
(1917) 01 AHC CK 0036
In the Allahabad High Court

Musammat Narain Dei

APPELLANT

Vs

Musammat Parmeshari and Others

RESPONDENT

Date of Decision : 30-01-1917

Acts Referred:

Citation : AIR 1917 All 213 : 40 Ind. Cas. 124

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Piggott, J.—This is an appeal from an order passed under the Succession Certificate Act. It arises under the following circumstances :-- The applicant, the appellant before this Court, is the widow of one Umrao Singh. She applied to the District Judge for a certificate entitling her to collect the debts of her late husband, to the amount of Rs. 1,246-11-0. The application was opposed by certain persons, the respondents now before us, who claim to be interested as reversioners in the estate of Umrao Singh. The District Judge decided in favour of the present appellant, but held that the succession certificate should be granted only subject to her furnishing security for the amount of the debts specified in her application. He fixed the amount at Rs. 1,250, and we think it is worthwhile to notice this point, because it would seem that, by some copyist's error, the lady was left under the impression that she was ordered to furnish security to the amount of Rs. 1,750. Some months later the present appellant applied to the District Judge, the successor-in-office of the Judge who had originally passed the order, asking him to grant her a certificate without any condition as to security, the reason alleged being that she was not in a position to furnish security. Thereupon an order was passed on the 8th of December 1915, to the effect that the learned Judge refused to reconsider his predecessor's order. The appeal is against this order of the 8th December 1915.

2. A preliminary objection is taken before us that no appeal lies and we have come to the conclusion, although not without some reluctance, that this

objection must prevail. The question we have to consider is altogether distinct from the question whether an appeal could have been prosecuted by either party against the original order of July the 30th, 1915, granting a certificate subject to conditions. According to the existing state of authorities in this Court, such an appeal would not lie *vide* Nannhu Mal v. Gulabo 26 A. 173 : A.W.N. (1903) 225 and the cases therein cited. Our attention has been drawn to a later decision of this Court in Gauri Dutt v. Musammatt Maikia 2 A.L.J. 606 questioning the correctness of the older rulings, though not dissenting from them. If the question had come before us in a pure form, namely, whether this lady had or had not a right of appeal from the order of the 30th July 1915, we might have felt disposed to see whether the older decisions of this Court could not be re-considered. The lady, however, has submitted to the existing current of authority in this Court and has refrained from appealing from this order of the 30th July 1915. We must, therefore, accept the position that that order was not appealable, or, at any rate, has not been appealed against. The order of the 8th of December, as it stands, is merely an order rejecting what the learned Judge took to be an application for review of the order of the 30th July 1915. From this order, as it stands, it is quite clear that no appeal lies. The only question, which could be argued and which has been argued before us, was whether we could treat this latter order as being in substance one refusing a certificate in favour of the present appellant. We are afraid under the circumstances stated that it is impossible for us to do this. If the appellant wished to obtain from the District Judge an appealable order, in accordance with the view of the law taken in Nannhu Mal v. Gulabo 26 A. 173 : A.W.N. (1903) 225 she should have moved the District Judge, upon her representation that she was unable to furnish security, to pass an order finally disposing of her application for the certificate. Such an order, in the circumstances, if the District Judge had refused to review his predecessor's order, would have to be an order rejecting this lady's application for the certificate, and from such an order, according to the view of the law hitherto accepted in this Court, an appeal would lie. It may be that it is not too late even now for the appellant to adopt this course. For the reasons stated, we dismiss this appeal with costs including fees on the higher scale.

Walsh, J.

3. I agree. I think the whole thing is a lamentable exhibition of the results which may accrue to parties of a misunderstanding and an attempt to fight about the form instead of the substance. The whole point in the case is as to who should collect the debts of the deceased man, and there is no question between the parties, such as arises in a suit, which need have led to several months being spent upon an idle discussion of this kind. There seems to have been a misunderstanding. Mr. Malaviya tells us, and I see no reason to doubt him, that the intention was to get an order from the District Judge on the 8th of December 1915, refusing a certificate without furnishing security. For some reason, which has not hitherto been explained, there was an order on that application which is dated the 4th of May. It is quite clear from the order which was drawn up that

the learned Judge treated the application as one to review or modify the previous order. Whether it was that owing to the time which had elapsed when the formal order came to be drawn up what had really happened was forgotten and the formal order does not represent the real result, or whether it was due to the fact that the learned gentleman representing the appellant did not make himself clear to the learned Judge of the Court below, it is impossible for us to say that it is an order refusing a certificate. It is not such an order. It is an order refusing to entertain an application to review or modify the previous order. Therefore we cannot deal with it as something which it is not. It seems to us, however, that there is no obstacle to the applicant, the appellant before us, taking immediate steps to make a fresh application to the District Judge, and if possible supported by an affidavit, for grant of an unconditional certificate, or in the alternative for a certificate on such terms as the Judge thinks right. And if she is advised to appeal against the order made on such fresh application, speaking for myself, if I am satisfied that unless this Court makes some order to accelerate the hearing of the appeal, some of the debts will become statute-barred, I should be prepared to accelerate the appeal to prevent such result. That seems to be required in the interest of the parties themselves and reasonable as against the debtors who owe the money.