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In the Bombay High Court

Bhimappa Tamappa and Others — APPELLANT

Vs

Khanappa Venkappa and Others — RESPONDENT

Date of Decision : 11-08-1909

Acts Referred:

Citation : 4 Ind. Cas. 594

Hon'ble Judges : Basil Scott, C.J;Batchelor, J

Bench : Division Bench

Judgement

1. This is an application u/s 115 of the CPC asking for our interference on the ground that the District. Judge of Bijapur has acted without jurisdiction in making order in a summary suit u/s 4 of the Curator''s Act XIX of 1841.

2. The occasion for the application which was made to the District Judge and upon which the order complained of was passed, was the death in 1907 of Basawa the widow of one Kotrappa who died in 1892. Kotrappa was the representative Vatandar of a Deshgat Vatan in Bijapur territory, and on his death his widow Basawa was entered on the Register as representative Vatandar and she held the Vatan property until her death. On her death an application was made by one Khanappa, who claimed to be the nearest heir of Kotrappa, for possession of the property under the Curator''s Act, and that application was granted, It is the order on that application which is now the subject of this proceeding.

3. Two points have been raised by the applicant. First, he says that u/s 14 of the Act of 1841, the provisions of the Act could not be put in force because Kotrappa died more than six months before the date of the application. It is, however, admitted that the application was within six months of the death of Basawa, and it is contended on behalf of the opponents that the decease of the proprietor whose property is claimed by right in succession'' referred to in Section 14, would include the decease of Basawa in the present case, because, Basawa was, between the death of her husband and her own decease, the proprietor of the property which is claimed, and it is claimed in succession'' to her, that is to say,

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the claimant claims to succeed her in the possession of the property. This view of the section is we think correct.

4. In Section 14, we think that the words "by right in succession" are chosen to describe the point of view of the Judge and not the point of view of the, interested parties. All that the Judge has to decide is who should be put into possession of the property in succession to the last deceased holder. An application was made to him to come to a decision upon that point within six months of the death of Basawa and we, therefore, think that he acted with jurisdiction in coming to his decision.

5. It was next objected that even if he had a right to come to a decision upon an application made to him by the applicant, he did not follow the procedure which is made imperative by the words of Section 3; for, it is said that he did not inquire upon solemn declaration of the complainant whether there were strong reasons for believing that the party in possession had no lawful title. The materials upon which he came to his decision were the application and in addition to the application an affidavit upon solemn affirmation of the complainant Khanappa to the effect that he alone was the nearest heir to Basawa, that the opponents and distant bhaubands were wasting and misppropriating the property and that this statement was true to his belief and knowledge. The learned District Judge held that the statements in this affidavit furnished sufficient grounds for action u/s 4 and we cannot say that he has acted upon materials which are declared to be insufficient by the Act. He has, as it appears to us, entered into the inquiry upon statements made upon solemn affirmation which, having regard to the provisions of Act V of 1840, must be taken to be statements upon solemn declaration. We think there is no ground for interference and we dismiss the application with costs.

6. Separate sets of costs.

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