
(1918) 11 PAT CK 0003
In the Patna High Court

Sheikh Fazlur Rahman and Others

APPELLANT

Vs

Sheikh Kali Muzaffar

RESPONDENT

Date of Decision : 06-11-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1918 Patna 338 : 48 Ind. Cas. 533

Hon'ble Judges : Dawson Miller, C.J.; Mullick, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—This is an application on behalf of the representatives of some of the children of the late Musammat Bibi Fasihan in the course of administration proceedings in respect of her estate. It appears that she died leaving 4 daughters and 3 sons. To some of them she had by deeds of gift transferred certain portions of her property. The validity of these deeds of gift was called in question by the remaining heirs and after some litigation all of them were set aside and this Court ordered, in view of the somewhat complicated circumstances that had arisen by reason of the dealings with the shares which had been given to some of the children by the deeds of gift, that the whole estate should be administered under the supervision of the Court and directed a preliminary decree to be drawn up in accordance with that decision. In the course of the administration proceedings a Receiver was appointed and from time to time various applications were made to the District Judge under whose charge and supervision the estate was being administered. On the 23rd March 1918, Kali Muzaffar, one of the sons of Musammat Fasihan Bibi whose share of the estate was a 7-anna share and who had incurred certain costs in connection with an appeal from the decision of this Court to the Privy Council, applied to the District Judge by petition that those costs should be advanced to him out of his share and charged to his account and further that an allowance should be paid to him pending the administration of the estate. In the result the learned District Judge ordered that the costs incurred by Kali Muzaffar in prosecuting his appeal to the Privy Council from the decision of this Court might be advanced to him and

charged to his account out of the share which would ultimately come to him when the estate had been administered. With regard to the allowance he said: Receiver should submit a scheme for the payment of the debts due by the estate and an estimate of the mesne profits due by and to each party in order that it may be possible to fix the amount of the allowance." In pursuance of that order a report was made by the Receiver, which dealt with the assets and liabilities of the estate which was a large one, amounting to some 10 lakhs. The report also dealt with the mesne profits which Kali Muzaffar and one or two of the other heirs had received out of that portion of the estate which they had been dealing with under the deeds of gift and before the deeds were set aside. It appeared from that report, which was not final as the assets and liabilities had not then been entirely ascertained, that there would be due from Kali Muzaffar to the estate a sum of something between Rs. 70,000 and Rs. 90,000 in round figures. It further appeared, as far as can be ascertained at present, that making a liberal estimate for the debts and liabilities of the estate, something like 7 or 8 lakhs (take it at 7 lakhs) would be left representing the assets distributable amongst the various heirs. Of this sum Kali Muzaffar will be entitled to a 7-annas share. Out of that 7-annas share he will have to pay a sum of not less than Rs. 73,000 and not more than Rs. 94,000. Taking it even at a lakh, that would leave Kali Muzaffar's share at something like 2 lakhs and in the meantime, of course, he would be entitled to the interest on that property in addition to the capital which will eventually become his. In these circumstances the learned Judge, having received the report and presumably considered it, made another order on the 10th April 1918 when the previous petition was considered together with a petition made by the other members of the family dealing with various matters. In the course of that order he stated that an allowance of Rs. 400 a month be made to Kali Muzaffar for the present and added: "It does not seem possible to grant an allowance to the other parties at present." The other parties who were apparently asking for an allowance were the daughters of the deceased lady. The learned Judge allowed the application of Kali Muzaffar fixing his allowance at Rs. 400 and refused the application on behalf of the daughters. We have been asked by the petitioners to say that this order made by the learned Judge was without jurisdiction or that under the provisions of Section 115 of the CPC was made illegally or contained some material irregularity. In the alternative the petitioners ask us to say that an allowance should also be made to the three daughters who have moved this Court. The ground upon which we are asked to exercise our powers of revision are those which I have already stated. It is contended that under the preliminary decree the Court has no power to order any portions of the assets to be distributed at all, but merely has power to make enquiries in order to ascertain what the liabilities were and what the shares of each of the claimants of this estate are after the debts have been ascertained. I cannot accept that interpretation of the decree which has been put before us, for this reason. By the order of this Court a general administration of the estate was ordered and the case was sent down to the District Judge to prepare a decree in accordance with those directions. Whilst it is quite true that the great bulk of the

