

(1941) 09 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Original Order No. 51 of 1940

Maharaja Bahadur, Ram Ranbijoy and Prosad Singh

APPELLANT

Vs

Sm. Savitri Devi and Others

RESPONDENT

Date of Decision : 07-09-1941

Acts Referred:

Citation : (1941) 09 CAL CK 0002

Final Decision : Dismissed

Judgement

Derbyshire, C.J.—This suit was brought originally by Srinivas Prosad Singh against Keshava Prosad Singh who is referred to as the owner of the Dumraon Raj Estate in the Province of Bihar. The purpose of the suit is to set aside a compromise which was entered into in this Court on May 17th, 1912. The circumstances which led up to that compromise were these. Maharaja Sir Radha Prosad Singh was the owner of the Dumraon Raj. He died in the early part of this century leaving a widow, Maharani Beni Prosad Kueri, and one daughter, but no male issue. Before he died the Maharaja executed and registered a deed by which he empowered his widow to adopt a son to him, and he confirmed that authority by his Will.

2. On his death his widow took possession of the property of the Dumraon Raj and remained in possession till her death in 1907. It was contended that shortly before her death the Maharani adopted Srinivas Prosad Singh as a son to her husband and Srinivas Prosad Singh who was then about five years of age claimed the Raj on the footing that he was the duly adopted son of the late Maharaja. Thereupon Keshava Prosad Singh denied such adoption and himself claimed the Raj as the heir of the Maharaja. The Court of Wards took possession of the estate on behalf of Srinivas Prosad, having made Srinivasa Prosad a Ward of the Court.

3. In 1909, Keshava Prosad Singh instituted a suit in the Court of the Subordinate Judge at Shahabad and claimed the estate making Srinivas Prosad Singh, the Manager of the Court of Wards, and the Collector of Shahabad the Defendants.

4. Srinivas Prosad resisted Keshava Prosad's claim on the ground that he had been duly adopted by the widow of the Maharaja.

5. That suit was heard by the Subordinate Judge of Shahabad who decided against the adoption and made a decree in favour of Keshava Prosad. The relevant operative part of that decree was:

It is ordered and decreed that the Plaintiff Babu Keshor Prosad Singh of Dumraon Raj being lawful heir to the Dumraon Raj is entitled to recover possession of all the properties appertaining thereto and the Defendant should make over peaceful possession of the same. He is further entitled to the reliefs prayed for in the plaint.

6. Then followed an order that the Court of Wards should render accounts to the Plaintiff in that suit, Keshava Prosad Singh.

7. There was an appeal brought to this Court which was then the High Court having superintendence over the Shaha-bad Court. On May 17th, 1912, there was a settlement of the appeal which was approved by a Bench of this Court. The short effect of that settlement was that the decree of the Shahabad Court was confirmed, that the Court of Wards was relieved from its responsibilities to account for interim rents and profits of the estate, that the Plaintiff Respondent, Keshava Prosad, should pay a certain sum of money to the Court of Wards in respect of its costs, that Keshava Prosad should also pay certain costs of the Appellant, and that the Appellant was declared to be absolutely entitled to a payment of ten lacs of rupees, the payment to be made in the manner and by way of instalments therein specified. The appeal was disposed of accordingly.

8. Some eleven years later on July 30th, 1923, the Appellant to that appeal, Srinivas Prosad, who said that he was the adopted son, attained the age of twenty-one years. Three years later, on June 12th, 1926, he instituted the present suit to set aside the compromise decree and asked to be remitted to his original rights so as to be able to proceed with the appeal which in 1912 was the subject of compromise. The original Defendants to that suit, which is the present suit, were Keshava Prosad Singh who had been declared to be the owner of the Raj, a member who constituted the Board of Revenue in Bihar and Orissa and as such formed the Court of Wards, Mr. Murphy, a member of the Indian Civil Service, the Collector of Shahabad at the time of the compromise, and also the Collector of Shahabad as representing the Court of Wards.

9. Keshava Prosad Singh has died since, and his two sons Maharaj Bahadur Ram Ranbijoy Prosad Singh, and Maharaj Kumar Biswa Nath Prosad Singh have been substituted in his place.

10. Srinivas Prosad Singh also died on December 5th, 1939, leaving a Will by which he appointed his widow, Sabitri Debi, the sole executrix of his estate. Srinivas Prosad has two minor sons, Dig Vijay and Birendra Vijay. Savitri Devi made an application on behalf of herself and her two minor sons praying that she

and her two minor sons should be made parties to this suit and substituted in place of Srinivas Prosad.

11. The Defendants to the suit opposed the application, but Sen, J., allowed it, with the result that the widow and executrix and the two children have been substituted in place of Srinivas Prosad.

12. The Defendants have appealed from that decision. It has been contended, as it was before Sen, J., that no substitution should have been made, because the right which Srinivas Prosad had to sue, did not survive to the executrix. That contention is based upon a construction which is attempted to be put upon sec. 306 of the Indian Succession Act. Sec. 306 of the Indian Succession Act provides:

All demands whatsoever and all rights to prosecute or defend any action or special) proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory."

13. The argument for the present Appellants, Defendants in the suit, is that the damage which the original Plaintiff Srinivas Prosad suffered, if he established that the settlement approved by the Court was invalid, is in the nature of personal injuries which come within the exception to sec. 306 and so do not pass to the executors under the first part of the section.

14. Srinivas Prosad alleged that the settlement which the Court approved was procured and sanctioned through the collusion and fraud of those who had then charge of his appeal acting in conjunction with the Respondents to the appeal. Srinivas Prosad in substance was complaining of the loss of the Dumraon Raj through fraud in the settlement. The purpose of his bringing this suit was to have the settlement set aside and be restored to the position he occupied when he brought the appeal, then prosecute the appeal, as he hoped successfully, and so obtain the ownership of the Dumraon Raj. Whatever right he had in regard to this proceeding at the time of his death comes under the category of " rights to prosecute any action or special proceeding" and not under the category of " personal injury." Such right would accordingly pass to his executrix.

15. I am therefore of opinion that the executrix of Srinivas Prosad, who is his widow Sm. Savitri Debi, was properly substituted in the place of Srinivas Prosad as Plaintiff in these proceedings. I see no reason to interfere with the order of Sen, J., adding the two sons of Srinivas Prosad as Plaintiffs.

16. In the result this appeal must be dismissed with costs. Certified for two Counsel.

Edgley, J.

I agree.