

In Re: Durga Das Koosary

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Court : Allahabad

Decided On : Apr-05-1934

Reported in : AIR1934All804; 150Ind.Cas.1018

Appellant : In Re: Durga Das Koosary

Judgement :

King, J.

1. This is an application for the grant of probate of the unadmitnistered portion of the estate of Sukhi Sundari Dasi of Benares who died about 1900. Pie left a registered will under which she had appointed Biswainath Koosary, who was the father of the present applicant, as the executor and had also authorised him to nominate an executor if he liked. Probate was granted to Bishwanath Koosary but he was not able to realise the entire estate. He died some 17 years ago, but before his death he executed a registered will appointing his son, the present applicant, as the executor to administer the estate. The present application is made for a fresh probate being granted to the applicant.

2. Under Section 222, Succession Act (Act 39 of 1925), probate can be granted only to an executor appointed by the will but such appointment may be expressed or by necessary implication. Section 224 also shows that when there are several executors so appointed, probate may be granted to them all simultaneously or at different times. The illustration to that section shows that where A is an executor of

B's will by express appointment and C an executor of it by implication, probate may be granted to A first and then to C.

3. It is therefore quite clear that if the present applicant were to be treated as a person who was appointed under the will by necessary implication as the executor he is entitled to apply for a fresh probate in Ms own favour.

4. In *Moosa Haji v. Haji Abdul* (1903) 5 Bom. L.R. 639 (at p. 641) Sir Lawrence Jenkins, C.J., pointed out that there was nothing in the Probate and Administration Act which imposed upon a testator an obligation on himself to name his executor and that there was nothing which precluded a testator from appointing as his executor such person as some one selected by him may name for that purpose. The learned Chief Justice cited some English cases as showing that such an appointment has been held to be good consistently in England.

5. It therefore seems to us that inasmuch as Mt. Sukhi Sundari Dasi in her will had authorised Biswanath Koosary to nominate an executor and he has done so, it must be taken that the present applicant has been appointed under the will by necessary implication.

6. We accordingly direct that probate be granted to the applicant of the will of Sukhi Sundari Dasi.