of 2/3rd's share of her husband Jehangir Mirza. As the notes stood in the names of the two persons in the bank, the latter refused to hand them over to the administratrix

alone without a discharge from the representatives of Roshan Ara Begam. It was found impossible to get Mirza Kambakht to do anything in the matter, and on 29th May, 1914, further letters of administration were granted to Afsar Ara Begam in respect of the interests of Roshan Ara Begam also.

4. Mean while Mirza Kambakht died, and on 21st November, 1916 two of the sons of Roshan Ara Begam, namely Qaisar Mirza and Qura Ali filed Miscellaneous Application No. 491 of 1916 praying that the later grant in the name of Afsar Ara Begam be revoked and annulled and that she be ordered to deposit the amount of Roshan Ara's share in Court. The real dispute between the heirs of Roshan Ara Begam and Afsar Ara Begam was as to the amount to which Qaisar Mirza and Ors. were entitled. A Bench of the late Court of the Judicial Commissioner considered and the matter in its order, dated 11th January, 1917, referring to the dispute between the parties it observed that if they wished to clear up the matter, the obvious course for them was to bring a suit against the lady as an administratrix of the estate. It further observed that while suggesting that Afsar Ara Begam should be removed from the position of administratrix, the applicants did not make any suggestion as to who was to be appointed in her place. The Judicial Commissioners were, however, satisfied that in the circumstances the portion of the estate, which belonged to the heirs of Roshan Ara Begam, should be put in such custody that it would be impossible for the capital to be touched by Afsar Ara Begam until the questions in dispute were settled between the parties, and they accordingly ordered that the securities of Rs. 20,766-10-6 should be handed over by Afsar Ara Begam to the Registrar of Judicial Commissioner's Court and they be kept by him in safe deposit in order to safeguard the interests of the applicants.

5. Under Order 45, Rule 3 of the Rules of Supreme Court, 1883, the administrators or the heirs at law of a deceased persons or certain other person mentioned therein may take out an originating summons returnable in the Chambers of a Judge of the Chancery Division for the reliefs mentioned in the rule. Amongst the matters so specified is the payment into Court of any monies in the hands of the administrators. Section 302 of the Indian Succession Act provides that where letters of administration in respect of any estate have been granted under the Act, a High Court may, on an application made to it, give to the administrator any general or special directions in regard to the estate or in regard to the administration thereof. In our opinion a High Court has power, u/s 302 of the Indian Succession Act, to give the directions which the Court of Chancery in England has under Order 45, Rule 3, and we conceive it was in consequence of this power that the promissory notes of the value of Rs. 20,766-10-6 were ordered to be deposited with the Registrar.

6. The deposit was made on 11th January, 1917, and certain distributions were sanctioned during the period that Afsar Ara Begam's administrator ship lasted. On 25th July, 1927, Afsar Ara Begam tendered her resignation and notice of her application was issued to all persons interested in the estate of Roshan Ara

Begam. None, however, appeared on the date of hearing on behalf of those persons, and on 11th May, 1928, a Bench of this Court accepted the renunciation and discharged her from the position of administratrix subject to the condition that she endorsed all the Government promissory notes which were in the custody of the Registrar in his favour. Next day after the order Hasan Ali Mirza and Khurshed Ara Begam applied for the disbursement of the amount in certain specified shares to the heirs of Roshan Ara Begam, and thereupon some notes in respect of the shares regarding which there was no dispute were handed over to the heirs. No action has since been taken for further administration of the estate.

7. A sum of Rs. 9,000 invested in Government Promissory Notes and Defence Bonds is still in the custody of the Court, and by Civil Miscellaneous Applications Nos. 684 and 788 of 1943 Qaisar Shikoh Qasim Mirza, who is one of the present heirs of Rosan Ara Begam, prayed that the entire amount in deposit should be handed over to him as he was solely entitled to it. We considered, as is apparent from our order, dated 2nd September, 1943, that the applications could not be decided in the absence of such of the other heirs of Roshan Ara Begam as were still alive and the legal representatives of those who were dead. Our view was that if all the persons interested in the estate of Roshan Ara Begam could agree, there would be no objection to the granting of the applicant's prayer. We accordingly ordered notice of the applications to be sent to those persons, but none of them appeared at the time of the next hearing which was on 11th May, 1944. Obviously this Court by virtue of the order of 11th January, 1917 was merely the custodian of the sum of Rs. 20,756-10-6 and if there were any disputes between the heirs of Roshan Ara Begam regarding the right to their respective shares, this Court could not take upon itself the responsibility of making disbursements without a proper adjudication having been obtained in respect of those disputes from a proper Court or without fresh letters of administration being taken out by one of the heirs. We did not concern ourselves with the question at that stage whether any fee would be payable on a fresh grant or whether a mere substitution suffice. There being no proper proceedings in this Court which could entitle us to hand over the money to any person amongst such heirs, the applications were considered to be misconceived and were accordingly rejected.

8. By Section 301 of the Indian Succession Act a High Court may, on an application made to it, suspend, remove or discharge any private executor or administrator. This was done by the order, dated 11th May, 1928. Section 301 also contemplates succession of another person to the office of the executor or administrator who may cease to hold office and the vesting in such successor of any property belonging to the estate. In the order of the 11th of May, 1928, no provision was made in this behalf obviously because no one applied to be substituted in Afsar Ara Begam's place, but it may still be possible to obtain substitution if circumstances permit. With this aspect of the matter, however, we may repeat, we are not concerned.

9. Our view that this Court was merely a custodian of the notes which are in the hands of this Court is not vitiated by any mistake or error apparent on the face of the record or for any other sufficient reason as contemplated by Order 47, Rule 1, CPC Three grounds are pressed by the learned Counsel for the applicant. These grounds are--

(1) that we have wrongly mentioned that the money was ordered to be deposited with the Registrar as a result of the resignation of Afsar Ara Begam,

(2) that our order is contrary to the spirit of the earlier Division Bench orders of this Court whereby distributions were previously made from time to time. It is said we ought to have, under the circumstances, referred the matter to a Full Bench, and

(3) that the order contemplates a fresh realisation of fee for letters of administration, and this is unfair, as the fee has already been once realised.

10. We are unable to accede to any one of the above submissions. It is true that while narrating the facts of the case we happened to say in our order (which, we might mention, was passed in the presence of the learned Counsel for the applicant) that the sum of Rs. 20,766-10-6 had been ordered to be deposited in this Court for the benefit of the heirs of Roshan Ara Begam "in consequence of the resignation." The sequence was incorrect, but as nothing turned upon it, we think it was immaterial. The further fact that various benches of this Court have made distributions of some promissory notes did not necessitate that we should have permitted the applicant to withdraw the remaining notes from this Court. The previous orders were passed, as there were no disputes then regarding the proposed disbursements. It is obvious that our order under review did not have the result of setting aside the orders of the previous benches, and there is no reason to think that it was erroneous either in fact or in law. We are still of the opinion that the applicant, if he wants to withdraw the remaining notes from this Court which are kept in safe custody, must take proper proceedings in that behalf. Our order, dated 11th May, 1944, can be revoked only on such grounds as, if tenable, would justify an alteration or cancellation of it.

11. In our opinion sufficient cause has not been made out for review of that order, nor is there any sufficient cause for referring the matter to a Full Bench. We have already dealt with the third ground of objection in an earlier part of this judgment.

12. We accordingly dismiss this application under Order 47, Rule 4(1), Code of Civil Procedure