

PETITIONER:
SMT. RAJ RANI

Vs.

RESPONDENT:
CHIEF SETTLEMENT COMMISSIONER DELHI AND ORS.

DATE OF JUDGMENT 03/05/1984

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
DESAI, D.A.
SEN, AMARENDRA NATH (J)

CITATION:
1984 AIR 1234 1984 SCR (3) 763
1984 SCC (3) 619 1984 SCALE (1)815

ACT:

Evidence Act-S. 35-Scope of. Whether certificate of death given by respectable persons of the place where deceased once resided admissible in evidence. Held no.

HEADNOTE:

Nanak Chand, father of the appellant, a displaced person from West Pakistan and having a verified claim in his name for some land, disappeared some time in December 1954. A report about his disappearance was lodged by the appellants brother, Dewan Chand, Respondent No. 2, with the local police in Punjab. The police made an enquiry in the matter and ultimately gave out that Nanak Chand could not be traced. In response to a notice issued in the year 1956 in suo moto revision in regard to the verified claim, in the absence of Nanak Chand, Dewan Chand appeared and alleged that Nanak Chand had died leaving behind three sons including him as the only legal heirs. Dewan Chand produced a certificate to the effect that Nanak Chand had died one year and 10 months prior to 25th October, 1956. The certificate was issued on his request by some respectable persons of the place where the family once resided. The Additional Settlement Commissioner, Delhi, by his order dated 27th October, 1956 allowed the application for substitution and directed the three sons to be brought on record as legal representatives of the deceased Nanak Chand although Nanak Chand had left behind three sons, three daughters including the appellant and his widow. The appellant, in an attempt to have her name substituted, filed a revision application against the order of the Additional Settlement Commissioner before the Chief Settlement Commissioner under s 5 of the Displaced Persons (Claims) Supplementary Act, 1954. By his order dated 25th September 1965, the Chief Settlement Commissioner confirmed the order of the Additional Settlement Commissioner dated 27th October, 1956 and dismissed the revision application of the appellant without affording an opportunity of being heard to the appellant. The High Court dismissed the appellant's writ petition and Letters Patent Appeal against the order of the Chief Settlement Commissioner. The High Court observed that the Additional Settlement Commissioner acted rightly in relying

upon the death certificate produced by Dewan Chand and substituting the sons of Nanak Chand as heirs of the deceased of his certified claim. Hence this appeal,

Allowing the appeal,

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HELD: A certificate given by respectable persons of the place where the deceased once resided, to say the least, is not admissible in evidence, Sec. 35 of the evidence Act provides that an entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty, specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact. [769B-C]

In the instant case a certificate by certain respectable person of the place where the family once resided does not satisfy the requirements of s. 35 of the evidence Act. There is no proof that any statutory duty was cast upon the person issuing the certificate to keep a record of birth and death and therefore, the certificate of death has no evidentiary value. It is very easy for a person to obtain a death certificate from the so-called respectable persons in order to grab the property. If according to Dewan Chand, Nanak Chand had died he must also indicate where did he die and it is the place of his death which will be relevant and not the place of his birth or residence. The certificate obviously is not of the place where Nanak Chand died. The authorities have gravely erred in relying upon the certificate of death which was inadmissible in evidence. [769D-E]

To see whether daughters would be entitled to interest in the property left by Nanak Chand will depend upon the death of Nanak Chand before or after the enforcement of Hindu Succession Act and to decide as to when Nanak Chand died it was absolutely essential that an opportunity should have been offered to the appellant in accordance with the principles of natural justice. [769H; 770A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 485 of 1971.

From the Judgment and order dated the 29th January, 1970 of the Delhi High Court in Letters Patent Appeal No. 8/70.

D.D. Thakur, E.C. Agarwala and V.K. Panditta for the Appellant.

Chaman Lal Itrora for the Respondent.

