Janak Raj
v.
Gurdial Singh
and Swaran
Singh

Mehar Singh, J
Pandit, J.

treated as cancelled as held by the Privy Council in the case last referred to.

The result is that this appeal fails and is dismissed, but, in the circumstances of the case, the parties are left to their own costs.

PANDIT, J.—I agree with my learned brother that **this** appeal should be dismissed, but the parties be left to **bear** their own costs.

K.S.K.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

SANT RAM AND ANOTHER,—*Petitioners.*

versus

BOLA DEVI AND AMRIT KAUR,—*Respondents.*

Civil Revision No. 399 of 1665

1966

January, 6th.

Succession Act (XXXIX of 1925)—*S.* 373(3)—*Intricate questions of law or fact involved—Court—Whether bound to grant succession certificate or can direct the parties to have the matter decided in a regular suit.*

Held, that the use of the word "may" in sub-section (3) of section 373 of the Indian Succession Act, 1925, in contradistinction to the word 'shall' in the preceding subsection, clearly implies a discretion and if the Court feels that the questions of title involved are not capable of decision in summary proceedings under the Act, he is permitted to say so and to leave the parties to establish their rights in a regular suit.

Petition under Section 115 *of the Code of Civil Procedure, for revision of the order of Shri Om Parkash Aggarwal, Subordinate Judge, Ist Class, Amritsar, dated* 19*th January,* 1965, *consigning to the record room an application filed under section* 372 *of the Indian Succession Act for a succession certificate regarding the estate of Shrimati Babbo Devi deceased.*

BHAGIRATH DASS AND B. K. JHINGAN, ADVOCATES, for the Petitioners.

H. S. WASU, ADVOCATE, for the Respondents.

JUDGMENT

Falshaw, C.J.

FALSHAW, C.J.—This is a revision petition filed by Sant Ram and Hari Ram against an order consigning to the record room an application filed under section 372 of the Indian Succession Act for a succession certificate regarding the estate of Shrimati Babbo Devi deceased.

It seems that the deceased lady inherited certain property at Amritsar under a will executed more than 30 years ago according to the terms of which on her death the property was to be managed by the petitioners. The application was opposed by the widow and daughter of a brother of the deceased who claimed to be the heirs. After the parties' evidence had been recorded the learned Subordinate Judge found that complicated questions of inheritance and succession were involved in the case which he considered the parties ought to get decided in a regular suit rather than in summary proceedings under the Succession Act and he ordered the record to be consigned to the record room for the present without any decision on the merits with the observation that, if so advised, the petitioners could approach the Court for a revival of the proceedings for the grant of the succession certificate.

The learned counsel for the petitioners has contended that this order was without jurisdiction and that the Court was bound to give a definite decision either in favour of the petitioners or dismissing their application. The relevant provisions of section 373 of the Act which deal with the procedure on an application under section 372 read:—

> "(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.
>
> (3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto."

In support of his contention the learned counsel relied on the decisions in *Basanta Lal* v. *Parbati Koer* (1), and *Firm*

(1) I.L.R. 31 Cal. 133.

Sant Ram and another
v.
Bola Devi and Amrik Kaur

Falshaw, C.J.

Patnam Lakshminarayana Chetti v. *Grandhe Seshamma and others* (2), in both of which the view has been taken that the Court is bound to give a decision in favour of one party or the other. The former case was under the earlier Succession Act, VI, of 1889, in which the words of the relevant provisions were the same, and the latter under the present Act. There is, however, no reasoning in either of the judgments. In the Calcutta case the matter is dealt with as follows:—

> "Clause (3) of the same section provides that 'if the Court cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant, if he appears to be the person having *prima facie* the best title thereto'. This clause also indicates that the Court has to determine the question of title to the certificate asked for."

In the Madras case the matter is dealt with as follows:—

> "The learned District Judge was no doubt entitled to dismiss an application under section 373 if he was satisfied that there were no grounds for entertaining it. The District Judge, however, has not dismissed the application for that reason but for the reason that he thought the case was too complicated to be decided in summary proceedings. This is not a valid reason as is clear from section 373, sub-section (3) of the Act read with sub-section (2). If there are grounds for entertaining an application but the right to a certificate is contested, it is plain that the District Judge must make an order for the grant of the certificate to one party or the other. Under Section 373(2) he can make the order after going into the merits of the case. But under section 373(3), although again he must make an order, he need not determine questions of law or fact which are too intricate and difficult for determination in summary proceedings."

(2) A.I.R. 1942 Mad. 709 (1).

With due the respect to the learned Judges who have expressed this opinion I do not find it possible to agree with it, since in my opinion it involves interpreting the word 'may' in sub-section (3) as being equal to the word 'shall' and when in the proceeding sub-section the word 'shall' is used and then in the next sub-section the word 'may' is used I do not consider there can be any doubt that the word 'may' implies a discretion, and if the Court feels that the questions of title involved are capable of decision in summary proceedings under the Act, he is permitted to say so and to leave the parties to establish their rights in a regular suit which I am informed by the learned counsel for the respondents is already pending in the present case. I thus see no reason to interfere and dismiss the revision petition, but leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

KARAM SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

C. Misc. 4175 of 1965 in Civil Writ No. 285 of 1963.

1966

January, 7th.

Legal Practitioner—Duty of, towards his client and Court pointed out—Role of lawyers in administration of justice stressed—Profession of law—Whether a trade or business.

Held that it is the duty of the counsel engaged for conducting a cause on behalf of a suitor to keep himself fully informed of the proceedings in the Court in which his case is likely to be heard on a given day and be present when his case is called. If the clerk of the counsel is, for certain reasons, not available to keep the watch and call the counsel, it would be incumbent on the counsel to take effectively suitable measures to remain in touch with the proceedings in the Court so that when the case is called, he is actually present in Court for discharging his profession duties. The counsel is also expected to inform the Court Reader and the Court peon about his case and also as to where he would for being contacted if his case is called earlier than expected. But it must be clearly understood that the Court is