

Desputty Singh (a Minor)

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Court : Kolkata

Decided On : Jun-28-1876

Reported in : (1877)ILR2Cal209

Judge : Kemp and ;Birch, JJ.

Appellant : Desputty Singh (a Minor);bajjnath Shahai and ors.

Respondent : ;desputty Singh

Judgement :

Kemp, J.

1. On the 14th of July 1875, Baboo Desputty Singh, a minor, through the manager of his estates, Abdool Hye, applied to the District Judge for probate of the will of the late Bindessurree Pershad Singh, who it is alleged died at Arrah on the 31st of July, 1871, leaving properties, moveable and immoveable, situated in the district of Shahabad. To the petition, an instrument purporting to be the will of the deceased was annexed. Mr. J. H. Thornton, Civil Surgeon of Arrah, one of the subscribing witnesses to the said instrument, verified the petition, as laid down in Section 248, Act X of 1865.[1] Upon this petition an order was passed, directing 'advertisements to be made at the Collectorate and at the Civil Courts of the district. Notice also to be served on parties to suits before the Subordinate Judge, in which Desputty Singh was concerned. This application to come up on the first miscellaneous day after Mr. Palmer takes charge, say Saturday the 24th July.' This order was passed

by Mr. Geddes.

2. Baijnath Shahai and others, the appellants, are the creditors of Baboo Reetbhunjun Singh; and they objected to the grant of the probate, on the ground that Desputty Singh was not the heir of the late Bindessurree Singh, but that their debtor Reetbhunjun was.

3. It appears that notices were issued by the Subordinate Judge of the district, dated the 20th July 1875, calling upon Baijnath Shahai and others to file any objections they might have to make in the matter of the petition of Abdool Hye before the Judge of the district on or before the 22nd of July 1875. They appeared and filed their objections. The Judge, on the 9th of August, after considering the objections of Baijnath Shahai and others, passed the following order--'That letters of administration will be granted by this Court to Moulvie Abdool Hye, petitioner, as manager and next friend to Baboo Desputty Singh, minor, on his undertaking to make a true inventory of the property and credits of the late Baboo Bindessurree Pershad Singh deceased, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and to render a true account thereof, and also on his filing a bond with two sureties engaging for the collection, getting in and administering the estate of the deceased Baboo Bindessurree Pershad Singh. Each party to pay their own costs.'

4. On the case coming before us, it was contended by the learned Advocate-General for the respondent that the appellants ought not to have been made parties to these proceedings, and he asked the Court to dismiss the appeal without hearing their Counsel or entering into the merits. We were of opinion that as the appellants were made parties to the proceedings by the action of the Court and were called upon to file their objections, and did file them without any objection on the part of the respondent we ought to hear the appeal. We therefore called upon the learned Counsel Mr. Kennedy, who appeared for the appellants, to satisfy us that his client was in a position to oppose the grant of probate of the estate of the late Baboo Bindessurree Pershad Singh. After hearing his argument and that of the learned Advocate-General for the respondent, we are of opinion that the appellants ought not to have been permitted to object in the lower Court to

the grant of probate.

5. Numerous cases in the English Courts were cited by the learned Counsel on both sides; but, in deciding this case, we have not to look to what is or was the English law on the subject--we must look to the Act itself, Act X of 1865, as the law applicable to the case--DeSouza v. The Secretary of State 12 B.L.R. 423 at p. 427 per Macpherson, J.

6. The application for probate having been formally made, it was lawful for the District judge, under Section 250, Act X of 1865,[2] to issue citations, calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. The citation to be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district.

7. No caveats, on the part of the appellants before us, had been lodged against the grant of probate or letters of administration. The Judge, therefore, acted illegally in directing notices to be served on the appellants through the Subordinate Judge of the district, inviting them to file any objections they might have to make against the grant of probate. The appellants cannot be said to be parties having any interest in the estate of the deceased 'within the meaning of Section 250 of the Act. The appellants, who are the creditors of Reetbhunjun Singh, who, in the event of Baboo Bindessurree Singh having died without executing a will, and without having adopted Baboo Desputty Singh, on whose behalf the application for probate was made, he being a minor, may be the heir of the late Baboo Bindessurree Singh, but that does not entitle them to claim as of right as interested in the estate of Baboo Bindessurree Singh to oppose the grant of probate or letters of administration.