The Judgment of the Court was delivered by

MISRA J. The present appeal by certificate is directed against the judgment of the High Court of Delhi dated 29th January, 1970 in letters patent appeal confirming the judgment and order of the learned Single judge of the High Court dated 7th January, 1970,

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Nanak Chand, father of the appellant was a displaced person from West Pakistan where he held left agricultural lands in village Chhota Bhukh Autar, tehsil Bahawal Nagar, district Bahawalpur. After the partition of the country his claim bearing Index No. B/BP-3/259 was verified in his name for 26 standard acres 12.5 units. Nanak Chand disappeared sometime in December, 1954 and a report about his

disappearance was lodged by the appellant's brother Dewan Chand, arrayed in this appeal as respondent No. 2, on 25th December, 1954 with the local police, Malhout, district Ferozepur, Punjab. An enquiry was made by the police in the matter and ultimately the police gave out that Nanak Chand could not be traced.

In the year 1956 a notice was issued in suo moto revision in regard to the verified claim referred to above, by the Additional Settlement Commissioner, Delhi to Nanak Chand, claimant. As Nanak Chand could not and did not appear in compliance with the notice, the eldest brother of the appellant, namely, Dewan Chand, appeared before the Additional Settlement Commissioner, Delhi on October 25, 1956 and alleged that Nanak Chand had died leaving behind three sons namely, Dewan Chand, Prabhu Dayal and Ashok Kumar (minor) as the only legal heirs of the deceased.

The learned Additional Settlement Commissioner by his order dated 27th October, 1956 allowed the application for substitution and directed Dewan Chand, Prabhu Dayal and Ashok Kumar alone to be brought on the record as legal representatives of the deceased Nanak Chand, although Nanak Chand had left behind the aforesaid three sons, three daughters, namely, Satnam Devi, Lajwanti and Smt. Raj Rani, and his widow Smt. Chandan Bai.

Prabhu Dayal, one of the three sons of Nanak Chand died in 1961 leaving behind his daughter Santosh Kumari. His widow Smt. Lajwanti applied for being substituted as an heir of the deceased alongwith her minor daughter Santosh Kumari. In 1964 the mother of the appellant also applied to the Settlement officer that she and her three daughters may also be constituted as heirs and legal representatives of Nanak Chand deceased regarding payment of compensation in respect of the verified claim. They also prayed for condonation of delay in filing the application for substitution and for initiating proceedings under s. 9 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The Settlement

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Officer concerned recommended for condonation of delay in his report dated 24th March, 1964 to the Regional Settlement Commissioner, Rajasthan with the delegated powers of Chief Settlement Commissioner, Rajasthan, who by his order dated 6th April, 1964 condoned the delay and directed that the case may be processed and finalised according to rules.

When the relevant record was received by the M.O./S.O. Rajasthan, the appellants mother alleged that the previous order of substitution of heirs of Nanak Chand, deceased, had been obtained by fraud and mis-representation practised by her sons inasmuch as they did not disclose in their application for substitution the existence of the appellant, her mother and sisters. The M.O-cum-S.O. by his order dated November 16, 1964, dismissed the application of the mother of the appellant on the ground that the previous order dated 27th October, 1956 passed by the Additional Settlement Commissioner declaring only three sons of Nanak Chand deceased as his heirs, to the exclusion of deceased's widow and daughter was never challenged by way of an appeal or revision, so the said order had assumed finality. He, therefore, declined to interfere and refused to grant redress. The mother of the appellant on her own behalf and on behalf of her three daughters, including the appellant, filed an appeal in the Court of the Regional Settlement Commissioner which came up before Shri S.S. Govilla, S.O. with delegated powers of Regional Settlement Commissioner (Rajasthan) and he by his order dated 22nd December, 1964

dismissed the same.

The mother of the appellant undaunted by the failures, filed a revision petition before the Chief Settlement Commissioner, which came up for hearing before Shri D.N. Vohra, Settlement Commissioner with delegated powers of Chief Settlement Commissioner, and he also took the view that the order dated 18th December, 1954 passed by the Additional Settlement Commissioner had become final and he had no jurisdiction to revise or amend the said order, and accordingly he dismissed the revision. Thereafter the mother moved the Central Government under s. 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 on her own behalf as well as on behalf of the appellant but the application was dismissed by the Central Government, Ministry of Rehabilitation. On 30th August, 1965 the appellant also filed a revision against the order of the Additional Settlement Commissioner before the Chief Settlement Commissioner under s. 5 of the Displaced Persons (Supplementary)

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Verification of Claims Act, 1954, but this also met with the same fate on 25th September, 1965 without affording an opportunity of being heard to the appellant.

