

(1925) 05 CAL CK 0006

In the Calcutta High Court

Case No : Application for leave to appeal to Privy Council in appeal from Original Order No. 111 of 1924

Sudhir Chandra Dass

APPELLANT

Vs

Srimati Indumati Chowdhurani and others

RESPONDENT

Date of Decision : 29-05-1925

Acts Referred:

Citation : (1925) 05 CAL CK 0006

Judgement

Sanderson, C.J.—This is an application by the plaintiff, Sudhir Chandra. Dass, for a certificate that the case is fit for appeal to His Majesty in Council.

2. The judgment against which it is desired to appeal was delivered by my learned brother Mr. Justice Rankin, and me on the 18th of February 1925 : vide A. I. R. 1926 Cal. 627. That judgment affirmed the decision of my learned brother, Mr Justice C. C. Ghoae, who tried the case. It is, therefore, necessary for the plaintiff to show that there is a substantial question of law involved in the appeal.

3. The facts are set out in the three judgments which were delivered in this case, and it is not necessary for me to repeat them.

4. There is no doubt that a compromise was made with the object of settling a serious family dispute which had arisen by reason of Indumati's action in disputing the Will of Srish Chunder Das. The compromise was arrived at on or about the 22nd of May 1905. Indumati's opposition to the grant of. probate was withdrawn, and probate was granted on the 24th of May 1905 and the administrator pendente lite was discharged. The plaintiff was not adopted by the widow Raseswari until the 26th of April 1906.

5. I refer to two or three passages in the judgment of my learned brother, Mr. Justice Rankin, with a view to showing what the position was. They are as follows : the first passages is:

Raseswari as a Hindu widow was, in my judgment, certainly entitled to speed

what was necessary from the corpus as well as from the income of the estate to defend the right given her by her husband to adopt a son to him. Of that I imagine there can be no doubt.

6. Another passage is as follows.: Now what took place was. in my judgment, this : with the knowledge and at the instigation of all the people-certainly of all the daughters and their husbands-these executors, the widow and Rajani agreed to find Rs. 30,000 to buy off Indumati's objections. That it was ever dreamt by anyone that, that the Rs. 30,000 should not come out of the estate I do not believe for a moment; in particular for the reason that there was no other fund that it could come out of. That it did come out of the estate also. I think, clear. But the position was that an administrator pendent lite was in charge of the assets when the compromise took effect the administrator was to clear off to wind up his management and go. Accordingly, in order that indumati might not be given a mere promise, the arrangement which appears in the books was made to the effect that money was scraped up from four different sources."

7. Then the learned Judge, said:

But in this case, whether the Will was bad or whether it was good, everything went to the widow herself as the estate of a Hindu widow. The estate was the widow's. She was fully entitled to represent it and consequently a payment out of the estate necessarily means, as things stood, a payment out of that beneficiary's interest which at the moment was the widow's. There is nothing to be gained in endeavouring to make the distinction as between a personal responsibility and whether the money was coming out of the estate.

8. Another passage is as follows : " But you have, I think to examine, this matter on the footing that a Hindu widow was entitled to protect the right that her husband had purported to give by his Will that she should make an adoption and to make a compromise in defence of that right provided always that the transaction, as a whole, was fair and reasonable from the point of view of reversions"

9. On the hearing of this application it was admitted on behalf of the plaintiff that Raseswari, in her capacity of Hindu widow, was competent to make the compromise. It was alleged, however, that she was the executrix of the Will and that she and the executor made the compromise in the capacity of executrix and executor.

10. Both the Courts have found that the compromise was made by the widow and the other members of the family for the purpose of procuring peace in the family and to prevent the estate being wasted in litigation, and that the compromise was a reasonable one. It being conceded that the widow was competent to make the compromise, the question is whether the mere fact that the widow was executrix of the Will would prevent her entering into the compromise, having regard to the fact that she was entitled to the whole of the estate. I am of opinion that the mere fact that she was executrix would not

prevent her making the compromise and in my judgment there is no substantial question of law involved in this point.

11. The other point raised was that the appeal Court and the trial Court should not have decided the case on the grounds set out in the judgments by reason of the attitude which was adopted by Indumati before the Assistant Referee. The claim of Indumati was made in the suit for the administration of the estate in respect of the monthly allowance of Rs. 100 provided for her by the Will, and the claim was referred to the Assistant Referee. The issue was raised that she had received Rs. 30,000 out of the estate which she should not be allowed to retain and that she was not entitled to the allowance until she returned that sum.

12. In the first place, she denied the receipt of the money. At a subsequent stage, however, the receipt of the sum was admitted; and, a special order was made as to the costs by reason of the course adopted by Indumati. I see no reason why the Court should be prevented from adjudicating upon the true facts as found by both the Courts. There is a concurrent finding of fact by the trial Court and the appeal Court, and both of them have held that it has not been proved that Indumati owed Rs. 30,000 to the estate; and consequently that she is entitled to the monthly allowance.

13. In my judgment there is no substantial question of law involved in the appeal; and this application must be dismissed with costs.

Panton, J.

14. I am of the same opinion. It is necessary to determine whether the appeal referred involves any substantial question of law within the meaning of S. 110 of the Code of Civil Procedure.

15. It is argued in the first place that a question of this nature arises from the fact that my learned brothers have adopted a case which was not made by the defendant Indumati. She had in this suit for administration claimed arrears of monthly allowance from the estate of her late father, and in her objection to the Assistant Referee's report on his investigation of her claim had falsely denied the payment to her of the sum of Rs. 30,000 which, under the report, she was required to make good to the estate. Then again in the course of the trial she denied that she had given a certain receipt for this money in which her mother-in-law Raseswari is described as executrix to the estate of the deceased. The Court, however, on an examination of the " material above, has discarded the fictitious allegation of Indumati, has ascertained the true nature of the transaction between these two ladies and has decided the case on that basis. No substantial question of law can, in my opinion, arise from the adoption of this course.

16. It is then contended that the matter of Indumati's liability to refund the Rs. 30,000 should have been determined on the footing that Raseswari was executrix to the estate, in which case the payment by her would have been in breach of trust. But it is conceded that apart from the Will, Raseswari, as a Hindu

widow could have made this payment; and the Court has found that under the terms of the Will she, as the widow, was "entitled to the whole beneficial interest at the time" that is at the time she made the payment. My learned brother Rankin, J., has pointed out:

But in this case, whether the Will was bad, or whether it was good, everything went to the widow herself as an estate of a Hindu widow.

The estate was the widow's. She was fully entitled to represent it and consequently a payment out of the estate necessarily means, as things stood a payment out of that beneficiary's interest which at the moment was the widow's.

17. It does not appear to me to be a point of substance that she subsequently obtained probate of the Will in which she was appointed executrix.

18. In my opinion no substantial question of law is involved in this respect in the proposed appeal.

19. I would refuse this application.