

## **Lal Singh vs Smt. Hira And Ors. on 30 January, 1953**

**Equivalent citations: AIR1953ALL507, AIR 1953 ALLAHABAD 507**

### **JUDGMENT**

Brij Mohan Lall, J.

1. This is an application for Letters of Administration in respect of the estate of one Thakur Dewan Singh, who died in village Kishun Khera, Tahsil Haldwani, district Nainital on 24-12-1950. The application, when presented, purported to have been made on behalf of two persons, viz. Lal Singh and Roop Singh, although it bore the signature of Lal Singh alone. During the pendency of the petition Roop Singh presented an application praying that his name might be removed from the array of the petitioners. He made it clear that he did not want to proceed with this petition. In the circumstances, it is Lal Singh alone who is now claiming the Letters of Administration.

2. The deceased was a Naik by caste. Lal Singh and Rup Singh are his brothers. He left a married daughter, Smt. Rami and her sons. But it is the common case of the parties that according to the customary law to which the deceased was subject, the married daughter and her descendants are no heirs.

3. The petition is opposed by the deceased's two sisters viz. Smt. Hira and Smt. Anandi. The parties are agreed that under the law applicable to the Naik community married sisters do not inherit the estate of their deceased brother. An unmarried sister is, however, an heir, and ranks equally with the brother in the matter of inheritance.

4. The defence put forward by the objectors, i.e. the two sisters, is that the estate has already been administered and there remains nothing more to be done to administer it.

5. Parties are agreed that after the deceased's death an application for mutation was made. During the pendency of those proceedings the petitioner, i.e. Lal Singh made two applications, one before the Assistant Collector and the other before the Panchayat Court, in which he stated that the matter had been compromised, that the two brothers would get the half share and the two sisters would get the remaining half and that the mutation might be made accordingly. He was examined on oath by the Panchayat Court and during the examination also he re-affirmed that statement. He made a petition before the patwari also and therein, too, he stated that he, his brother and their two sisters would share the deceased's property equally. As a result of this compromise mutation has been effected on the "Hisse-dari" property, which is the name given in hill areas to the zamindari property.

(6) There was some dispute about the house property. But the Chairman of the Municipal Board Haldwani passed an order on 16-3-51 to the effect that the two sisters and the two brothers would share equally. After that order mutation was effected in the Municipal registers in respect of the house property also. The orders passed by the mutation Court in respect of Hissedari property and by the Chairman, Municipal Board, Haldwani in respect of house property were not challenged before higher authorities. The house property is in the actual occupation of the tenants. Kiryanamas have been obtained from them in such a manner that the two sisters have begun to realize half the rent and the two brothers the other half. Thus the house property has, for all practical purposes, been divided and taken separate possession thereof by the co-sharers.

7. The deceased left no debts nor any liquid assets.

8. The real object of starting the present proceedings is that the applicant, for reason best known to him, has thought fit to resile from the compromise arrived at in the mutation Court. He challenges that agreement by alleging that his sisters are married and cannot inherit any share out of the deceased's assets. A question of title is sought to be raised and the compromise arrived at during the mutation proceedings is challenged. It is also suggested that the agreement was not arrived at by free consent on his part. It is certainly open to him to raise these pleas in a separate civil suit and to have this compromise set aside provided he succeeds in proving the allegations made by him. But it is not the function of this Court to enter into this dispute and to record a finding thereon. In exercising testamentary jurisdiction it is not for me to adjudicate upon these disputed questions of title or to record a finding as to whether or not the compromise should be set aside. The compromise has been carried into effect and has been acted upon. The parties are now in separate possession of the houses through their tenants and in possession of their respective shares in Hissedari property. The estate has therefore been completely administered. Letters of Administration cannot be granted when the estate has already been administered. It has been held by a long chain of authorities that if an estate has been duly administered and the object of asking for the Letters of Administration is simply to agitate a question of disputed title the application should be rejected. In -- 'Lalit Chandra v. Baikuntha Nath', 15 Cal L J 305 (A) it was held that "It is the duty of the Court in granting Letters of Administration to consider whether there is any estate whatever to be administered" and that "no application for Letters of Administration should be entertained in respect of an estate which has already been fully administered."

This view was affirmed in a later case, --'Parsania v. Hari Charan', 17 Cal L.T 65 (B). Sir Ashutosh Mookerjee delivering the judgment of the Division Bench remarked that:

"Where the object of the litigation was not to administer the estate left upon the death of the owner but merely to obtain a declaration of heirship so as to fortify the position of the successful party in a regular suit that may be instituted no grant of letters of administration should be made."

The erstwhile Chief Court of Avadh had also taken a similar view in the case of -- 'Mt. - Hajira Khatoon v. Mustafa Hussain', A. I. R. 1941 Oudh 474 (C). It was remarked that:

"Where there is no estate which stands in need of administration, no suggestion that any creditors have to be paid or any debts due to the estate have to be collected, and an application for Letters of Administration is a transparent device to secure from the probate Court a decision upon a contested question of title to the estate, there is no occasion for the grant of letters of administration. The proper course is to obtain an adjudication of the rights in a regular suit properly framed for the purpose."

9. With these authorities I respectfully agree. I am definitely of the opinion that the present case is exactly similar to the cases cited above and the object of this petition is simply to obtain an adjudication about the question of title which should appropriately be decided by means of a regular suit in a civil Court. I am, therefore, of the opinion that this application cannot be entertained. It is hereby rejected. The opposite parties shall get their costs from Lal Singh.