The appellant eventually filed a writ petition before the High Court of Delhi giving rise to the present appeal against the orders dated 25th September, 1965, passed by the Chief Settlement Commissioner, Delhi whereby he confirmed the order dated 27th October, 1956 passed by the Additional Settlement Commissioner, refusing to substitute the appoint as legal heir of Nanak Chand, deceased. The writ petition was dismissed by an order dated 7th January, 1970. The appellant unsuccessfully filed a letters patent appeal which was dismissed on 29th January, 1970. Feeling aggrieved the appellant applied for a certificate under Art. 133 of the Constitution, which was granted. This is how the appellant has come to this Court.

It is contended for the appellant that on 27th October, 1956 she was a minor when the order was obtained by fraud and misrepresentation by Dewan Chand, without disclosing the names of other heirs viz the appellant and her brother and two sisters. The appellant filed revision petition under s. 5 of Claims (Supplementary) Act (12 of 1954) on 27th of November, 1964 before the learned Chief Settlement Commissioner, who without hearing the appellant and without affording her any opportunity to substantiate her pleas, dismissed the revision petition on 25th September, 1965. This was in Violation of the principles of natural justice.

The High Court chose to rely on the deposition of Dewan Chand, respondent No. 2, to the effect that his father had been murdered and he produced a certificate of death before the Chief Settlement Commissioner certifying that Nanak Chand died one year ten months prior to 25th October, 1956 and this certificate is alleged to have been given on the application filed by Dewan Chand before the President of the Municipal Committee, Abohar. The learned Single Judge of the High Court observed that the Additional Settlement Commissioner acted rightly in relying upon the certificate and substituting the sons of Nanak Chand as heirs of the deceased to his verified claim, on the ground that as Nanak Chand had died prior to the enforcement of the Hindu Succession Act his daughters would not be heirs and could not succeed to the property of their father.

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Shri Thakur, learned counsel for the appellant strenuously contended that if he had been given an

opportunity by the Chief Settlement Commissioner he would have been able to produce the evidence before him that on the own admission of Dewan Chand, Nanak Chand had disappeared sometime in December, 1954 and a report about his disappearance was lodged by Dewan Chand on 25th December, 1954 with the local police, Malhout, district Ferozepur and as a result of an enquiry the police gave out that Nanak Chand could not be traced. This evidence could not be produced before the Chief Settlement Commissioner because the appellant was not heard.

The decision of this case hinges on the question whether Nanak Chand had died before or after the enforcement of the Hindu Succession Act. If he died before the enforcement of the Hindu Succession Act obviously the daughters could not get any share in the property left by Nanak Chand. If on the other hand he died after the enforcement of the Hindu Succession Act, the daughters would be equally entitled to a share in the property left by Nanak Chand. In any case the widow of Nanak Chand would be entitled to a share in the property irrespective of the fact whether Nanak Chand died before or after the Hindu Succession Act. This aspect of the case has been completely lost sight of by the High Court. If Nanak Chand disappeared in December, 1954 on the report of Dewan Chand himself and has not been heard of for seven years by those who would naturally have heard of him if he has been alive, there could be raised presumption of death when the question arises. But in the instant case to presumption arises as the question arose just two years after the date of disappearance.

As regards the actual date of death the High Court dealing with the death certificate observed as follows:

"As an administrative office doing quasi-Judicial work, the Additional Settlement Commissioner was entitled to give credence to the death certificate. He was bound only to make a preliminary enquiry as to who were the heirs of Nanak Chand. He did not have to decide that question finally. For a preliminary enquiry the death certificate signed by the respectable persons of the place where the family resided was sufficient. Therefore, the Additional Settlement Commissioner was satisfied that the substitution

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of the sons of Nanak Chand in place of the deceased would not prejudicially affect his daughter. It was not, therefore, necessary for him to have given an opportunity to the daughter of being heard under sub-section (2) of section 5 of the Displaced Persons (Claims) Supplementary Act, 1954."

