

Allahabad High Court

Hari Shankar Bhatt vs Gulab Shankar Bhatt And Ors. on 13 April, 1948

Equivalent citations: AIR 1948 All 448

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JUDGMENT Malik, C.J.

1. The application under the (sic) Estates Act was filed by Gulab Sbankar Bhatt and others, who were members of a joint Hindu family. The case was decided by the Special Judge and papers were sent to the Court of the Sub-Divisional Officer for payment of the debts. It was at this stage that an application was filed by one Hari Shankar Bhattl claiming that he was an afterborn son and his father, Beni Shankar one of the applicants, had only a one-fifth share, half of which belonged to the appellant. The claim was dismissed by the Court below on the ground that it was not mentioned when the appellant was born and why the application could not be filed earlier.

2. The grounds on which the lower Court dismissed the objection were perfectly correct. But apart from these there is a further ground. and the appeal seems to have no force and must, therefore, fail. Section 11, Encumbered Estates Act, provides that any person having any claim to the property mentioned in a notice issued in accordance with the provisions of Section 9, Encumbered Estates Act, has a right to put in a claim within three months of the publication of the notice in the Gazette, stating his claim and the Special Judge has then to determine whether the property specified in the claim or any part thereof is liable to attachment, sale or mortgage in satisfaction of the debts of the applicant. The words of the sub-section are rather significant. The Special Judge is not called upon to determine the share of the claimant in the property and that of the landlord applicant. What the Special Judge has to decide is whether any part of the property is liable to attachment, sale or mortgage in satisfaction of the debts of the applicant. These words were used to cover cases under the Hindu law where on account of the indebtedness of the father, the son's share could also be sold. The debts were incurred by Beni Shankar before the objector was born. For the debts of Beni Shankar not only his own share but the share of his son, the objector, was liable to attachment, sale or -mortgage, unless the objector could prove that those debts were tainted with immorality. The objector has not only not proved it, but he has not even alleged it in his objection. The result is that his objection had no force and was, therefore, bound to fail. We dismiss this appeal with costs.