different paragraphs in the decree deals merely with enquiries that have got to be made and accounts which have to be taken as to the ascertainment of the debts and the shares of the different heirs and as to their rights and liabilities, it was nevertheless a decree made in an administration suit and it is provided in that decree that the Commissioner or the parties or any of them are at liberty to apply to the Court for the appointment of a Receiver or for other directions from time to time as they may be advised. A Receiver has been appointed and the administration of this estate is apparently taking longer than was anticipated, and I can see no reason why any of the parties who will eventually be entitled to share in the property should not apply to the Court under whose direction the estate is being administered, asking that they should be granted an allowance, certainly not a very excessive allowance, pending the time when they will come into their own. It seems to me that that is one of the powers which the Court exercising control over the administration of the estate is certainly entitled to exercise. I quite agree that that power ought to be exercised with proper discretion and having regard to the claims that are likely to be made upon the estate, and that the Court ought not to grant to any of the beneficiaries properties by way of an allowance unless it is satisfied that the assets will be sufficient to satisfy the creditors. Having regard to the report of the Receiver which I have already referred to it, seems to me that it is quite clear that the share of Kali Muzaffar will be able to bear the liability that may attach to it in respect of this advance of Rs. 400 per month. It seems clear that if he gets his share of the income that share of income alone will be in excess of Rs. 400 per month, and moreover the order which was made was merely an order that he should be paid that sum for the present. If owing to the administration being protracted or for any other reason it should appear to any of the parties interested that this allowance should cease, they will certainly be entitled to make another application to the District Judge and he can then consider the question in the light of the altered circumstances which may have arisen.

2. The alternative suggested by the applicants is that the whole of the assets of this estate should be looked up in the pocket of the Receiver and not a penny piece should be paid to anybody whatever their ultimate rights thereto may be, until the whole of the somewhat complicated set of circumstances has been ascertained and everybody's definite share has been apportioned. If that were so, it would follow that those who were certainly entitled to share in this estate might be kept out of their only means of subsistence for a considerable time, and I have no hesitation whatever in coming to the conclusion that the administrator has ample power to make an order such as this and there is no lack of jurisdiction nor is there any illegality or irregularity in the order which has been made.

3. The other question which we have been asked to decide is that if Kali Muzaffar is granted an allowance, then the three surviving daughters ought also to be granted a similar allowance. This is a matter for the discretion of the learned Judge. He is not bound in any case to grant an allowance to any one of the

parties and no doubt he has exercised his discretion in this matter, and speaking for myself I can see very good reason why Kali Muzaffar, one of the sons who probably is dependent upon the income of his mother's property for his livelihood, should be granted a small allowance such as this merely for his everyday expense?, whereas the daughters who are married have other means of subsistence and there is nothing to show that they are in immediate want or necessity. That is one of the reasons which I imagine affected the decision of the learned Judge in coming to the conclusion at which he arrived. In any case I do not think that this Court sitting in revision ought to substitute its own discretion for that of the Court below in such matters where discretion has to be exercised. That being so, it seems to me that this application must fail and ought to be dismissed with costs. Hearing fee two gold mohurs.

4. At the same time it does appear that the Receiver, who was appointed by the decree to make enquiries and take accounts and ascertain the assets and liabilities of this estate and the shares of the different heirs, was ordered to have his enquiries and accounts and other matters completed and present a certificate ready for inspection by the parties by the 31st March 1918. We are now in November, and it does not appear that the accounts have been completed and it is impossible to say how far from completion they are even at the present moment. This has been put before us as a grievance on behalf of the applicants. It is not a matter with which we are in a position to deal, not knowing what the actual facts are, nor would it be a matter with which we would be entitled to deal in an application of this sort. At the same time in dismissing this application I think perhaps it might be advisable to bring this matter to the notice of the District Judge in order that he may, so far as he can, take steps either on his own initiative or if an application should be made to him by the parties to see that this administration is pushed on without any unnecessary delay.

Mullick, J.

5. I agree.