A certificate given by respectable persons of the place where the deceased once resided, to say the least, is not admissible in evidence. Sec. 35 of the Evidence Act provides that an entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

In the instant case a certificate by certain respectable person of the place where the family once resided does not satisfy the requirements of s. 35 of the Evidence Act. There is no proof that any statutory duty was cast upon the person issuing the certificate to keep a record of birth and death and therefore, the certificate of

death has no evidentiary value. It is very easy for a person to obtain death certificate from the so-called respectable persons in order to grab the property. If according to Dewan Chand, Nanak Chand had died he must also indicate where did he die and it is the place of his death which will be relevant and not the place of his birth or residence. The certificate obviously is not of the place where Nanak Chand died. We are of the view the authorities have gravely erred in relying upon the certificate of death which was inadmissible evidence.

The High Court repelled the contention raised on behalf of the appellant that opportunity should have been given to the appellant under s. 5(2) of the Displaced Persons (Claim) Supplementary Act, 1954 merely on the assumption that Nanak Chand had died much before the enforcement of the Hindu Succession Act and, therefore, no prejudice has been caused to the daughters as they would not be an heir. It is simply begging the question. Whether daughters would be entitled to an interest in the property left by Nanak Chand will depend upon the death of Nanak Chand before or after the enforcement of Hindu Succession Act. It was an important question, therefore, to decide whether Nanak Chand died before the enforce-

ment of Hindu Succession Act or not. For that it was absolutely essential that an opportunity should have been afforded to the appellant in accordance with the principle of natural justice. As observed earlier, if an opportunity had been given to the appellant she would have produced the admission of Dewan Chand that his father Nanak Chand disappeared sometime in December, 1954 and as a result of an enquiry by the police, no trace of him could be found out.

The finding that Nanak Chand died before the enforcement of the Hindu Succession Act, based on the death certificate, cannot be sustained for a moment as it is based on an inadmissible piece of evidence. If that finding is set aside, there is no escape from the conclusion that Nanak Chand died not before but after the enforcement of the Hindu Succession Act, that is, after 25th October, 1956.

There is no dispute that Nanak Chand died leaving behind his widow, three sons and three daughters. Dewan Chand fraudulently obtained an order alleging that Nanak Chand died leaving behind only three sons. If Nanak Chand died after the enforcement of the Hindu Succession Act, as found earlier, obviously his widow, three sons and three daughters would succeed to his interest in equal shares, which would work out to 1/7th. Now the question arises what was the interest of Nanak Chand at the time of his death. As the property in question was Mitakshara coparcenary property, his interest would be determined in accordance with the provisions of Explanation I of s. 6 of the Hindu Succession Act. It would be appropriate at this stage to read s. 6 insofar as it is material for the purpose of this case:

"6. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property, shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative, specified in that class who claims, through such female relative, the interest of the deceased in the Mitakshara coparcenary property

shall devolve by testamentary

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or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation I.-For the purposes of this section, the interest of a Hindu Mitakshara coparcenary shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not."

The interest of Nanak Chand shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death irrespective of whether he was entitled to claim partition or not. In view of Explanation I of s. 6, Nanak Chand would have got 1/5th interest on partition between him and his wife and three sons. If once the interest of Nanak Chand is determined to be 1/5th before his death, his interest would devolve upon his widow, three sons and three daughters equally and thus the share of each one of them would be $1/5 \times 1/7$, that is, $1/35$ th each. The claim of these heirs cannot be denied merely because some of them have not advanced the claim. When the question of determination of share among the heirs crops up before the Court, the Court has to see that every heir gets his due. Shri Itrora appearing for the respondents could not successfully meet the point raised on behalf of the appellant.

For the foregoing discussion the appeal must succeed and it is accordingly allowed and the judgment of the High Court as well as of the authorities below are set aside and shares of the three sons, three daughters and the widow are determined as follows: Each of the three sons $1/35$; each of the three daughters $1/35$, the widow $1/35 + 1/5$. As the widow has inherited the interest of her husband after his death her share would be augmented by $1/5$. Therefore, her share would come to $1/35 + 1/5 = 8/35$.

In the circumstances of the case we direct the parties to bear their own costs.

H.S.K. Appeal allowed.

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