

In Re: Ishan Chunder Roy

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Court : Kolkata

Decided On : Jan-28-1881

Reported in : (1881)ILR6Cal707

Judge : Morris and ;Tottenham, JJ.

Appellant : In Re: Ishan Chunder Roy

Judgement :

Tottenham, J.

1. This is an appeal from an order of the District Judge of Tippera, rejecting, on the ground that it was barred by limitation, an application for probate of the, will of one Obhoy Chunder Roy, who died on the 23rd of Pous 1281 (corresponding with the 6th January 1875).

2. The application was made on the 11th March 1880,-that is, five years and two months after the death of the testator. The Judge appears to have called for an explanation of the delay, and to have considered that no sufficient reason was made out. He rejected the application as being barred under Article 178, sched. ii of the Limitation Act.

3. We think that the lower Court was mistaken in applying the Limitation Act to a petition for probate. If the article quoted be read alone, it does indeed seem capable of the widest extension to every possible application that can be made to

the Court, 'for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, Section 230.'

4. But the preamble to the Act distinctly shows that it is not intended to apply to all, but to certain, applications to Courts: and an examination of the 3rd division of sched. ii, which deals with applications, shows that every article therein contained, No. 178 only excepted, specifically relates to some case pending or already decided. Article 178 must be construed with reference to the wording of the other articles, and can relate only to applications ejusdem generis, and therefore not to such an application as the one now before us. We find this principle has already been enunciated in this Court on the Original Side, in the ease of Govind Chunder Goswami v. Rungunmoney (ante, p. 60). It is to be observed that in the previous Limitation Acts, XIV of 1859 and IX of 1871, no such article as this article (No. 178) was included, and under those Acts no question of limitation could have arisen in respect of an application for probate. It may fairly be presumed that, had the Legislature intended to apply for the first time a period of limitation to such applications, there would have been some provision in regard to them similar to that contained in Section 2 in respect of suits for which the new Act prescribes a shorter period of limitation than was previously allowed.

5. Altogether, we are of opinion that no law of limitation governs applications for probate. Of course long unexplained delay may, in certain cases, throw doubt on the genuineness of the will propounded; but that is a different thing from saying that probate is barred by limitation. The appellant is entitled to have his application decided on its merits.

6. The lower Court's order is, therefore, set aside; and the case will be returned to it to be dealt with according to law.