

(1916) 01 CAL CK 0037
In the Calcutta High Court

Chandra Kanta Ganguly and Others

APPELLANT

Vs

Srimati Sarojini Debi

RESPONDENT

Date of Decision : 24-01-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 25 Rule 1, Order 41 Rule 10

Citation : 32 Ind. Cas. 786

Hon'ble Judges : Imam, J; Herbert Holmwood, J

Bench : Division Bench

Judgement

1. This is a Rule calling upon the opposite party to show cause why she should not furnish security for the costs of the petitioner here and in the Court below.
2. The case is one of a Hindu widow, who alleges that she did not enter into a certain ekrarnamah making over the management of her husband's property to the father of his adopted son. She likewise denies the adoption. The learned Judges who issued the Rule were, both of them, Hindu Judges and must have fully in their minds the position of a Hindu widow and the rulings protecting her interests.
3. It is argued before us that there is a hard and fast rule that unless the plaintiff has no interest in the litigation but is a mere puppet in the hands of others, there cannot be any order for security for costs. We do not think that any such hard and fast rule has ever been laid down. The nearest approach to it is a ruling of a Single Judge of this Court on the Original Side in the case of Khajah Assenoollajoo v. Solomon 14 C. 533, and there the rule, which has been adopted in all the Courts in India as well as in England, that mere poverty is no sufficient ground to ask for security for the costs of the suit, may be taken as clearly laid down; and it is then said it is otherwise, as was the case in the case cited, when he is not the real litigant but a mere puppet in the hands of others. That does not, in our opinion, mean that a person who has an ostensible interest in the property in suit is not a puppet in the hands of others and that you cannot ask for security. It must inevitably happen that in all cases of litigation fomented by

third parties the ostensible plaintiff must have a claim which can prima facie be supported in Court, and in this case the widow, were she able to get rid of her alleged action in adopting the son and of the alleged ekrarnamah which she denies, would no doubt have a very substantial interest in the property. But there are specific allegations in the affidavit of the petitioner which are supported by the findings of the Court of first instance; and these specific allegations have not been traversed by the affidavit in reply. Now, in the case of Ramsingh Bhagwan v. Balubai 5 Bom. L.R. 661, it was clearly laid down that where "there is something more than mere poverty alleged and, so far as the Court below is concerned the respondents have succeeded in proving that allegation to its satisfaction, whether the Appeal Court will come to the same conclusion when it has heard the appeal is immaterial, but the Respondents are entitled to ask the Court to bear the facts found by the lower Court in mind in deciding whether this is a first case for the exercise of the discretion" vested in the Court under Order XLI, Rule 10; and in exercising that discretion in the case of a Hindu widow who denies an alleged adoption, it was further held that the Court may very well be guided by the provisions of Section 380, now Order XXV, Rule 1.

4. There are, therefore, two grounds for making this Rule absolute: Firstly that although the widow may have a very large ostensible interest in the property of her husband she has been found to be a puppet in the hands of others and secondly, that apart from the property of her husband, which is substantially in suit, she has no other Immovable property which can be given as security and money security should, therefore, be asked for. Having regard to the allegations in the case we are willing to allow the lady either to deposit Rs. 600 (rupees six hundred only) to cover the costs of both Courts in cash or Government promissory notes or to furnish security of Immovable property to the satisfaction of the lower Court through some substantial surety within three months of the date of the order reaching the Court below or thirteen weeks from this date, whichever is earlier. With these directions the Rule is made absolute. The petitioner is entitled to his cost of the day--two gold mohurs.