

Oula and ors. Vs. Beepathee and anr.

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Court : Chennai

Decided On : Sep-18-1893

Reported in : (1894)ILR17Mad209

Judge : Muttusami Ayyar, J.

Appellant : Oula and ors.

Respondent : Beepathee and anr.

Judgement :

Muttusami Ayyar, J.

1. This was a suit brought by one Kutti Hammad upon a bond executed by his late ancle Abdul Rabiman Kutti. Hammad having since died, Beepathee and Kunhipathu, claiming to be his sisters by adoption, applied to have their names entered on the record in place of the deceased plaintiff. The third defendant denied the adoptions, but the Subordinate Judge granted the application without proper inquiry, and ordered that the suit be proceeded with; hence this appeal. It is contended for the appellants that the Subordinate Judge gave them no opportunity to disprove the alleged adoptions, and that the admission made by the deceased plaintiff is not binding upon them. It is also urged that before respondents were admitted as supplemental plaintiff's, the procedure prescribed by Section 367 had not been complied with and the factum of the adoptions determined. On the other hand, the contention for respondents is that the Subordinate Judge has acted in accordance with the provision of Section 365, and that no appeal lies from the order made under that section.

2. As regards the preliminary objection that no appeal lies, it cannot be maintained. In this case the third defendant denied that Beepathu and Kunhipathu were the legal representatives of the deceased plaintiff, and it falls, therefore, under Section 367. An appeal is allowed from the order made under that section by Section 588,1 Clause 18. I am unable to accede to the contention that Section 367 applies only when two or more persons claim to be legal representatives of the deceased plaintiff, and that it is not applicable where there is but one claimant, and the defendant denies his representative character. Section 365 provides that in case of the death of a sole plaintiff or sole surviving plaintiff, the legal representative of the deceased may, where the right to sue survives, apply to the Court to have his name entered on the record in place of the deceased plaintiff, and the Court shall, thereupon, enter his name accordingly and proceed with the suit. The section presupposes that the claimant is the legal representative, and then prescribes the procedure which ought to be followed. Section 367 enacts that, if any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact

has been determined in another suit or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit. The language is wide enough to include a sole claimant, whose representative character is denied by the defendant. Reading the two sections together, they show that when there is no dispute as to the applicant being the legal representative, the procedure prescribed by Section 365 is to be followed, and, either when the representative character is denied or when two more persons claim it, the procedure prescribed by Section 367 should be followed. The bringing in of a representative on the record is not a mere formal act, and there must be a complete judicial inquiry and determination as to whether the claimant is the proper representative. This is further made clear by the procedure prescribed when the legal representative of a deceased sole defendant is brought on the record. In that case the Court is bound to enter on the record the name of the person who is alleged by the plaintiff to be the legal representative, liberty being reserved to the person who is so made defendant to object that he is not the legal representative. When the plaintiff makes the application and causes a new defendant to be put on the record, he does so at his own peril, and if the new defendant is not really the representative of the deceased defendant, the plaintiff will not be able to execute the decree. On the other hand, when a person is substituted for the deceased plaintiff, it is the act of the Court and the substituted person realizes the deceased's estate. The Court must, therefore, satisfy itself that the substituted person is the real representative at or before the hearing of the suit and then deal with it according to law. In the case before us, the Subordinate Judge admitted two documents and a judgment in evidence, and acted upon them without giving the defendants an opportunity to prove their allegation, and I cannot say that there was a proper judicial inquiry. The order of the Subordinate Judge is set aside, and he is directed to hear all the evidence which the parties may adduce and, after holding a proper judicial inquiry, to determine whether petitioners are entitled to be admitted as the legal representatives of the deceased Kutti Hammad for the purpose of prosecuting the suit and then deal with the suit according to law. Costs of this appeal will abide and follow the result and be provided for in the revised judgment or order.

1. Section 588(18): Order under Section 366, paragraph 2, Section 367 or Section 368.

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