

Kandhya Lal Vs. Manki

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Court : Allahabad

Decided On : Dec-01-1908

Reported in : (1909)ILR31All56

Judge : Aikman and; Karamat Husain, JJ.

Appellant : Kandhya Lal

Respondent : Manki

Judgement :

Aikman and Karamat Husain, JJ.

1. The respondent Musammat Manki obtained from the District Judge letters of administration for the estate of her deceased husband on condition of her giving a bond together with a surety for the due collection, getting in and administering the estate. The appellant Kandhya Lal became surety for her. Less than six months afterwards the appellant asked the District Judge to cancel the surety bond which he had given and to call upon Musammat Manki to furnish a fresh surety. The District Judge rejected this application. The appellant come here in appeal. The Courts at Calcutta and Madras are at variance as to whether a surety bond given under the circumstances stated can be cancelled--see Raj Narain Mookerjee v. Ful Kumari Debi (1902) I.L.R. 29 Calc. 68 and Subroya Chetty v. Ragammal (1905) I.L.R. 28 Mad. 161. The former Court held that a surety bond given under the circumstances stated is a continuing guarantee within the meaning of Section

129 of the Contract Act and may be revoked in regard to future transactions by the surety. This view was not accepted by the Madras High Court. In our opinion the decision of the Madras High Court is right. We do not think that when a person becomes a surety that an administrator will duly get in and administer the estate of a deceased person, this can be said to be a continuing guarantee within the meaning of the Contract Act. It appears that in the Calcutta case the Court deferred disposing of the case until it had inquired whether the administratrix had been guilty of maladministration of the estate, and the learned Chief Justice in his judgment says: 'I am not dealing with the case of a person who becomes surety, and then from mere caprice or for no sound reason desires to be discharged.' If the case was one of continuing guarantee the surety had an absolute right to revoke his guarantee as to all future transactions whatever his motive may have been. It was in consequence of the appellant becoming surety that letters of administration were issued to Musammat Manki, and once these were issued, it appears to us that the appellant had no right to withdraw his surety. We may also add that the Probate and Administration Act confers no power upon the District Judge or upon this Court to cancel a surety. For the above reasons we are of opinion that the decision of the Court below was right and we dismiss the appeal with costs.