8. The order granting letters of administration to the respondent is affirmed, such order however being without prejudice to the appellants who have no present right to oppose such grant, nor precluding them from seeking any further remedy they may be advised to pursue as against their debtor Reetbhunjun Singh.

9. The appeal is dismissed with costs.

Birch, J.

10. I also am of opinion that those who, in the petition of appeal, style themselves 'opposite parties,' ought not to have been allowed 'to come and see the proceedings before the grant of letters of administration.'

11. Section 250 contemplates the citation of those directly interested in the estate of the deceased. Its provisions cannot, I think, be strained to include creditors of the next-of-kin to the deceased. It is admitted that the appellants are not the only creditors of Reetbhunjun, but that there are several other creditors, and, if the appellants had succeeded in their opposition to the granting of letters of administration, they would not be in any better position than other creditors of Reetbhunjun.

12. We have to be guided by the provisions of Act XXI of 1870 and those sections of Act X of 1865 which are by the former enactment declared to apply to wills made by Hindus after 1st September 1870. I do not think it incumbent upon us to consider what the law and practice were antecedent to the law by which we have to be guided Nor do I think it necessary to discuss in a case such as we have before us the 'English cases cited by Mr. Kennedy. I would only remark that no case which has been cited supports the learned Counsel's contention, that a creditor, not of the deceased, but of his next-of-kin, is a person interested in the estate of the deceased and entitled to come in and controvert a will said to have been executed by the deceased. It has been hold on the Original Side of this Court in *DeSouza v. The Secretary of State* 12 B.L.R. 423 that, since the passing of Act X of 1865, the Courts in this country must look to that Act and it alone for the law of British India applicable to all cases of testamentary or intestate succession; and the correctness of that ruling has never been impugned.

13. Then as to the argument of the learned Counsel, that his client is barred from taking any further steps against the estate, and prejudiced by having been made a party to those proceedings, I find nothing in the Act which leads me to conclude that this argument has any foundation. By Section 242,[3] letters of administration are conclusive as to the representative title of the person who obtains them, and creditors of the deceased must look to him for satisfaction of their debts. If the

appellants have any claim against the estate of the deceased, I fail to see how they can be deprived of their remedy by an order granting letters of administration.

14. What we now decide is, that the Judge was wrong in citing the appellants to see the proceedings, and that they have no right to oppose the granting of letters of administration. We cannot, on their appeal, go into the merits of the case. The result is, that the appeal must be dismissed with costs.

[1]

Verification of petition [Section 248: Where the application is for probate, the petition

for probate by one witness shall also be verified by at least one of the witnesses to the Will

to the Will. (when procurable), in the manner or to the effect following:

I(C.I.) one of the witnesses to the last Will and Testament of the testator mentioned

in the above petition, declare that I was present and saw the said testator affix his signature

(or mark) thereto (as the case may be), or that the said testator acknowledged the writing

annexed to the above petition to be his last Will and Testament in my presence.)

[2]

[Section 250: In all cases it shall be lawful for the District

District Judge may examine- Judge 'or District Delegate,' if he shall think proper-

to examine the petitioner in person, upon oath or solemn

affirmation, and also

Require further evidence. to require further evidence of the due execution of the Will,

or the right of the petitioner to the loiters of administration, as

And issue citations to the case may be, and

inspect proceedings. to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of

Publication of citation. the Court-House, and also in the office of the Collector of the

District, and otherwise published or made known in such manner

as the Judge 'or District Delegate,' issuing the same may direct.]

[3]

[Section 242: Probata or letters of administration shall have effect over all the property and

estate, moveable or immoveable, of the deceased, throughout the

Conclusiveness of probate province in which the same is granted, and shall be conclusive

or letters of administra- as to the representative title against all debtors of the deceased,

tion and all persons holding property which belongs to him, and shall

afford full indemnity to all debtors paying their debts, and all

persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.]

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