

**Gangadhar Nanda Vs. Sm. Annapurna Dei**

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**Court :** Orissa

**Decided On :** Nov-15-1949

**Reported in :** AIR1952Ori160

**Judge :** Ray, C.J. and ;Jagannadhadas, J.

**Acts :** [Succession Act, 1925](#) - Sections 372, 373, 373(3), 373(4) and 375

**Appeal No. :** Civil Revision No. 307 of 1949

**Appellant :** Gangadhar Nanda

**Respondent :** Sm. Annapurna Dei

**Advocate for Def. :** B. Mohapatra, Adv.

**Advocate for Pet/Ap. :** H. Sen, Adv.

**Judgement :**

Ray, C.J.

1. This is an application directed against an order of the District Judge of Cuttack, dated the 13th of October, 1949, rejecting the petitioner's prayer to withhold the granting of Succession Certificate to the Opposite Party No. 2.

2. The history of the litigation is that one Kartick Chandra Nanda died leaving an estate behind, which comprised both moveable and immoveable properties and considerable amount of debts due to him and also bank deposits. Shortly after his death, the opposite party SM. Annapurna Debi put in a petition for issue of a Succession Certificate for collection of the debts due to the estate of the deceased. She claimed to be the only daughter and therefore the only heir of Kartick. She filed that application on the 4th of October, 1947. She did not cite the petitioner Gangadhar Nanda as one of the near relatives but had cited several other people. Before service of notice on the persons cited was complete, this Gangadhar intervened in the proceeding started on the petition of Annapurna by an application dated the 4th of February 1948, asking permission and time to file an objection to the validity of Annapurna's claim. He did file an objection on 20th February 1948. In paragraph 7 of that objection he pleaded that the deceased Kartick Nanda was his nearest agnate being his nephew, and had executed a Will in his favour sometime in June 1947, bequeathing all his properties moveable, immoveables, debts, securities, etc., to him. He disputed Annapurna's relationship as daughter with Kartick, while on the other hand, Annapurna too, disputed the alleged relationship of the petitioner with her father. The Will was produced in Court on the 20th of March, 1948. The

proceeding regarding granting of Succession Certificate to Annapurna terminated in her favour on the 30th of June 1949. As there was no application for grant of Letters of Administration with the Will or an authenticated copy of the Will annexed before him, the learned Additional District Judge did not enter into the question of genuineness of the Will. He decided, however, that on the facts established before him, Annapurna was the daughter and the sole heir of Kartick Nanda and was entitled to a grant of Succession Certificate in order to enable her to collect debts which approximately come to something over ten thousand rupees. As to the petitioner, before us, the Judge has come to the finding that he is not related either as uncle or as brother of late Kartick Chandra Nanda. His finding is 'Objector is neither the uncle nor brother of late Kartick Chandra Nanda.' In his order he did not affix any condition as a condition precedent to the grant of the certificate. It was urged before him that security should be demanded from Annapurna as she was a limited owner. The learned Additional District Judge observes 'There is nothing in law to demand security when Succession Certificate is to be granted to a limited owner simply because she is a limited owner.' In that observation he may be correct because the Section (Section 375 of the Indian Succession Act) that deals with the matter of security provides that in cases falling under Sub-section (3) or Sub-section (4) of Section 373 the District Judge shall require as a condition precedent to the granting of a certificate, that the person to whom he proposes to grant the certificate shall give to the Judge a bond, etc., but with regard to other cases, the matter is left to the discretion of 'the District Judge. In this view of the matter, however, the District Judge may be right to say that the law does not demand it, but law does not prevent him from exercising his discretion in proper cases to demand a security. That the person to whom a certificate is granted is a limited owner though the immediate heir is itself a circumstance which may, in deserving cases, call for taking of security at least for the sake of the safety of the next reversioners. Of course in this particular case. Sm. Annapurna has got sons and it is not likely that she should act in a manner so as to prejudice their interest. But the element of her husband being in dominating position may not be completely banished from consideration.

3. However, that order of the learned Additional District Judge has not been appealed against and has therefore, become final. The Succession Certificate proceeding after its disposal by the learned Additional District Judge has come back to the Court of the District Judge where the application by the present petitioner Gangadhar Nanda was filed requesting that the Succession Certificate should not be issued. The learned District Judge ordered 'I fail to see how at this stage in this proceeding such an order can be passed.' In this, I think, he is perfectly right. So far as actual issue of certificate is concerned, which is mostly a ministerial act, it cannot be stopped as the order has already been passed and the order has not been subjected to any condition either precedent or subsequent. Neither the District Judge nor this Court has got power to make any addition to the order granting certificate. It could only have been done either by way of modifying or reviewing that order in an appropriate proceeding. As I have already said such a proceeding has not been initiated by the petitioner and the order has become final, such prayer could not also be granted by way of stay of execution, except in course of an appeal by an appellate Court or review proceeding which is tenable before that Court who passed the order granting the certificate.

4. At this stage, I should mention that Mr. Mohapatra, the learned Counsel for the respondent (opposite party) urged as a preliminary objection that no civil revision lay. Technically speaking, he may be correct because Mr. Sen's application in the Court

below seems to have been filed in Miscellaneous Case No. 42 of 1947 which is the case regarding grant of Succession Certificate. But a liberal view can be taken in this respect. Before the District Judge is still pending the petitioner's application as legatee for issue of Letters of Administration with the will or its authenticated copy annexed. His petition may be taken to be a petition in that proceeding and that for some sort of interim protection against wastes or removal of the property beyond the contemplated administration. In that view Civil Revision may be tenable. But the only way in which such a petitioner can get protection would be one under Section 247 of the Indian Succession Act which gives the Court power for interim administration of the estate. The section reads:

'Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, v/ho shall have all the rights and powers of a general 'administrator, other than the rights of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.'

5. The learned Counsel for the petitioner asks us to issue an order of injunction preventing Sm. Annapurna from realising debts. Neither this is an appropriate prayer nor is it advisable. It will do no good to the estate of Kartick Nanda whosoever may be ultimately determined to be successor of it. Under the circumstances, we do not find our way to give Mr. Sen any sort of interim protection. The only protection that I have been able to find which he can get, is by way of the relief obtainable under Section 247. He has not moved the District Judge under the section and it was not made clear to the District Judge under what section he could proceed in order to give such a protection. He has therefore said 'I fail to see how at this stage in this proceeding such an order can be passed.' Besides, in order to adjudicate upon a matter like this various information's are required, which it is impossible to find in this Court. Under the circumstances, this petition is bound to be rejected and that with costs. Hearing fee is assessed at one gold mohur. The petitioner, it properly advised, may approach the learned District Judge to appoint an Administrator during the pendency of the proceeding for grant of Letters of Administration which is pending before him. He will consider the pros and cons of the proposal, solvency of Lakhmipriya, the stake that the petitioner has in case the money is mis-spent or spent away by Lakhmipriya and all other incidental circumstances and if he finds it necessary that the petitioner should get some protection, he may proceed to give it. It is a matter for exercise of the District Judge's discretion.' We refrain from fettering it in any way whatsoever.

Das, J.

6. I agree.