Ranjit Singh Minor Under the Court of Wards by His Guardian NobIn Krishna Banerjee, Manager of His Estate Vs. Jagannath Prosad Gupta

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Court : Kolkata

Decided On : Sep-11-1885

Reported in : (1885)ILR12Cal375

Judge : Norris and; Ghose, JJ.

Appellant : Ranjit Singh Minor Under the Court of Wards by His Guardian NobIn Krishna Banerjee, Manager of His E

Respondent : Jagannath Prosad Gupta;gangadhur Dass Rae and anr.

Judgement :

Norris and Ghose, JJ.

1. The learned Government Pleader, who appeared for the Court of Wards, did not, as we understood him, question in the course of his argument, the conclusion of the Court below that it was not proved that the minor was the adopted son of Kirti Chandra.

2. As regards the appellants in the other appeal, we are clearly of opinion upon a consideration of the neog-puttro that they were not by that instrument appointed shebaits as directed by the will executed by Ranee Annapurna, and so they also have no locus standi, and on this ground, which is common to both appellants, we should have felt inclined to dismiss both these appeals. But considering the importance of the points raised by the learned Government Pleader, and having in view the provisions of Sections 83 and 86 of the Probate and Administration Act (V of 1881), we think it proper to deal with them.

3. Baboo Annoda Prosad Banerjee's main contentions were that the application of Jagannath did not properly fall within the scope of the Probate and Administration Act, and that therefore the District Judge had no jurisdiction to deal with the matter and grant letters of administration; and the applicant's proper course was to bring a regular suit to establish his right, and for the appointment of a shebait.

4. These contentions were not raised in the Court below, but we allowed them to be argued at the bar, as they involved important questions deserving careful consideration.

5. As already observed, Ranee Annapurna by her will dedicated certain immoveable properties to the sheba of certain idols, constituting Anundmoyee as shebait, and empowering her to appoint the next shebait. The will also by implication appointed Anundmoyee an executor, and as such executor, she took out probate. During her life-

time, she fully represented the estate, both as a trustee for the idols, and also as an executor under the will; but she died without appointing in her place a shebait who could administer the estate in accordance with the directions of the will.

6. Now, looking at the scope and policy of the Probate Act, it is apparent that it was the intention of the Legislature that an estate should not be left unrepresented; and to this end provisions are made for the grant of a probate and letters of administration in a variety of cases.

7. In the present case, there being an endowment created by the will in favour of the idol, the trust is of a perpetual character, and therefore the necessity of administration of the endowed property did not and could not cease with the death of the shebait Anundmoyee. So long as an administrator is not appointed, the estate would be wholly unrepresented, and the idol would run the risk of its sheba being not properly preformed, and its properties being wasted or mismanaged.

8. Bearing these considerations in view, let us now consider whether the Probate Act has provided for an administration being granted in a case like the present. Section 45 of the Act provides: 'If the executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.'

9. In the present case what has happened is, that the executor appointed by the will has died; and the estate of the testator, for reasons already explained, has yet to be administered. In this view it would seem that administration might well be applied for and granted under the Act. We may also refer to Section 37 of the Act as bearing upon this matter.

10. That section runs as follows:

When a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

11. Upon the death of Ranee Annapurna, the properties mentioned in the will became the idol's, and Anundmoyee became the sole trustee for the idols. But she died, as already observed, without appointing another trustee, and leaving, as far as we are aware, no general representative, who, by virtue of his or her being such representative, could take charge of the idol's estate. That being so, the administration, according to the wordings of the above section, devolves upon the idol, the cestuique trust; but it being impossible for the idol to take the management, somebody else on its behalf may apply for administration.

12. It may be doubtful whether in using the word 'beneficiary' in the above section, the Legislature ever contemplated the case of an idol. But regard being had to what has for a number of years been understood in our Courts to be the true position of an idol in regard to dedicated properties, we do not see why, as a cestuique trust, an idol may not be a beneficiary within the meaning of that section.

13. It has also been contended that it was never the intention of the Legislature that

letters of administration should be granted on the death of each trustee to the next succeeding trustee, and that if that were so, the trust estate might be swallowed up by the Court fees that would have to be paid for the taking out of letters of administration. We are unable to accept these contentions; for, as already observed, if no administration is granted, the estate would be wholly unrepresented until the decision of a regular suit, which might take a considerable time, and in the second place the Court Fees Act, Section 19c (chapter IIIA) provides that 'if a probate or letters of administration has been granted in respect of an estate or part of an estate, and the fee chargeable under the Act has once been paid, no fee shall be chargeable when a like grant is made in respect of the same estate.'

14. Upon these considerations, we are of opinion that the case now before us falls within the scope of the Probate Act, and the learned Judge had ample authority to deal with it.

