

Mina Winsor Vs. E. Winsor

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Court : Mumbai

Decided On : Dec-03-1919

Reported in : (1920)22BOMLR396; 57Ind.Cas.116

Judge : Shah and ;Crump, JJ.

Appeal No. : First Appeal No. 57 of 1919

Appellant : Mina Winsor

Respondent : E. Winsor

Judgement :

Shah, J.

1. In this case on the application of Miss E. Winsor for Letters of Administration of the estate of her deceased father, the District Judge granted the Letters of Administration to her on the 6th of September 1918. There were other sisters of the applicant who either did not appear or did not oppose the application. It is not clear from the record as to what exactly happened on the 1st of October 1918; but an order was made, apparently with the consent of the sister, who is the appellant before us, and of the pleader who appeared for the original applicant, directing that all the houses in question should be advertised and auctioned, the exact arrangement being settled between the parties. On the 14th of October a further application was put in on behalf of the original applicant asking for certain

modification of the order of the 1st of October. After hearing the parties the learned District Judge made an order on the 3rd of December 1918, directing that the family house should be valued by the Nazir of the District Court, that the opponent (the present appellant) be paid her one-eighth share in accordance with his valuation, and that the other houses should be sold by private arrangement and not by auction.

2. The opponent in the Court below has appealed to this Court; and the principal question that arises in the appeal, apart from the merits of these two orders, is whether the District Court had any jurisdiction to make the orders which it made after granting the Letters of Administration on the 6th of September. The Letters of Administration have been granted under the Indian Succession Act, and the case is governed by the provisions of that Act. We have not been referred to any provision of the Indian Succession Act under which these orders after the Letters of Administration are granted and after an administrator is duly constituted could be justified. Apparently the District Judge had no power to give such directions as he has given in this case on the first occasion with the consent of the parties and on the second occasion after hearing the parties according to his own view of the matter. It appears from the provisions of Act V of 1902, Section 5, Sub-section 2, that the High Court may give directions to any private executor or administrator other than the Administrator-General acting officially. This provision has been recently repealed and transferred to the Indian Succession Act as Section 264 B by Act XVIII of 1919. I refer to this provision only for the purpose of showing that the power of giving directions to an executor or an administrator is conferred upon the High Court. There is no corresponding power given to the District Court. It appears from the provisions of Section 239 of the Indian Succession Act that the District Court has power to make orders with reference to the property under certain stances so long as no person has been appointed administrator of the estate or granted probate of a will. But it is obvious that that section has no application after an administrator is constituted. We are unable to refer the orders made by the District Judge after the grant of the Letters of Administration to any provision of the Indian Succession Act. The result is that both these orders, one made on the 1st of October and the other made on the 3rd of December, must be discharged and the parties must be left in the position in which they were when the

Letters of Administration were granted to the present respondent on the 6th of September 1918.

3. This will be without prejudice to any remedy which the persons interested in the estate may have for securing relief by way of such directions to the administratrix as they may desire under the circumstances.

4. The costs of this appeal and costs in the lower Court subsequent to the order of the 6th of September to come out of the estate.

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