

In Re: Prem Chand Moonshee, Deceased

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Court : Kolkata

Decided On : Feb-19-1894

Reported in : (1894)ILR21Cal484

Judge : Sale, J.

Appellant : In Re: Prem Chand Moonshee, Deceased;gopal Chandra Ghose and ors.

Respondent : ;upendra Mohan Ghose and ors.

Judgement :

Sale, J.

1. This is an application under Section 596 of the Civil Procedure Code for a certificate to enable the applicants to appeal to Her Majesty in Council. A notice under Section 600 was issued to the opposite parties who have appeared and opposed the application.

2. The suit was brought by the respondents in the Testamentary and Intestate Jurisdiction of the Court to establish the will of Prem Chand Moonshee.

3. The defendants, claiming to be the heirs of Prem Chand Moonshee, impugned the genuineness of the document propounded by the plaintiffs as the will of the deceased. The learned Judge in the Original Court, in an elaborate judgment,

upheld the will. An appeal was preferred by the defendants. In the result the appeal was dismissed and the judgment of the Original Court affirmed, the reasons upon which the learned Judge in the Original Court proceeded being approved and adopted by the Appellate Court.

4. It appears that in the course of the hearing of the appeal an application was made by the appellants, under Section 568 of the Code, for leave to adduce further evidence. The application, which was supported by affidavits and was opposed on affidavits, was rejected. The point now submitted is that the refusal of the application should be treated as involving a 'substantial question of law' within the meaning of Section 596 of the Code.

5. Section 568* provides that the parties to an appeal shall not be entitled to adduce fresh evidence in the Appellate Court. It follows that the rejection of their application to be allowed to adduce such evidence contravened no right. It further seems that under that section the admissibility of additional evidence is made to depend, not upon the relevancy or materiality to the issue before the Court of the evidence sought to be admitted, or upon the fact whether or not the applicants had an opportunity of adducing evidence at some earlier stage, but upon whether or not the Appellate Court requires the evidence 'to enable it to pronounce judgment or for any other substantial cause.' The test of the admissibility of the evidence, therefore, seems to be the requirements of the Court itself. The language of the section shows that the Appellate Court, to which the application is made, is to be the sole and final judge of the question whether circumstances exist which require the admission of the evidence, and that the discretion vested in the Court for the purpose is not one which the Legislature intended should be subject to revision or control by a higher tribunal. Moreover, if the rejection of any such application, which as to its merits may or may not be of an entirely frivolous character, is to be held to involve a substantial question of law within the meaning of Section 596, it is obvious that an opportunity would be afforded to litigants of bringing themselves within the requirements of the section in a manner and in a way hardly contemplated by the Legislature. For these reasons it appears to me that the rejection of the application did not involve any substantial question of law, and that the applicants have failed to bring themselves within the requirements of Section

596. I must, therefore, refuse the application with costs.

6. Mr. Mittra.-I ask that the costs of the application be costs of the appeal. The Appellate Court required the appellants to give security for the costs of the appeal. The applicants are not men of means, and the respondents will not be able to recover their costs of this application unless the order now asked for be made.

Sale, J.

7. Have I the power?

8. Mr. Mittra.--I submit your Lordship has power. When an Appeal Court is not sitting, the Judge, exercising original jurisdiction, has all the powers of the Appeal Court, and in the exercise of that power your Lordship can make the order.

Sale, J.

9. The present application is made under the sections relating to appeals to Her Majesty in Council, and cannot I think, be treated as forming part of the appellate proceedings in this Court. I cannot, therefore, direct the costs of this application to be included in the costs of the appeal which have been already dealt with.

* Production of additional evidence in Appellate Court.

[Section 568: The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment; or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.]

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