
(1937) 03 PAT CK 0026
In the Patna High Court

Ram Ranbijaya Prasad Singh

APPELLANT

Vs

Parmatmanand Singh

RESPONDENT

Date of Decision : 08-03-1937

Acts Referred:

Succession Act, 1925 — Section 214

Citation : AIR 1938 Patna 390

Hon'ble Judges : Madan, J;Agarwala, J

Bench : Full Bench

Judgement

Agarwala, J.—The late Maharaja of Dumraon sued for recovery of possession of certain property and obtained a decree for recovery of possession and for costs of the suit. Subsequently the decree-holder died.

2. The estate is an impartible Raj governed by the rule of primogeniture, so that the decree-holder was succeeded by the elder of his two sons. The present Maharaja then applied for execution of the decree for costs. His application has been disallowed on two grounds.

3. The learned Subordinate Judge has held, in the first place, that the application cannot succeed without joining the brother of the present holder of the Raj and, secondly, that the application for execution must fail in the absence of a succession certificate.

4. The Maharaja has appealed against that order and in this Court the judgment, debtor has stated that he does not oppose the appeal. Section 214, Succession Act, on which the Court below relies, does not require a certificate in respect of a debt due to a person claiming it by survivorship.

5. As was pointed out in Shiva Prasad Singh v. Beni Madhab Chowdhury A.I.R.1922. Pat. 529 their Lordships of the Privy Council have made it clear that succession to an impartible Raj is decided by the rule of survivorship so that the successor of the decree-holder took the estate not by sue. cession but by survivorship.

6. The learned Court below has taken the view that the decree for costs was not part of the estate but was the income of the estate and that it belonged to the holder for the time being as distinct from the estate.

7. In my opinion the decree for costs was itself a part of the estate being merely re-imbursement for expenses incurred in conducting litigation for recovery of part of the estate.

8. The appeal succeeds and is allowed but without costs.

Madan, J.

I agree.