

In Re: Juggodishari Dabi

In Re: Juggodishari Dabi

SooperKanoon Citation : sooperkanoon.com/858876

Court : Kolkata

Decided On : Apr-02-1881

Reported in : (1881)ILR7Cal84

Judge : Morris and ;Tottenham, JJ.

Appellant : In Re: Juggodishari Dabi

Judgement :

Morris, J.

1. Regard being had to the definition of probate in Section 3, Act X of 1865, and to the words of Section 256, [Section 256:-Every person to whom any grant of administration shall be committed shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering to the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.] which section appears to us to refer as much to Section 254, as to Section 255, we cannot say that the District Judge was wrong in law to require an administration-bond from the person to whom the Court had ordered probate to be granted. In fact the Act scarcely seems to leave any option in the matter. A case has been brought to our notice-Bun Bahadur Singh v. Moharanee Bajrup Koer (4 C.L.R., 498)---in which the learned Judges, who were asked to direct that an order for probate should be

conditional on the petitioner's furnishing security, stated, that the uniform practice of this Court was not to take security from an executor named in the will. In that case, however, there was no judicial declaration that the taking of a bond would not be in accordance with the law. And we find no reported case in which this Court has interpreted the law in the sense contended for by the pleader for the petitioner, viz., that Section 256 authorizes the taking of a bond only in the case of the grant of letters of administration under Section 255, and not in the case of grant of probate under Section 254. We have found a case, not reported, Mis. App. No. 321 of 1875, in which a Division Bench, following a supposed ruling of the Madras Court, in H. C. Rul., 3 Mad., App., 10, held, that there was nothing in the law to authorize the District Judge in calling on the applicant for probate to give security. But, on referring to the report cited, we find that there was apparently nothing more than an extra judicial expression of opinion, for which no reasons were assigned, elicited by a letter from a District Judge. This is not sufficient authority for disregarding what appears to be the clear provision of the Act.

2. We think, therefore, that in law the lower Court was entitled to call for the bond mentioned in Section 256. But at the same time we are clearly of opinion that the Judge ought to exercise a reasonable discretion in prescribing the sum for which the bond should be given; and that this question should be regulated by the circumstances. Where, as is stated in the present case, the person to whom probate is granted is himself the universal legatee and sole executor under the will, it seems to us that the District Judge should be satisfied with a bond for an amount almost nominal. With this expression of opinion, which may probably induce the lower Court to reconsider its order, we discharge the rule.