

In Re: Shib Charan Das

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Court : Kolkata

Decided On : Feb-05-1929

Reported in : AIR1930Cal150,121Ind.Cas.687

Appellant : In Re: Shib Charan Das

Judgement :

Lort-Williams, J.

1. In my opinion, the law on this point is not sufficiently clear and definite to induce me to discharge this caveat.

2. The next reversioner is an old man of 70 who has stated in writing that he has no expectation of surviving the young widow for whose benefit the will was made and that he has no expectation, therefore, of personally inheriting the property and that, because he wants peace of mind in the closing period of his life, he is not disposed to take any action in the matter, but is quite willing to surrender whatever rights he has in favour of the caveator, his brothers and cousins. In these circumstances, I think I am justified in applying the rule laid down in *Rani Anand Kunwar v. Court of Wards* [1880] 6 Cal. 764. At p. 772, Sir R. Collier says:

Their Lordships are of opinion that although a suit of this nature may be brought by a contingent reversionary heir, yet that, as a general rule, it must be brought by the presumptive reversionary heir, - that is to say, by the person who would succeed if the widow were to die at that moment. They are also of opinion that such a suit

may be brought by a more distant reversioner if those nearer in succession are in collusion with the widow, or have precluded themselves from interfering. They consider that the rule laid down in *Bhikaji Apaji v. Jagannath Vithal* [1873] 10 B.H.C. 351 is correct it cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain a suit of the present nature, for, if so, the right to sue would belong to every one in the line of succession, however remote. The right to sue must, in their Lordships opinion, be limited. If the nearest reversionary heir refuses, without sufficient cause, to institute proceedings, or if he has precluded himself by his own act or conduct from suing, or has colluded with the widow, or concurred in the act alleged to be wrongful, the next presumable reversioner would be entitled : see *Kooer Goolab Singh v. Rao Kurun Singh* [1871] 14 M.I.A. 176... The Court must exercise a judicial discretion, in such a case and would probably require the nearer reversioner to be made a party.

3. In my opinion the facts of this case come within the first reason stated by their Lordships and I think that the next reversioner has refused without sufficient cause to institute proceedings. I say that because he has been communicated with at my suggestion. It has been pointed out to him that all he would have to do would be to sign two documents, that he would not incur any liability for costs, and would not be troubled in any way, but in spite of that he writes that he is unwilling to take even these steps. I think his refusal is without sufficient cause.

4. If I am at liberty to apply common sense to cases of this kind it seems to me unreasonable that this caveator, who is the next in succession to his father should be shut out because of what I have held to be an unreasonable refusal. I quite agree that some limit must be imposed, and that it would be impossible to hold that every person in the line of succession however remote should have the right to intervene. I think that in every case the circumstances of the particular case must be considered and because in this case the caveator is the next person in succession to the person who has refused to take any steps that it is not unreasonable to allow him to intervene. For these reasons, the application for discharge of the caveat is refused.

5. The matter is set down as a contentious cause. The father need not be added as a party. There will be cross order for discovery within 14 days. The suit will appear on the appropriate Warning List 14 days thereafter. The executor's costs will come out of the estate as between attorney and client including fees of two counsel.

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