

## **Ganga Prasad vs Mt. Saeedan And Ors. on 24 April, 1952**

**Equivalent citations: AIR1952ALL801, AIR 1952 ALLAHABAD 801**

### **JUDGMENT**

Agarwala, J.

1. This is an execution appeal against a decree of the lower Court rejecting an application for execution. One Sm. Ram Piari obtained a decree against the predecessor-in-interest of the respondents in 1934. This decree was made final in 1937. Sm. Ram Piari applied for execution in 1941. During the pendency of the execution proceedings she died on 14-2 1943. The execution application was then dismissed for default. The appellant; Ganga Prasad applied for the execution of the decree and for substitution of his name in place of the decree-holder on the ground that he was the adopted son of Sm. Ram Piari's son Madan Lal. He could not prove his adoption to the satisfaction of the execution Court which rejected the application upon the finding that the appellant was not the adopted son of Madan Lal and therefore not an heir of Sm. Ram Piari.

The appellant then applied for a succession certificate in respect of the decretal amount. The succession certificate was granted to him. On the strength of the succession certificate he again applied for execution of the decree in 1945. This application was dismissed by the execution Court on the ground that the previous decision was binding upon the appellant. Against this order there was an appeal to the District Judge, which was dismissed. Ganga Prasad has now come up in second appeal to this Court.

The point for decision is whether the previous judgment inter paries is to prevail over the succession certificate or whether the succession certificate is conclusive against the debtors, that is, the judgment-debtors respondents.

2. Section 381, Succession Act, provides that a succession certificate obtained shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

3. This section, therefore, raises a conclusive presumption against the debtors that the person in whose favour a succession certificate is granted is entitled to receive the debts specified therein. The debtors cannot challenge this fact. The presumption raised by the succession certificate being conclusive and absolute it cannot be displaced even upon the ground of a previous decision to a contrary effect. Indeed the previous application for execution filed by the appellant should have been dismissed upon the preliminary ground that the applicant had not obtained a succession certificate with respect to the decretal amount ; and as such the finding that the appellant was not

the adopted son of Madan Lal and, therefore, not the heir or the last decree-holder was wholly unnecessary.

In any case the presumption raised by the succession certificate will prevail over any previous judgment. It was urged that the debtors were not parties to the proceedings which resulted in the grant of the succession certificate. That is true. But succession certificate proceedings are, as against the debtors, in the nature of judgment in rem. They are binding on them whether they are represented in the proceedings or not. I, therefore, allow this appeal, set aside the order of the Court below and direct that the execution shall proceed according to law. In the circumstances of the case I order that the parties shall bear their own costs, in these proceedings.