

Parma Vs. Nek Ram

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Court : Allahabad

Decided On : Mar-27-1915

Reported in : AIR1915All172(2); 29Ind.Cas.133

Judge : Henry Richards, C.J. and ;Piggott, J.

Appellant : Parma

Respondent : Nek Ram

Judgement :

Richards, C.J.

1. The facts connected with this appeal are as follows. It is alleged that one Sanwalia died intestate. The property left by him is said to be only a house in a village. One Parma applied for Letters of Administration to the estate of deceased and obtained an order on 18th of September 1914. The order was in the following terms: Read application from the above-named petitioner, dated 18th August 1914, requesting that Letters of Administration to the estate of Sanwalia deceased, may be granted to him under Act V of 1881. Valued at Rs. 400. Order. This case has been uncontested. I grant Letters of Administration to Parma applicant for the estate of his deceased nephew Sanwalia; provided that if the valuation of the house made by the Collector exceeds the amount stated in the application the deficiency in fees shall be recovered.' It appears that later on the same day one Nek Ram came into Court, with the result that the learned Judge passed the

following order: After passing the above Ex parte order a petition has this day been filed. I cancel the above order and frame the following issue: Is Parma the uncle and heir of the deceased Sanwalia'? Parmi has come in appeal to this Court, contending that the order granting him Letters of Administration should not have been cancelled by the learned Judge without giving him notice. Nek Ram's contention admittedly is that Sanwalia died intestate and without heirs and that according to custom, the house reverts to him as zemindar. It seems to me that Pirma having obtained an order granting him Letters of Administration, that order ought not to have been cancelled without giving him notice. This in itself sufficient to dispose of the present appeal. I think, however, that it is right to point out a few matters to the learned Judge. It does not appear upon what evidence, if any, the order in favour of Parma was made. In my opinion a Court ought never to grant Letters of Administration to the estate of a deceased person without having good prima facie evidence that the applicant has such an interest in the estate of the deceased as would entitle him to a grant of Letters of Administration. A person who satisfies the Court that he is the heir, or one of the heirs, of the deceased has such an interest. A creditor also has an interest. In an insolvent's estate the creditor's interest is even greater than that of the heirs. I think even assuming that Parma had satisfied the Court that he had an interest as one of the heirs of the deceased, it ought to have ordered him to give security for the due administration of the estate of the deceased. I think also that it is a wise precaution for the Court to have clear evidence as to who are the other persons interested in the estate and as a general rule, to direct that such persons should get notice either that the application has been made or at least that the application for Letters of Administration has been allowed. The question whether or not the zemindar Nek Bam has such an interest' as will entitle him to oppose the grant of Letters of Administration, will probably arise. It seems to me that Nek Rim has no interest in the estate of the deceased. His contention is that the moment Sanwalia died without heirs the house reverted to him. It is contended on behalf of Nek Ram that if Letters of Administration are once granted to Parma, the result would be that under the provisions of Section 14 and Section 59 the zemindar will never afterwards be allowed to say that Sanwalia died without heirs. If this is really the result of the provisions of the sections I have mentioned, it certainly would seem

only just to allow Nek Ram an opportunity of contesting that Parma is the heir of the deceased. I, however, do not think that we are called upon to decide this question in the present appeal. I would set aside the order of the learned District Judge cancelling the order granting Letters of Administration and send the case back to him, directing him to send notice of the objection of Nek Ram to Parma and then to proceed to consider the matter according to law.

2. Piggott, J.--I entirely concur in what the learned Chief Justice has said and in the order proposed by him. It is only in regard to one matter that I wish to add a few words. In the arguments addressed to us in support of this appeal, it seemed to me that in the background of the appellant case there lay the contention that he was in the position of a person holding Letters of Administration which could not be revoked at all, except under the provisions of Section 50 of the Probate and Administration Act, V of 1881. Now no doubt the Court which has granted Letters of Administration has jurisdiction to take action under that section. But in the circumstances of the present case it is clear that other points would have to be considered before the case could be tied down to the provisions of that particular section. In the matter of an application for Probate or Letters of Administration, it is often impossible to apply strictly these rules of the Code of Civil Procedure which govern ex parte proceedings in cases where there is a defendant named at the very outset, on whom notice is required to be served. Nevertheless the Court possesses, as is recognised by Section 151 of the Code of Civil Procedure, inherent powers to make such orders as may be necessary for the ends of justice, or to prevent the abuse of the process of the Court. When Nek Ram laid his petition before the Court, what he desired to contend was that he was entitled to be heard before any Letters of Administration were granted to Parma at all. He still desires to raise this point in spite of the fact that an ex parte order allowing Parma's application had been passed before he was able to lay his petition before the Court. I only wish to say that it will be open to the learned District Judge when the matter comes back to him, to consider whether under the provisions of Section 114, or under the inherent powers of the Court recognised by Section 151 of the Code of Civil Procedure, he can or ought to reconsider his ex parte order in favour of Parma, apart altogether from the provisions of Section 50 of the Probate and Administration Act itself.

3. Richards, C.J.--I agree with what my learned colleague has said.

4. By the Court.--The order is that we allow the appeal, set aside the order of the Court below and remand the case to that Court for trial according to law. Costs will be costs in the cause.

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