

Jnan Kumar Das Vs. Ram Kumar Das and ors.

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Court : Kolkata

Decided On : Aug-10-1939

Reported in : AIR1940Cal264

Appellant : Jnan Kumar Das

Respondent : Ram Kumar Das and ors.

Judgement :

B.K. Mukherjea, J.

1. This is an application for removing or discharging an executor appointed under the will of one Magan Chandra Das, an inhabitant of Rangunia in the District of Chittagong. The application is made by one of the sons of the deceased testator, who is also a beneficiary under the will, trader Section 301, Succession Act, and it seeks to remove the executor who is opposite party 1 in the case on various allegations of misconduct, waste and personal disability to carry on the work of administration. A preliminary point was taken on behalf of the opposite party, raising the question as to whether the application could be dealt with by this Bench, or it should be presented to the Judge in the original side who is exercising jurisdiction in matter of testamentary and intestate succession. Section 301, Succession Act, provides that the High Court may, on application made to it, suspend, remove or discharge any private executor or administrator. The oppression 'High Court' has not been defined in the Act, but it is clear that the

words have the same meaning in this Section as they have in Section 300 of the Act. In *In the goods of Mohendra Narain Roy* (1901) 5 C.W.N. 377, it was held by Sale J. that the 'High Court' in Section 87, Probate and Administration Act (which corresponds to the present Section 300, Succession Act) was not intended merely to be limited to the High Court in its appellate jurisdiction but also included the High Court exercising original jurisdiction. It was pointed out by the learned Judge that if the definition of the expression given in the General Clauses Act, is the highest Court of Appeal, meant only the High Court in its appellate jurisdiction, serious consequences might ensue and it would be difficult also to see how a Court of Appeal could exercise concurrent jurisdiction with a District Judge in issuing Probate and Letters of Administration. This decision was followed by Fletcher J, in *Nagendrabala Debi v. Kashi Pati* (1910) 37 Cal. 224.

2. These cases are not direct authorities on the question which has arisen in the present case and they only go to show that the original side of this Court can exercise jurisdiction under Section 300, the expression High Court being not confined to the appellate side alone. It seems to me that the expression High Court as used in Sections 300 and 301, Succession Act, means the High Court as a whole, and the litigant has got to approach the particular department of the Court which deals with the matter in dispute. As the dispute in the present case relates to a matter of testamentary succession of an original nature, the application, in my opinion, should be presented to that department which exercises original testamentary jurisdiction. So far as this Court is concerned, there is a definite allotment of work in this respect and all matters relating to testamentary and intestate succession are dealt with by a particular Judge in the original side. There is of course no specific rule laying down the procedure to be followed when applications are made in respect of wills probated in the mufussil Courts, but in the absence of definite rules, the ordinary procedure that obtains in the original side regarding applications of this description, may I think, be followed. The result is that the rule is discharged and the application is returned to the advocate for being presented to the proper Court. No order as to costs.

Roxburgh, J.

3. I agree.

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