15. This disposes of the other question raised by the learned Government Pleader that the applicant ought to have recourse to a regular suit for the declaration of his right, for, if the Judge had authority to deal with the case under the Probate Act, he would equally have the power to deal with such questions as might arise as to the relative rights of the several claimants before him for administration, either as heirs of Ranee Annapurna, or otherwise.

16. The next question that arises is, whether the applicant is entitled to the administration. With reference to this question, we desire to say, in the first place, that upon the death of Anundmoyee without appointing a Shebait or manager, the said office reverted to the heirs of Ranee Annapurna, who made the endowment see Jai Bansi Kunwar v. Chatter Dhari Singh 5 B.L.R. 181 The Probate Act after laying down in Section 45 that in cases where the whole of the estate has not been administered by the executor, a new representative may be appointed for administration, provides in Section 46 that in such cases the Court, in granting letters of administration, shall be guided by the same rules as apply to original grants, and shall grant administration to such persons only to whom the original grants, might have been made.

17. Now, it has been found by the learned District Judge that the applicant is the adopted son of the Ranee Annapurna's sister; and against this finding no question has been raised before us in appeal. The only contention in connection with this matter was that the Judge was wrong to suppose that in the Nosipoor family, the Asura form of marriage prevailed, and to presume that the Ranee was married according to that form, and to hold that therefore the applicant being the Ranee's sister's son was the preferential heir to her stridhan. We are of opinion that it is not material to consider whether the Ranee was married in the Asura form or not; because, whether she was married in that form or in any of the approved forms of marriage, the applicant as sister's son would seem to be an heir according to the Hindu law, and be entitled to inherit the Ranee's stridhan property, in default of any other preferential heirs; and in this case it does not appear that there are any such heirs. The Ranee was governed by the Benares school of law; and although the Mitakshara is silent as to the class of heirs to whom the stridhan of a woman married according to one of the approved forms devolves in default of issue, her husband, and his kinsmen, yet we have authority for saying that the sister's son, as one of her kinsmen on the father's side, is an heir. The Vira Mitrodaya, which as the Privy Council has said in the two cases of The Collector of Madura v. Mootoo Ramalinqa Sathupathy 12 Moore's I.A. 397 : 1

B.L.R.P.C. 1 and Girdhari Lall Roy v. The Bengal Government 12 Moore's I.A. 448 : 1 B.L.R.P.C. 44 is a treatise of special authority in the Benares school, and is properly receivable as an exposition of what may have been left doubtful by the Mitakshara, and declaratory of the law of the Benares school,--distinctly lays it down, following a text of Vrihusputty, that the woman stands in the position of a secondary mother to her sister's son, and that the latter is an heir to her. That seems also to be the case in the other schools of law (see Vira Mitrodaya, p. 243; Dayabhaga, chapter IV, Section 3, verses 35; to 37; Smriti Chandrika, chapter IX, Section 3 verse 36; Vavahara Mayukha, chapter IV, Section 10, para. 30; West and Buhler, volume I, pp. 242-245; and Vivada Ratnakara, chapter on the Property of a Childless Woman). It is not necessary in this case to examine what may be the true position of the sister's son as an heir of a woman; for, as already observed, the persons who contested the heirship of the applicant have been found to have no hens standi at all, and it does not appear that there are any heirs of the Ranee, save and except the applicant.

18. If then the applicant is heir of the Ranee, he is entitled to hold the office of a shebait of the idol, and it seems to us clear, looking at the language of Section 46, read in connection with Sections 18 to 23, that he is entitled to administration; for, as heir, the original grant in respect to the debutter property might have been made to him.

19. We are also of opinion that if the case falls within Section 37 of the Act referred to above, the applicant is a fit and proper person to obtain letters of administration; for, as already observed, the office of manager has reverted to him, as heir of Ranee Annapurna who made the endowment, and also because he is one of those persons who was authorized in the will of the Ranee to supervise the acts and conduct of the shebait appointed by her.

20. There is only one other matter which we need notice, viz., as to whether the dwelling-houae mentioned in the will of the Ranee was by that instrument dedicated to the idol. The Judge has held that it was given to Anundmoyee even if only for life estate. We are not prepared to accept that view; we are rather inclined to hold, reading the document as a whole, and bearing in mind that the house is the same where the idol was lodged, that it could not have been the intention of the testator to give it to Anundmoyee, even if only for life, in any other capacity than that of a shebait of the idol. But it is perhaps immaterial to express any decided opinion on this point, because, even if it was bequeathed to Anundmoyee for her life, it reverted on her death to the legal heirs of the testator, and therefore the applicant being an heir of the testator under the Hindu law, and there being nobody else who is shown to have a better claim, the applicant is entitled to administration.

21. Upon all these considerations, we are of opinion that the order passed by the District Judge is right, and ought to be affirmed with costs.