

KalimuddIn Vs. Meharui

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Court : Kolkata

Decided On : Feb-12-1912

Reported in : (1912)ILR39Cal563

Judge : Coxe and; Imam, JJ.

Appellant : Kalimuddin

Respondent : Meharui

Judgement :

Coxe and Imam, JJ.

1. The appellant in this case was granted letters of administration to the estate of one Moulabux, and executed a bond in favour of the District Judge under Section 78 of the Probate and Administration Act. 1881, for the due administration of the estate. As apparently he did not administer it properly, the bond was assigned under Section 79 of the Act to Gyasuddin, a son of Moulabux. Gyasuddin, however, came to terms with the appellant and did not sue on the bond. The widow and the other children of Moulabux then sought to have the bond assigned to them. This has been granted by the District Judge, and hence this appeal.

2. A preliminary objection is taken that no appeal lies. We think this contention must prevail. Section 86 of the Act enacts that every order of a District Judge under the Act shall be subject to appeal to the High Court under the rules

contained in the Code of Civil Procedure, applicable to appeals. One of those rules is to be found in Section 105 of the Code, which lays down that save as otherwise expressly provided no appeal shall lie from any order. There is certainly no express provision in the Code for an appeal from an order assigning a bond. This seems to be in accordance with the view taken in *Broja Nath Pal v. Dasmony Dasee* (1878) 2 C.L.R. 589 and *Abhiram Lass v. Gopal Dass* (1889) I.L.R. 17 Calc. 48. That view was not taken in *Uma Charan Das v. Muktakeshi Dasi* (1900) I.L.R. 28 Calc. 149 but in that case the effect of the words 'Under the rules contained in the Code of Civil Procedure' seems not to have been considered.

3. We think, however, that the order of the learned. District Judge is without jurisdiction, and that we can accordingly revise it. Under Section 78 the bond enured for the benefit of the District Judge. Under Section 79 he could assign it on conditions. But there is no provision in the law which authorised him to assign it again while the first assignment was still in force. If there had been a condition that the assignment should be void, if the assignee failed to comply with certain requirements, in that case re-assignment might perhaps have been possible. But there is no such condition in the present assignment. All that is stipulated is that any money decreed should be deposited in Court, a condition that can hardly be said to have been broken. No doubt the respondents can apply to have the letters revoked, if they can make out a case under Section 50 of the Act, and can sue the administrator. They can also hold Gyasuddin responsible as a trustee for them under Section 79 for all that he has recovered. But they cannot obtain an assignment of the bond from the District Judge when it is no longer his to assign.

4. Accordingly the appeal is dismissed, but in the exercise of our revisional jurisdiction we set aside the order of the District Judge assigning the bond to the respondents. They will be at liberty, if so advised, to proceed with the application for revocation of the letters of administration which the District Judge has left undetermined. We make no order as to costs.